

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

**CWP NO. 26390 of 2015(O&M)
DATE OF DECISION : 04.04.2019**

Sreenivasa Rao Sanapala

... Petitioner

versus

Union of India & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Nikhil Anand, Advocate,
for the petitioner.

Ms. Balwinder Kaur, Advocate
for Union of India-respondents.

ARUN MONGA, J.

1. The challenge in this writ petition filed under Article 226/227 of the Constitution of India is to the order dated 30.04.2015 (Annexure P-9) by virtue of which the services of the petitioner were dispensed with on the ground that he was found unsuitable to render the services, as provided under Section 17(II) read with Section 25 of the Indo Tibetan Border Police Force Rules (for brevity, ITBP Rules).

2. The factual matrix of the case is that the petitioner participated in the selection process conducted by the respondents for the post of Constable in Indo Tibetan Border Police Force (hereinafter referred to as ITBP, in short). He successfully cleared the examinations and was issued appointment letter dated 17.10.2005 (Annexure P-1). On joining, the

petitioner was required to undergo basic training. It is the case of the petitioner that during training he suffered illness and was diagnosed as a case of 'seizures'. The petitioner was placed in low medical categorization and was deployed at static field locations, as per the exigency of work. It is further averred that despite being fit, the petitioner was not made to undergo the basic training. Rather, he was issued notice dated 16.06.2014 wherein he was informed about the recommendations made by the Departmental Rehabilitation Board to invalidate him from service on the ground of physical incapacitation. Though, the petitioner confronted the authorities with the medical reports about his general physical conditions issued by the Civil Surgeon, King Gorge Hospital, Vishakhapatnam, but the same was not considered by the authorities and he was issued notice dated 25.03.2015 (Annexure P-7) under Section 17(ii) and Rule 25 of ITBP Rules and ultimately, as noted above, his services were terminated, leading to the filing of the instant writ petition.

3. The grievance of the petitioner is that before terminating his services, no proper procedure, as prescribed under the Rules was followed and he has been deprived of his right to livelihood. The competent authority did not take into consideration the medical certificates submitted by the petitioner and a unilateral decision was taken by the authorities without providing him the opportunity of being heard.

4. In the reply, the respondents admitted that the petitioner was given the appointment with them and he joined on 28.11.2005. They took the stand that owing to his low medical category and seizure disorder, he could not complete his basic training, which he was required to undergo as per conditions mentioned in the appointment letter. It was admitted that the

medical condition of the petitioner was upgraded on 11.06.2012 and he was sent for training, but it was claimed that during that period he again suffered attack of seizure disorder and was again placed in low medical category. His life was at high risk. According to the respondents, adequate opportunity of hearing was given to the petitioner to produce the medical certificates about his fitness and it was required under the Rules that the medical authority issuing fitness certificate must mention that he had taken into consideration the previous medical record of the employee and he/ she is fit to undergo basic training and service in the Armed Forces. Though, the petitioner produced the certificates but the same were lacking the findings of the Medical Authorities to the aforesaid extent. It was the case of the respondents that the petitioner obtained the medical certificate while concealing the material factum of his illness. Therefore, on the basis of recommendations of the Board, his services were dispensed with in accordance with rules.

5. The petitioner in his replication has controverted the stand taken in the written statement and reiterated his averments made in the writ petition.

6. I have heard learned counsel for the parties and have gone through the paper-book carefully with their able assistance.

7. Learned counsel for the petitioner has submitted that the services of the petitioner were terminated wrongfully, in violation of provisions contained in Rule 26 of the ITBPF Act as no proper procedure was followed. Elaborating his arguments, he has referred to Rule 26 of the Act to contend that the termination falls within the ambit of Rule 26 which envisages that the employee be provided opportunity to counter the medical

opinion by furnishing medical certificates from the Civil Surgeon and on receipt of such information, the case of the employee was required to be referred to the Review Medical Board and this procedure was not resorted to in the case in hand and hence the termination was against rules. He has further contended that the respondent authorities have ignored the fact that the petitioner had served them for about a decade. He has placed reliance upon the cases of **Capt. Virendra Kumar Vs. Union of India, 1981 (1) SCC 486, Union of India & Ors. Vs. Rajpal Singh 2009(1) SCC 216, Nepal Singh Vs. State of UP & Ors. 1985(1) SCC 56, Union of India & Ors. Vs. L.D. Balam Singh 2002(9) SCC 73 and Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, 1997(7) SCC 622.**

8. Per contra, learned counsel for respondents has strongly argued that the services of the petitioner were though terminated on medical grounds but he was even otherwise found unsuitable and unfit owing to the fact that he had not undergone the training. According to her, it was incumbent upon the petitioner to undergo the basic training and he failed to complete the same despite lapse of more than 8 years and had been given ample opportunities to do the needful. She has further contended that the petitioner is not entitled to any enquiry or relief on merits as he has concealed his ailment from the authorities as also from the Doctor at the time of his medical examination and obtained the medical certificates by concealing the factum of his previous illness and said medical certificates are of no help to him.

9. A perusal of file would reveal that the services of the petitioner were terminated by invoking Section 17(ii) read with Rule 25 of ITBP Rules on the ground of being unsuitable. This rule gives the power to the authority

prescribed to terminate the services of the employee who was found unsuitable to be retained in Force. Rule 26 of the Act empowers the competent authority to retire/ discharge the enrolled person on the ground of physical unfitness. A perusal of impugned order (Annexure P-9) makes it abundantly clear that while passing it, the competent authority had taken into view the recommendations of Rehabilitation Board as well as Invalidation Medical Board, which opined that the petitioner was medically and physically unfit to complete the basic training. Thus, the termination of petitioner's service falls under Section 26 of the Rule. A bare glance of Rule 26, *ibid*, makes it apparent that certain checks and balances are provided therein which the authorities are under obligation to follow before taking adverse action against the enrolled person on medical grounds.

10. A right has been given to the enrolled person to counter the report of the Medical Board, which was exercised by the petitioner by producing the certificate from the Civil Surgeon, King Gorge Hospital, Vishakhapatnam. The rule further envisages that in case any contrary view/report is brought by the concerned person, then he has to be examined from a Review Medical Board and based on the report thereof, the final decision was to taken. But this procedure was not followed while passing the impugned order. Once the authorities were of the opinion that the services of the petitioner were required to be terminated on medical grounds, then it was imperative on their part to get the petitioner examined from the Review Medical Board.

11. The plea of concealment of fact on the part of the petitioner is untenable. Neither the impugned order nor anything otherwise from the record of the respondents reflects that the petitioner was found unsuitable

on the ground of concealment of his ailments. On the contrary, it was for the medical board to conduct the requisite medical test to find out if the petitioner suffered from any ailment rendering him unfit for continuation in service. It is only for the first time, this stand has been taken by way of filing the written statement before this Court. It is settled position of law that the orders must speak for themselves and not the pleadings, which is totally lacking in this case and the respondents cannot be permitted to raise the plea of concealment of facts, at this juncture.

12. In view of the discussion above and the reasoning contained therein, the impugned order dated 30.04.2015 (Annexure P-9) is set aside with a direction to the respondents to get conducted fresh medical examination of the petitioner from a duly constituted medical Board, in accordance with Rule 17(v) read with Rule 26 of ITBPF Rules and to pass appropriate orders afresh, as per law. It is expected of the respondents to take sympathetic view of granting the past service benefits to the petitioner, in the event he is found medically unfit for continuation in service. On the other hand, if he is found suitable, the petitioner will be entitled to reinstatement in service with back wages for the period he had remained out of service.

Disposed of.

(ARUN MONGA)
JUDGE

April 04, 2019
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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |