

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

117

CWP No.24836 of 2022 (O&M)
DATE OF DECISION: 28th OCTOBER, 2022

HC/RO Ram Sagar Singh

.... Petitioner

Versus

The Union of India and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Parminder Singh, Advocates
for the petitioner.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for setting aside the order dated 21.10.2022 (Annexure P-19), whereby the petitioner has wrongly been ordered to be retired from service w.e.f. 31.10.2022, with certain another prayer made in the present petition.

It is submitted by learned counsel for the petitioner that the petitioner was declared disable only to the extent of 65%. Therefore, he can perform light duties with the respondent-Force. The petitioner has been performing the duties in the Force despite disability; for the past about 10 years and hence the action of the respondents in retiring the petitioner from the service is illegal. Moreover, the respondents had not communicated to the petitioner the medical examination report qua his unfitness; as required under Rule 25 of the BSF Rules, 1969. Therefore,

the action taken by the respondents is totally in violation of the rules. Hence, the same deserves to be set aside. The respondents deserve to be directed to assign some light duties to the petitioner instead of retiring him from the Force.

Notice of motion.

Mr. Arihant Goyal, Advocate, Central Govt. Counsel for UOI, accepts notice on behalf of the respondents.

Learned counsel for the respondents has referred to the official records and has submitted that the petitioner was duly examined by the Medical Officer. He was declared to be medically unfit; having acquired 65% of disability. Thereafter, the petitioner was referred to the Review Medical Board; as required under the Rules. Even the Review Medical Board found the petitioner to be unfit and declared him to be permanently unfit for any service in the Force. Not only that, to consider the representation of the petitioner, the matter was referred to the Rehabilitation Board of the Force, as well, however, even the Rehabilitation Board found the petitioner to be unfit for any rehabilitations/light duty in the Force as such. Replying to the other arguments of the counsel for the petitioner, the counsel for the respondents has submitted that the medical examination report was duly communicated to the petitioner; along with the show cause notice. The petitioner had even put the signatures as token of having received the show cause notice, as well as, the medical examination report. Therefore, the relevant rules have been duly complied with; before initiating action against the petitioner. Moreover, the petitioner is not being discharged from the Force by way of punishment. He has been relived from the post

with all due retiral benefits, as available under the rules to him. Hence, the petition deserves to be dismissed.

Having heard learned counsel for both the parties and having perused the material on record, this Court does not find any force in the arguments raised by the counsel for the petitioner. Undisputedly, the petitioner has been duly examined by the Medical Officer, as well as, by the Review Medical Board of the Force. The Medical Authorities have found the petitioner to be unfit for any job in the respondent-Force as such; and had made recommendations accordingly. Not only that, to explore the possibility of rehabilitation of the petitioner with the respondent-Force, his case was referred to the Rehabilitation Board of the Force as well. However, even the Rehabilitation Board has found the petitioner to be unfit for any rehabilitation on any post in the Force. Therefore, the respondents have taken every possible step to make attempt to adjust the petitioner, if the same was possible. However, as per the rules and medical standards applicable to the Force, the petitioner has been found to be unfit for any job in the Force. Accordingly, no fault can be found with the action of the respondents in discharging the petitioner from the Force.

Although, learned counsel for the petitioner has raised legal aspect of non-communication of the medical examination report to the petitioner, however, learned counsel for the respondents has referred to the letter dated 08.07.2022, which has been duly received and signed by the petitioner himself and which states that the medical examination report was duly supplied to the petitioner; along with the show cause notice. Therefore, even on this count, this Court does not find any force

in the argument of the counsel for the petitioner. Although the counsel for the petitioner has also submitted that the petitioner had been working in the Force despite disability, however, this argument cannot be accepted by this Court for the simple reason that there is no estoppel against the rules. If the rules of the Force do not permit the retention of the petitioner in service, then mere fact that he might have continued in service in any capacity; would not stop the respondents from taking action, in accordance with law. Moreover, the petitioner is being granted all his retiral benefits, in accordance with the applicable rules. Therefore, there is no illegality or infirmity in the action taken by the respondents.

In view of the above, finding no merit in the present petition, the same is dismissed.

28th OCTOBER, 2022
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>