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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1633/2018**

RAM NIWAS

..... Petitioner

Through: Mr. Ankur Chibber, Advocate.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rakesh Kumar, CGSC for UOI.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

24.09.2019

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1. The prayer in the present petition is to discharge the Petitioner from the post of Constable (Cook) in the Central Reserve Police Force (CRPF) on medical grounds in the facts and circumstances explained in the petition. An order dated 1st December, 2015 of the Respondents rejecting the Petitioner's request for reinstatement followed by discharge on medical grounds has also been challenged in the writ petition.

2. The background facts are that the Petitioner was appointed as Constable (Cook) in the CRPF having been called for enrolment on 22nd March, 2004. He was first posted at Goods Centre (GC), Kadarpur, Gurgaon where he remained till 3rd July, 2004. Thereafter he was posted with the 167th Bn Sindri, Manipur from to 1st October 2004 to 4th November 2005. It is stated

that Battalion moved to Joysagar from 4th November 2005 to 3rd July 2006 and then to Mantipukhari.

3. While the Battalion was in Manipur, the Petitioner while on duty, slipped and suffered injuries on both his legs. He was referred by the Medical Officer, 167 Bn, CRPF to Ortho surgeon, Regional Institute of Medical Sciences (RIMS), Hospital, Imphal by a referral slip dated 2nd July, 2007. The Petitioner was operated in the left leg (knee) on 31st August, 2007 at RIMS Hospital, Manipur. Post surgery he was referred to the Ortho Surgeon at RIMS for follow up. The Petitioner has enclosed with the petition a copy of the referral slip and the relevant parts of the health book issued to him. He has also enclosed a copy of discharge slip dated 15th September, 2007 issued by RIMS hospital advising him to do light duties and not to lift weights. Subsequently, also during his consultation he was given the same advice.

4. The Petitioner moved with the 167th Bn. to Kolkata where he was again referred to Ortho Surgeon, NRS Hospital, Kolkata and SSKM Hospital, Kolkata. He has enclosed the extracts of the health book and the OPD card issued to him on 14th September, 2009. He states that he was operated again in the right leg (knee) on 11th August, 2009 at Nil Ratan Sarkar (NRS) Hospital in Kolkata.

5. The Petitioner's grievance is that the Respondents failed to hold a Court of Inquiry (CoI) to determine the attributability of his knee injuries to the discharge of his duties. He nevertheless asserts that the injuries were suffered and were attributable to his service and it was for this reason that the 167th Bn. referred him to RIMS, Manipur and other hospitals in Kolkata for treatment.

6. It is stated that due to the consecutive operations the Petitioner remained under medication for a long duration. This led to his developing psychological problems due to the side effects of heavy medication. He began suffering from hypertension and migraine since 2010 and he is stated to be under treatment at various hospitals even for this.

7. Due to the knee injury the Petitioner found it difficult to discharge the duties assigned to him. On 14th March, 2011 he was referred by the medical officer of the 167 Bn. to a psychiatrist. The petitioner is stated to have developed deformity in the joints of the right hand, pursuant to which he was referred to a rheumatologist at SSKM hospital again by the unit hospital of 167 Bn. Copies of the extract of the Battalion health book issued to the Petitioner have been enclosed with the petition.

8. Copies of the annual medical check-up and categorization dated 31st December, 2013 declaring the Petitioner to be in SHAPE-II category have also been enclosed with the petition. In October, 2014 the Petitioner is stated to have been referred to the orthopedic department of the Composite Hospital, New Delhi by the CMO, GC Sonepat, CRPF. The Petitioner is stated to have received treatment at that facility for some time.

9. The Petitioner refers to the entries dated 6th January, 2015, 9th February, 2015 and 10th March, 2015 in his health book whereby he was advised to do light duty without arms and ammunition. According to the Petitioner this was because his condition worsened and he had developed insomnia, severe anxiety

and stress. He was again referred to the Composite Hospital and to AIIMS, New Delhi by referral slip dated 18th March, 2015.

10. In October, 2014 the Petitioner's wife has stated to have made a verbal representation to the DIG of the Establishment Branch, CGO New Delhi for posting the Petitioner to Sonapat on account of his deteriorating health. While this verbal representation was not acted upon he made another representation to the DIG in January 2015. He was then transferred to GC Sonapat, CRPF in March, 2015.

11. The Petitioner's condition did not improve and the competent authority stated to have been approached requesting his invalidation from service. The Petitioner states that he was asked to submit an application seeking voluntary discharge from service. He accordingly submitted an application on 13th May 2015 seeking 'discharge from service due to growing physical and mental inability to discharge his duties'. A copy of this application has been enclosed with the counter affidavit filed by the Respondents. In it the Petitioner states that 'due to continuous physical and mental problem the applicant is unable to work.' (This is an English translation of the original which is in Hindi). In response to this application, the Petitioner was informed by the DIG, GC, CRPF, Sonapat by communication dated 21st May, 2015 that he had not shown 'clear reason' in respect of discharge from service and he had not enclosed an indemnity certificate.

12. The Petitioner then submitted a second application on 22nd May, 2015 again seeking voluntary discharge. His application also mentioned that he was suffering from physical and domestic problems and he remained disturbed

mentally. He enclosed an undertaking that 'due to my domestic problem and physical problems I want to go on discharge from service'.

13. On the basis of the above application on 1st June, 2015 an order was passed by the Commandant GC, CRPF, Sonapat the operative portion of which reads as under (This again is translated copy of the original which is in Hindi, has been enclosed as Annexure R-4 to the counter affidavit of the Respondents):

“Under the provisions contained in Chapter 47 of Swami's Complete Manual on Establishment and Administration and Rule-17 of Central Reserve Police Force Rules-1965, the request for Discharge from service of No. 045110194 Ct/Cook Rom Niwas of this Group Centre due to his domestic and physical problem is accepted today on 01.06.2015 after noon. The above individual will struck off from the strength of this Group Centre from 01.06.2015 afternoon.

02. The above official was recruited in CRPF in the post of Ct/Cook on 24.03.2004. The official has today on 01.06.2015 has completed 11 years 02 months and 08 day service and is taking discharge from service voluntarily. Therefore, as per the directions given in the letter No. A-VI-4/2007-08 dated 06.06.2007 of the Inspector General (Training) Directorate General, pay of three months or the cost incurred on giving trading to him whichever is more, no need to recover the same from the above official.”

14. The wife of the Petitioner realised that the above discharge order was a discharge simpliciter on the voluntary request of the Petitioner and would deprive him of a disability pension which would otherwise have been available to him had the discharge been on medical grounds. She first made an oral representation to the DIG for either reinstating the Petitioner or granting him the disability pension. She was subsequently advised to submit

an application for that purpose. On 18th November, 2015 the Petitioner's wife submitted an application requesting that he be reinstated in service pointing out that he should have been considered for payment of disability pension.

15. On this a detailed report was called for from the DIG, GC, Sonapat by the DIG of Police (Welfare). By an order dated 1st December, 2015, the above representation of the Petitioner's wife was rejected by the Inspector General of Police, GC, Sonapat. *Inter alia* it was stated that in terms of an office order of Ministry of Home Affairs (MHA) dated 7th January, 2004 under the New Pension Scheme (Defined Pension Contributory Scheme), no pension is due to the Petitioner from the date of his discharge from service i.e. from 1st June, 2015. Incidentally, this order also acknowledges that the Petitioner had submitted a letter and undertaking dated 22nd May, 2015 seeking discharge from service 'due to his domestic and physical health problems'. The Petitioner's wife submitted further representations on 1st and again 13th February, 2016. Thereafter the present petition was filed seeking the aforementioned relief.

16. The petition was first heard on 21st February, 2018 when notice was issued to the Respondents.

17. The stand taken by the Respondents in the counter affidavit is a predictable one. It is stated that since the Petitioner himself submitted the application on 22nd May, 2015 seeking to proceed on discharge 'due to physical/domestic problems 'as well as he is in mentally stressed state and

not able to serve', the order of discharging him would not be said to be invalid. It is pointed out that the request for reinstatement was made more than five months thereafter on 16th November, 2015. Learned counsel for the Respondents also refers to this and states that it is accordingly time barred.

18. The Respondents do not dispute that they have received the application from the Petitioner's wife on 5th February, 2016 requesting for his reinstatement and to the fact that on 13th February, 2016 she was intimated that the request cannot be acceded to. It is stated that the IG on 30th March, 2016 submitted a reply to the Spl. DG., J&K Zone who had sought a report that the Petitioner had not brought any new fact/ground on record which required to be considered.

19. It is thus seen that the rejection of the Petitioner's request is basically on two grounds. One is that he had voluntarily sought discharge simpliciter and secondly that his request through his wife for his reinstatement was beyond a period of 90 days from the date of his discharge and therefore barred by limitation.

20. As far as the second ground is concerned, the Court is of the view that in the facts and circumstances explained hereinabove, a rigid view cannot be taken of the limitation period of 90 days. As already noted, the Petitioner was suffering from severe physical and mental issues. In his application he repeatedly referred to his physical distress. The explanation in the writ petition that it was his wife who was running around from pillar to post for seeking his discharge on medical grounds, is not even denied by the

Respondents. It is obvious that she was the one corresponding with the Respondents since clearly the Petitioner was not in an appropriate state of mind to do so. In the circumstances, the time taken by her to submit an application for his reinstatement is purportedly understandable and in the considered view of the Court ought not to stand in the way of her request being considered. Therefore, the Court rejects the plea of the Respondent that the Petitioner's request cannot be considered because it was beyond 90 days after the date of discharge.

21. As far as the first ground is considered the Court notes that repeatedly in almost every application made to the Respondents, the Petitioner and later his wife have alluded to his physical/medical problems. The medical record, copies of which have been placed on record and not denied by the Respondents themselves, indicate that the Petitioner had been receiving continuous problem from 2007 onwards soon after he suffered the knee injury on both his knees.

22. It is plain that despite the Petitioner having suffered those injuries while on duty, the Respondents failed to conduct a COI which they were obliged to do in terms of the CRPF Rules. Nevertheless, the record speaks for itself. At every stage it was the Respondents who were referring the Petitioner to various public health institutions like RIMS in Manipur, SSKM and NRS hospital in Kolkata and later on the Composite Hospital in New Delhi for treatment. The medical record shows that the Petitioner suffered injuries for which he underwent repeated surgeries, and treatment, which in turn led to further complications that affected his mental health.

23. The Petitioner having completed 11 years and 2 months in the service in CRPF deserved to be treated better in the matter of his discharge. Clearly he was seeking discharge of medical grounds but for some reason his application did not clearly state that. If one reads his application carefully it is plain that the reason for his seeking discharge is his medical condition. It is the deep distress as a result of the repeated operations and treatment that affected his ability to discharge his functions properly. This is not difficult to discern on a collective reading of all the documents that have been placed on record.

24. In the considered of the Court, therefore, the Respondents ought to have taken a holistic view of the entire medical record which was available with them which would bear out that Petitioner was in fact seeking discharge on medical grounds and not a discharge simpliciter. To treat in such a condition the Petitioner's request and not as a request for discharge on medical would be causing grave injustice to the Petitioner.

25. In the circumstances, the Court sets aside the order dated 1st December, 2015 passed by the Respondents refusing the request for reinstatement and discharge on medical grounds. The order dated 1st June, 2015 which discharged him simpliciter shall now be treated by the Respondents as a discharge on medical grounds. Within eight weeks from today the Respondent will issue consequential orders granting the Petitioner the disability pension that he would be entitled to as a result of this order.

26. The petition is allowed in the above terms. No order as to costs.

27. Order *dasti*.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 24, 2019

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