



W.P.No.3584 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3584 of 2017
and W.M.P.No.3617 of 2017

Madhusudhan

... Petitioner

Vs.

1. The Union of India,
Represented by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.

2. The Director General,
Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road, New Delhi 110 003.

3. The Inspector General,
Central Reserve Police Force,
Hyderabad.

4. The Deputy Inspector General,
Central Reserve Police Force,
Group Center,
Avadi, Chennai 600 065.

5. The Commandant,
142 Battalion,
Central Reserve Police Force,
Golaghat, Assam 785 621.

... Respondents



W.P.No.3584 of 2017

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus pleased to call for the records relating to the order passed by the fifth respondent in his Office Order No.M.III.1/2016-EC-IV, dated 06.11.2016 and quash the same and to direct the respondents to provide lighter job to the petitioner and to pay all benefits from 06.11.2016.

For Petitioner : Mr.A.S.Mujubur Rahman

For Respondents : Mr.D.Simon,
Central Government Standing Counsel

ORDER

This Writ Petition has been filed seeking Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fifth respondent in his Office Order No.M.III.1/2016-EC-IV, dated 06.11.2016 and quash the same and to direct the respondents to provide lighter job to the petitioner and to pay all benefits from 06.11.2016.

2. The petitioner herein, who was appointed as a Constable GD in Central Reserve Police Force on 01.01.1997, was subject to medical examination in the year 2016 and after having found that the petitioner is suffering from Alcohol Dependence Syndrome, he was declared



W.P.No.3584 of 2017

completely and permanently incapacitated for further service of any kind in CRPF and the Order No.M.III.1/2016-EC-IV dated 06.11.2016 was passed in terms of instruction contained in para 5(1) of GOI OM No.38/3/63-Estt(A) dated 12.09.1963 incorporated in Appendix-4 of CCS (Pension) Rules, 1972, invalidating the petitioner for continuance in service and striking off his name from the strength of unit concerned.

3. Aggrieved by the said order, the petitioner approached this Court by filing the present Writ Petition.

4. The impugned order dated 06.11.2016 was passed by the fifth respondent, who is the Commandant of the Battalion concerned of the Central Reserve Police Force, Golaghat, Assam 785 621. On being asked as to the availability of an alternative remedy of appeal under the relevant rules, it is brought to the notice of this Court by the learned Counsel for the petitioner that in terms of Clause 15 of the Standing Order No.04/2008 dated 15.12.2008, the appeal is maintainable against the findings of the medical board before the Director General of the Force.

5. The learned Counsel for the petitioner also brought to the notice



W.P.No.3584 of 2017

of this Court the decision of the Gauhati High Court in case No.W.P.(C)/6210/2022 dated 21.09.2022, wherein the learned Judge considered the availability of an alternative remedy of appeal and the relevant paragraph 6 of the said order reads as under :-

“6. Mr.BK.Das, learned counsel for the petitioner refers to the procedure for medical categorization provided in the Standing Order No.04/2008 dated 15.12.2008 and relying upon Clause 15 thereof, a submission is made that an appeal against the findings of a medical board is maintainable before the Director General of the Force and therefore, the appeal of the petitioner ought to have been considered by the Director General and not by the Commandant of the Battalion concerned. Going by Clause 15 of the Standing Order dated 15.12.2008, we are in agreement with Mr.BK.Das, learned counsel for the petitioner that the appeal of the petitioner dated 16.12.2019 being an appeal against the order of the medical board, the same ought to have been considered by the Director General of the CRPF and if the Director General was of the view that there is a requirement, the appropriate procedure would have been to order the Director of Medical to constitute a review medical board.”

6. In the light of the availability of the alternative remedy of appeal as noted above, this Court is of the considered view that it would be

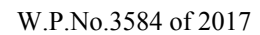


W.P.No.3584 of 2017

WEB COPY

appropriate and in the interest of the petitioner to avail such remedy of appeal before the Appellate Authority concerned on merits.

7. This Court feels it necessary to make certain observations which would enable the Appellate Authority to deal with the matter in proper direction. The petitioner herein has put in more than 19 years of service as on the date of invalidating him in the year 2016. The qualification for drawing pension under CCS (Pension) Rules, 1972 is 10 years. In case, if an employee is retired from service compulsorily or on invalidation grounds, the benefit of service rendered by the employee cannot be denied. Rule 49 of the Pension Rules deals with the amount of pension when the Government servant is retiring in accordance with the provisions of the rules before completing qualifying service of 10 years. Similarly, Rule 38 of the Pension Rules deals with the invalid pension. Therefore, though the petitioner was declared as incapacitated for continuance in service as per the terms contained in para 5(1) of GOI OM No.38/3/63-Estt(A) dated 12.09.1963 incorporated in Appendix-4 of CCS (Pension) Rules, 1972, the impugned order does not show whether the petitioner is retired from service or removed from service or dismissed from service. If the power



8. In case, the Appellate Authority after considering the appeal of the petitioner is not inclined to interfere with the said impugned order, the Appellate Authority shall deal with the aspect as to whether the petitioner is entitled to payment of pension either under Rule 38 or under 49 or anyother rule in terms of CCS (Pension Rules) 1972 or not and pass the order to that effect as well.

6/9
https://www.mhc.tn.gov.in/judis



W.P.No.3584 of 2017

Clause 15 of the Standing Order No.04/2008 dated 15.12.2008 within **six weeks** from the date of receipt of a copy of this order. On filing such appeal, the Appellate Authority concerned shall consider the said appeal on merits without reference to the delay in filing the appeal and pass suitable orders in accordance with law within a period of **twelve weeks** from the date of filing of such appeal by duly taking into consideration the observations made above and by affording the petitioner an opportunity of personal hearing.

10. Consequently, the connected miscellaneous petition is also closed. There shall be no order as to costs.

11.06.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
ham



W.P.No.3584 of 2017

WEB COPY

To

1. The Union of India,
Rep by its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road, New Delhi 110 003.
3. The Inspector General,
Central Reserve Police Force,
Hyderabad.
4. The Deputy Inspector General,
Central Reserve Police Force,
Group Center, Avadi, Chennai 600 065.
5. The Commandant,
142 Battalion,
Central Reserve Police Force,
Golaghat, Assam 785 621.



WEB COPY



W.P.No.3584 of 2017

MUMMINENI SUDHEER KUMAR, J.

ham

***W.P.No.3584 of 2017
and
W.M.P.No.3617 of 2017***

11.06.2024