

2024:PHHC:148352



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

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CWP-29442-2023 (O&M)

Date of decision: 13.11.2024

Munish Kumar

..Petitioner

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Gurpreet Singh, Advocate for the petitioner.

Mr. Sandeep Bhatia, Sr. Panel Counsel, Union of India.

AMAN CHAUDHARY, J. (Oral)

1. Prayer made in the present petition is for quashing the orders dated 22.03.2023, 04.08.2023, 09.08.2023 and 09.11.2023 (Annexures P2 to P5).
2. Learned counsel submits that the petitioner was dismissed from service which was upheld by the appellate authority without taking into consideration the fact that he had 19 years' unblemished service and is a psychiatric patient of S2/S3 category, as is evident from the Medical Board Proceedings (Annexure P6).
3. He prays the matter be reconsidered in light of the judgment of the Hon'ble Supreme Court in **Ravinder Kumar Dhariwal and another vs. Union of India and others**, (2023) 2 SCC 209, which has also been referred while issuing notice of motion in this case relating to CRPF, relevant paras thereof read thus:-

“148. The disciplinary proceedings are discriminatory and violative of the provisions of the RPwD for the following reasons:-

148.1. A person with a disability is entitled to protection under the RPwD Act as long as the disability was one of the factors for the discriminatory act.

148.2. The mental disability of a person need not be the sole cause of the misconduct that led to the initiation of the disciplinary proceeding. Any residual control that persons with mental disabilities have over their conduct merely diminishes the extent to which the disability contributed to the conduct. The mental disability impairs the ability of persons to comply with workplace standards in comparison to their able-bodied counterparts. Such persons suffer a disproportionate disadvantage due to the impairment and are more likely to be subjected to disciplinary proceedings. Thus, the initiation of disciplinary proceedings against persons with mental disabilities is a facet of indirect discrimination.

149. The disciplinary proceedings against the appellant relating to the first enquiry are set aside. The appellant is also entitled to the protection of Section 20(4) of the RPwD Act in the event he is found unsuitable for his current employment duty. While re-assigning the appellant to an alternate post, should it become necessary, his pay, emoluments and conditions of service must be protected. The authorities will be at liberty to ensure that the assignment to an alternate post does not involve the use of or control over fire-arms or equipment which may pose a danger to the appellant or others in or around the work-place.

150. The Civil Appeal is accordingly allowed in the above terms. Pending application(s), if any, stand disposed of.”

4. In **R. Sampath vs. Union of India and others**, Writ Petition

No.43093 of 2016, decided on 29.06.2020, Hon’ble the Supreme Court observed

thus:-

“19. Thus, elaborate procedure is envisaged whenever the competent authority finds that the member of the Force is unable to discharge his duties because of his unfitness. The Disciplinary

7. 91-B Retirement of enrolled member of the Force on the grounds of Medical unfitness:-

(1) Where a Commandant is satisfied that any enrolled member of the Force is unable to perform his duties by reason of medical unfitness, he may direct that the said enrolled member to be brought before a Medical Board.

(2) The Medical Board shall be constituted in such manner as may be determined by the Director General.

(3) Where the said enrolled member is found by the Medical Board to be unfit for further service in the Force, the Inspector General, the Deputy Inspector General or as the case may be, the Commandant, may, if he agrees with the findings of the Medical Board order the retirement of enrolled member. Provided that before the said enrolled member is so retired the findings of the Medical Board and the decision to retire him shall be communicated to him.

(4) The enrolled member may, within a period of fifteen days from the date of receipt of such communication, make a representation to the officer next superior in rank to the one who ordered the retirement. (5) The said superior officer shall have the case referred to a Review Medical Board which shall be constituted in such manner as may be determined by the Director General. (6) The superior officer may, having regard to the findings of the Review Medical Board, pass such order as he may deem fit. (7) Where a representation has been made to a superior officer under sub-rule (4), an order passed under sub-rule (3) shall, not take effect till it is confirmed by such superior officer.

PNR,J Authority mixed up both aspects. While continuing the disciplinary proceedings culminating in imposing punishment of compulsory retirement, he takes notice on the health status claim of the petitioner to retire him compulsorily by way of punishment. Thus, the order of compulsory retirement is in violation of statutory mandate. For the reasons best known, at all levels, this aspect was ignored.

20. Having regard to the peculiar facts of the case, it is apparent that there was no application of mind to the issue and ignorance of the statutory environment, culminating in the orders impugned in this writ petition.

21. Looking from any angle, the orders impugned in this writ petition are not sustainable and are accordingly set aside. The Writ Petition is allowed. Petitioner is entitled to reinstatement. Matter is remitted to the disciplinary authority. He shall refer the petitioner to duly constituted Medical Board and based on the assessment of the Medical Board, take all further steps as required by law. It is made clear that there is no expression of opinion on merits of the allegations levelled against the petitioner.”

5. Learned counsel for the Union of India, on instructions from Mr. KJ Pathak, Deputy Commandant, submits that the appellate authority would not be averse to having a relook at the appeal taking note of the aforesaid judgments, within a period of 3 months, after granting opportunity of hearing to petitioner which satisfies his learned counsel.
6. Disposed of accordingly.

13.11.2024
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No