

\$~A-1

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

+ W.P. (C) 4775/2021, CM APPL. 14731/2021

SURINDER PALPetitioner
Through: Mr. Shakti Narayanan, Advocate

Versus

UNION OF INDIA & ANR.Respondents
Through: Mr. Avnish Singh with
Ms.Pushplata Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

ORDER
20.04.2021

%

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the award of sentence under Rule 29 of Sahastra Seema Bal, 2007 dated 13th April, 2021 issued by Dy. Inspector General of Sahastra Seema Bal. Petitioner also seeks directions to the Respondents to stay the order of termination with immediate effect and to allow the Petitioner to continue with their employment till the outcome of the present writ petition.
3. Learned counsel for the Petitioner states that the Petitioner was appointed to the post of Constable (GD) on 31st December, 2014 in Sahastra Seema Bal. He states that the Petitioner could not complete his Basic Recruit Training Course (BRTC) within two years and two chances as mentioned in the offer letter, on account of his suffering from kidney

stones during the training course.

4. Learned counsel for the petitioner states that as per the Regulation Policy of BRTC, a medical board should have been constituted by the Competent Authority in order to assess the injury to the petitioner during the training prior to the termination order being passed. However, according to him, in the present case, no Medical Board was constituted and the petitioner was terminated without following due process of law.

5. Learned counsel for the Petitioner emphasises that the Petitioner is similarly situated as the Petitioner in **WPC 9287/2020, Bhagirath v UOI**, which was disposed off by this Court vide order dated 01st March 2021, along with other connected writ petitions. He states that the Court directed in the aforesaid writ petition that if termination orders are passed in pursuance to the show cause notices impugned in the batch of petitions, a two week period of stay would be available to the Petitioners to file their statutory appeal. He states that an order of 'Termination of Service' was passed against the Petitioner on 03rd April, 2021 and that the Petitioner preferred an appeal against it as per Rule 29 of SSB Rules, 2009, on the same day. He states vide the impugned order dated 13th April 2021, the sentence awarded to the Petitioner was upheld and his appeal was dismissed.

6. He states that a Coordinate Bench of this Court on the first date of hearing i.e. 16th April, 2021 had directed maintenance of status quo vis-a-vis the petitioner as the two week stay granted by this Court vide order dated 01st March, 2021 in WP(C) 8199/2019 and WP(C) 9287/2020 had not expired.

7. Per contra, learned counsel for the respondents states that the petitioner has suppressed the material facts inasmuch as the petitioner's writ petition being WP(C) 531/2020 was dismissed by this Court vide a speaking judgement dated 01st March, 2021. The order dated 01st March, 2021 in WP(C) 531/2020 screen shared by the learned counsel for the respondents is reproduced hereinbelow:-

“\$~13, 17, 18 & 20

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

13

+ W.P. (C) 12363/2019

DINKAR KUMAR SINGH

.....Petitioner

Through: Dr. Kanwal Sapra, Advocate.

Versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Sandeep Tyagi, Senior panel
counsel.

17

+ W.P. (C) 13700/2019, CM APPL. 55189/2019

AKSHAY DINKAR HIWALE

.....Petitioner

Through: Mr. K B Upadhyay, Advocate.

Versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Sunieta Ojha, Advocate.

18

+ W.P. (C) 199/2020

AMOL SHAMRAO KOKARE

.....Petitioner

Through: Mr. M.A. Niyazi, Advocate.

Versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Ms. Anju Gupta, Advocate for
UOI.

20

+ W.P. (C) 531/2020, CM APPL. 1409/2020

SURINDER PAL

.....Petitioner

Through: Mr. K B Upadhyay, Advocate.

Versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Anju Gupta, Advocate for
UOI.

%

Date of Decision: 01st March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. The petitions have been heard by way of video conferencing.
2. Present writ petitions have been filed challenging the office orders issued by the respondents whereby petitioners have been terminated on the ground that they had not completed their training in two years due to medical unfitness.
3. Learned counsel for the petitioners submit that though the petitioners had two chances to appear for the training programme, yet the respondents never allowed the petitioners to take the second chance.
4. Learned counsel for the petitioners also submit that the petitioners have been discriminated again, inasmuch as, a large number of candidates have been allowed in the past to complete their training beyond the two-year training period.
5. This Court finds that Para 2(vii) of the offer of appointment clearly mentions "He will have to successfully complete 'basic recruit training course' being conducted by Sashastra Seema Bal within a period of two years from the date of appointment. Not more than two chances will be given."
6. Admittedly, due to medical unfitness, the petitioners could not complete the basic recruit training course within two years from the date of appointment.
7. This Court is of the view that if the petitioners' submission that they be given two chances to complete their basic recruit training course even beyond two years from the date of appointment is accepted, then the new recruits may not complete their training for very long period and as a consequence, the combatised force shall not be able to deploy able-bodied persons for combat duties for a long period of

time. Such an interpretation would defeat the intent and purpose of creating a centralized combatised force like Sashastra Seema Bal, more so, when Para 2(vii) of the offer of appointment provides for nearly double the time to complete the training. This has been so held by this Division Bench in Ravi Ranjan Kumar Vs. Union of India, W.P.(C) 2402/2021 decided on 22nd February, 2021.

8. This Court is also of the opinion that it should not ask the respondent to lower/dilute their standards specially when it pertains to a Central Paramilitary Force.

9. As far as the aspect of discrimination is concerned, it is a well settled that Article 14 of the Constitution is a positive concept and cannot be enforced in a negative manner. Irregularity and illegality cannot be perpetuated on the ground that the illegal benefits have been extended to others. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If such a wrong is committed in an earlier case, it cannot be perpetuated under Article 14 of the constitution. [see: (2010) 2 SCC 59 “Union of India Vs. M.K. Sarkar” and (2013) 14 SCC 81 “Basawaraj and Another Vs. Special Land Acquisition Officer”.

10. Accordingly, the present writ petitions being bereft of merits are dismissed.

11. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

8. He also states that the petitioner despite seeking stay of the termination order dated 03rd April, 2021 has suppressed the same.

9. In rejoinder, learned counsel for the petitioner aggressively argues that there is no suppression. Initially, the counsel for the petitioner stonewalled the queries of this Court and gave no direct answers.

10. However, after persistent questioning, he states that as the petition was filed in a ‘tearing hurry’, the impugned termination order dated 03rd April, 2021 could not be enclosed. He further states that the earlier order dated 01st March, 2021 disposing off the petitioner’s earlier writ petition

was not brought to his notice by the petitioner. In any event, according to him, the petitioner's writ petition being WP(C) 531/2020 should have been governed by the order of the same day passed in the other batch of writ petitions, namely, WP(C) 9287/2020 and WP(C) 8199/2019.

11. Having heard learned counsel for the petitioner and having perused the paper book, this Court finds that the petitioner has suppressed not only the termination order dated 03rd April, 2021 but also the order dated 01st March, 2021 whereby the petitioner's writ petition being WP(C) 531/2020 was disposed of.

12. It is also not understood as to why the petitioner did not inform the Coordinate Bench on 16th April, 2021 of the order disposing of petitioner's earlier writ petition being WP(C) 531/2020.

13. Even if according to the petitioner, it was governed by the order dated 01st March, 2021 passed in the other batch of writ petitions namely WP(C) 8199/2019 and WP(C) 9287/2020, it should have annexed the order passed in his writ petition and should have filed an application for review of the order disposing of petitioner's earlier writ petition being WP(C) 531/2020.

14. Non-attachment of the impugned termination order dated 03rd April, 2021 is unpardonable, as that is the order whose stay in essence has been sought in the present writ petition. Even if the present writ petition had been filed in 'tearing hurry', it is not understood as to why between 16th April, 2021 and today, the termination order dated 03rd April, 2021 and the order dated 01st March, 2021 passed in petitioner's earlier WP(C) 531/2020 had not been placed on record in the present writ petition.

15. Accordingly, the present writ petition and pending application are dismissed on the ground of suppression. The interim order, if any, stands vacated.

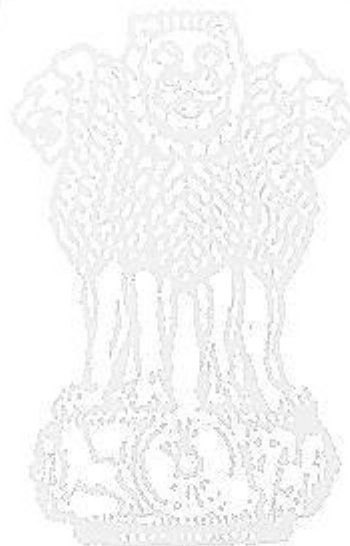
16. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

APRIL 20, 2021

rn



नित्यमेव जयते