

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12901 of 2015(O&M)

Decided on:03.12.2019

Const/AT (Rectt.) Rahul Kumar

.....Petitioner

versus

Union of India and others

....Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present: Mr.J.P.Jangu, Advocate,
for the petitioner.

Ms.Anita Balyan, Advocate
for the respondents-UOI.

ARUN MONGA, J. (Oral)

By way of this petition, petitioner seeks for issuance of a writ in the nature of certiorari for quashing the impugned order 18.12.2014 (Annexure P-2) vide which his services have been terminated and for issuance a writ of mandamus directing the respondents to reinstate the petitioner with all consequential benefits.

2. Succinctly, facts are that the petitioner was enrolled as Const/AT in ITBPF on 06.05.2014 and had been performing his duties. After appointment he was sent to Karera (MP) for training after which petitioner came back from Karera to Bonda Sarahan (HP) on 29.09.2014. The petitioner alongwith two others was sent to Delhi vide order dated 11.11.2014 where they immediately joined the office. Thereafter the petitioner was having some medical problem and he was admitted in hospital for treatment. He was not absent from 04.12.2014 to 18.12.2014, but inadvertently he was unable to attend the Roll call proceeding on 04.12.2014 because of some medical problem. But due to some wrong information given to the office of Bona Sarahan (HP)-respondent No.3,

services of the petitioner terminated vide order dated 18.12.2014 without giving him proper opportunity of hearing. The petitioner was under treatment and doctor had advised MRI as is evident from the prescription slip dated 15.12.2014 (Annexure P-4). The payment of the charges of test was also deposited in cash on 17.12.2014. Learned counsel for the petitioner also submits that the petitioner was on night duty on 01.01.2015 to 02.01.2015 and this fact can be verified from the dispatch register.

3. The petitioner also submitted a representation dated 19.01.2015. Pursuant to that representation respondent No.2 has issued memorandum to the authority for re-considering his case, as they themselves admitted that the order passed by the Commandant, 43rd Bn is not a speaking order. But no action has been taken. Hence, the present writ petition.

4. Perhaps there was realization of harshness of Rule 14(2) of ITBPF Rules, 1994, which envisages that a trainee official can be summarily dismissed during the period of probation without assigning any reasons. The Department vide standing Order No.9 of 2007 dated 05.11.2007 (Annexure R-2) issued a circular providing certain safeguard to the newly recruits/trainees, relevant part of which reads as below:

“Basic training plays a vital role in shaping a recruit/trainee as an efficient member of the Force. As such it is essential to ensure that all the recruit/trainees undergo the Basic Training seriously and progress of their training is monitored properly through various tests. In case the progress of trainee is unsatisfactory and performance is not upto the mark or the trainee is not able to pass any subject in the mid term or final test he/she may be relegated for a specific period and on completion of relegation period if such trainee does not qualify the retest his/her services may be terminated under the provision of ITBPF Act and Rules.

2. A trainee undergoing Basic Training at BTC/ATCs would be relegated on following grounds:

a) Failure/not qualifying the prescribed tests.

b) Absence from training

c) Other reasons.

3. **Procedure for relegation:**

a) Failure/Not qualifying the prescribed tests:

i) A trainee fails in mid term test will not be allowed to proceed on mid term break. He/she will be given extra coaching/training in the subject(s) in which he/she has failed and will be tested after 10 days. If he/she qualifies in the re-test, he/she would be allowed to continue the training, otherwise he/she would be relegated to next batch/course.

ii) A trainee who fails in the final test, will be relegated by three months. Such trainee will be kept at Training Centre during the relegation period and would be coached/trained in the subjects in which he/she has failed. After relegation period, a test will be conducted by a board constituted by the Commanding Officer of the Training Centre.

iii) If a trainee again fails to qualify the test conducted after the relegation period, would be deemed that he/she is not showing satisfactory progress in the training and is not likely to become an efficient member of the Force. In such cases service would be terminated under the provisions of ITBPF Act and Rules.

b) **Absence from training:-**

If a trainee could not attend the training due to illness, leave and other reasons and remains absent for a period of 7% (at a stretch) or more than 7% (accumulated of total working days including Sunday/GH, he/she would be relegated to the next batch and he/she may be retained at Training Centre or Returned to Unit depending upon the date of commencement of new batch.

(c) **Other reasons for relegation:-**

If a trainee indulges in indiscipline activities or commits misconduct/offence, besides taking disciplinary action against him/her, he/she may also be debarred from appearing in the test and relegated for a specific period.”

5. In the light of the aforesaid, issuance of a writ in the nature of certiorari has been sought by the petitioner to quash the order dated 18.12.2014. Vide the said order his services as a trainee were summarily terminated during the probation period on the ground of 15 days of absence w.e.f., 04.12.2014 to 18.12.2014. Against the termination order, the petitioner had filed an appeal which too was dismissed vide Appellant Order dated 07.07.2015 on the ground that he had absented himself for more than 12 days from the basic training and later on also be absented himself three times from the Base Hospital, ITBPF while he was under treatment.

Resultantly, in view of this unauthorised absence he was declared as a habitual offender and provision of Rule 14(2) of the ITBPF was invoked.

6. In the return filed by the respondents the writ petition has been resisted primarily taking the following stand:

“7. That in reply to contents of para No.07 of the petition it is stated that EX-CT/AT Rahul Kumar was absented from Base Hospital, w.e.f. 23.11.2014 to 25.11.2014 for 04 days but individual was given an opportunity to maintain his conduct and discipline and no any disciplinary action was taken against him, he, being newly recruited in Force, but as per Base Hospital ITBP Delhi Signal No.6028 dated 06.12.2014 Ex.-CT/AT Rahul Kumar again absented from Base Hospital Delhi w.e.f. 04.12.2014 without prior permission of competent authority. His pay and allowance were stopped with immediate effect vide 43 Bn WT Msg No.9259 dated 08.12.2014 and Ex-CT/AT Rahul Kumar was also informed to report back to Bn HQ 43 Shalabag Sarahan (HP) immediately vide memo No.7520 dated 08.12.2014 copy of this memo was also sent to Smt.Prem Devi, his mother at his home town address, but CT/AT Rahul Kumar neither reported on duty nor made any communication/correspondence with 43 Bn ITBP. Individual was under probation period and unable to complete his basic training for which he was relegated from basic training RTC Karera (MP) vide their office Order No.2780-81 dated 17.09.2014. He was under medical treatment at Base

Hospital. During this period he absented from Base Hospital twice. Keeping in view of all above facts his service was terminated i.e. discharged from service under the provision of Rule 14(2) of ITBP Rules 1994 vide 43 Bn Order No.727 dated 18.12.2014.

Due to some communication gap at Base Hospital, Ex-CT/AT Rahul Kumar was allowed to make GD entry on 24.12.2014 at Base Hospital although his service was terminated vide Bn order No.727 dated 18.12.14 and he remained at Base Hospital upto 03.01.2015. The individual was very well informed about his termination from service and the copy of termination order dated 18.12.2014 was also sent to individual home address. Ex-CT/AT Rahul Kumar taking advantage of communication gap at Base Hospital Delhi managed to stay at Base Hospital till 03.01.2015. In between he left the campus twice. When the termination order of individual was made clear to Base Hospital, then individual again left the campus on 03.01.2015 and never returned back. Ex-CT/AT Rahul Kumar was a newly appointed recruit who was relegated from Basic Training on medical ground and was under treatment at Base Hospital Delhi. His frequent absents from hospital also indicates that he was not co-operating in his medical treatment. Keeping in view circumstances of the case Commandant 43 Bn decided to terminate his service. Though he was given sufficient opportunity to report back to unit to present his

side, but he never reported to Battalion Head Quarter.”

7. A perusal of the above would reveal that the petitioner was hastily declared as a habitual offender as the considered position taken in the return is that he was absent from the hospital for a period of three days which was the immediate cause of passing of the impugned order. The earlier absence of 12 days was combined with the subsequent absence of 3 days to declare him as a habitual offender. That to my mind, seems to be too harsh.

8. The justification rendered by the petitioner for his absence does not seem to inspire any confidence. Still, the benefit of circular dated 15.11.2007 ought to have been given to the petitioner as its applicability is not confined to the cases where the absence is justified. The circular simply states that in case a trainee could not attend the training due to illness, leave or 'other reasons' and remains absent for a period of 7% at a stretch or more than 7% accumulated by including Sunday and Government holidays then he can be relegated to the next batch or he may be retained at training centre or return to the unit depending upon the date of commencement of new batch. Furthermore, the circular also envisages that in case the trainee indulges in indiscipline activities or commits misconduct in that case he can also be debarred from appearing in the test and relegated for a specified period.

9. Clearly the instant case is not one where trainee had committed any indisciplined activity but the admitted stand of the respondents is that he had remained absent. At best the same can be termed as “for other reasons” since no plausible justification worth consideration has been rendered by the petitioner. Even in such an eventually the petitioner ought

to have been given the benefit of the Standing Order No.9 of 2007 dated 15.11.2007.

10. Another facet which is noteworthy is that despite the petitioner's services having been terminated w.e.f. 18.12.2014, he remained admitted at the Base Hospital upto 03.01.2015 meaning thereby he had not been discharged from the rolls of the respondents. The ostensible justification of petitioner's having continued on rolls of the department seems to be that due to certain communication gap, he was allowed to make General Duty Entries at Base Hospital. The said justification does not inspire any confidence and is unacceptable, as concededly the communication gap if at all was attributable to the respondents themselves. The petitioner cannot be held responsible for the same.

11. As an upshot of the above discussion and the reason contained therein the impugned order dated 18.12.2014 (Annexure P-2) is set aside and respondents/competent authority is directed to reinstate the petitioner in service subject to his being medically fit and to induct him in the training from the stage deemed appropriate by the respondent/competent authority.

12. It is, however, made clear that in case the competent authority comes to the conclusion that the petitioner has to be put back in the training from the beginning it may do so by disregarding the fact that he has already undergone the seven months of training.

Disposed of in above terms.

(ARUN MONGA)
JUDGE

December 03, 2019

dharamvir

Whether speaking/reasoned:
Whether Reportable :

Yes/No
Yes/No