



2024:DHC:7536-DB



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

Date of decision: 30.09.2024

+ W.P.(C) 11715/2021
EX CT./DCPO SUNIL KUMARPetitioner
Through: Mr.U Srivastava, Mr.M.K.
Gaur, Advs.
versus

UNION OF INDIA & OTHERSRespondents
Through: Ms.Nidhi Raman, CGSC,
Mr.Zubin Singh, Ms.Rashi
Kapoor and Mr. Akash Mishra,
Advs. with De/Exe-Rishi
Kaushik.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the order dated 21.12.2020 passed by the respondents, terminating the services of the petitioner on the ground that he is not fit for permanent appointment due to low medical category, as well as the order dated 20.07.2021 passed by the respondents, rejecting the request of the petitioner for grant of invalid pension.
2. It is the case of the petitioner that the petitioner was appointed as a Constable in the CISF on 02.11.2013, on probationary basis. The petitioner remained on leave from 06.04.2015 to 18.09.2017 as he was diagnosed with tuberculosis and remained under treatment. He



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rejoined the duties with effect from 19.09.2017 and was advised for light duty. In the Medical Board conducted on 28.09.2020, he was diagnosed as suffering from Locomotor Disability in both lower limbs (paralysis) and was assessed as suffering from 90% physical impairment. Based on this report, *vide* the Impugned Order, he was declared unfit for the permanent appointment and his services were terminated with effect from 21.12.2020. The petitioner claims that he would be entitled to invalid pension in accordance with the Office Memorandum dated 12.02.2019 as he had been examined at the time of his appointment and was declared medically fit.

3. The learned counsel for the petitioner places reliance on the judgment of the Supreme Court in ***Dharamvir Singh v. Union of India & Ors.***, (2013) 7 SCC 316, in support of the prayer made by the petitioner.

4. On the other hand, the learned counsel for the respondents submits that the petitioner was appointed only on a probationary basis. The medical examination conducted at that time is not for the appointment in a permanent capacity, and only routine tests are done.

5. She further submits that the petitioner remained on leave from 06.04.2015 to 18.09.2017, which was regularized considering it to be an extraordinary leave. On his rejoining, at least four opportunities were given to the petitioner to clear the medical examination, as for being granted permanent status on completion of the probation period one of the pre-conditions is for the candidate to be having SHAPE-1 medical category. She submits that in the present case, the petitioner was in fact reported to be SHAPE-3 permanent with multiple CNS



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tuberculosis. Due to his medical condition, he was not found fit and eligible under Rule 25 of the CISF Rules, 2001 to be granted a permanent status. She also places reliance on the judgment of the Supreme Court in ***NO. 14666828M EX CFN Narsingh Yadav v. Union of India and Others***, (2019) 9 SCC 667, to submit that while considering whether the disability suffered by the petitioner can be said to be attributable to or aggravated by service, all attendant circumstances have to be looked into and the opinion of the Medical Board, though open to judicial review, has to be given due deference.

6. We have considered the submissions made by the learned counsels for the parties.

7. As would be evident from the above, the petitioner was appointed only on a probationary basis on 02.11.2013. He proceeded on leave on 06.04.2015, and remained on leave for 897 days, till 18.09.2017. On his rejoining, the respondents conducted medical examination wherein he was found unfit for service. Even as per the Disability Certificate of Government of Rajasthan, he has been declared to be suffering from permanent physical impairment with multiple CNS tuberculosis. The petitioner, therefore, could not attain SHAPE-1, which is a pre-requisite for his confirmation in terms of Rule 25 of the CISF Rules, 2001.

8. Merely because his medical condition was not discovered at the time of his appointment on probation, it cannot be said that the medical condition is attributable to service or has been aggravated thereby, this is more so especially keeping in view the limited period for which the petitioner had actually worked. There is also absence of



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a plea in the petition that his medical condition could actually be said to be attributable to or to have been aggravated only because of the service conditions.

9. As far as the Office Memorandum dated 12.02.2019, on which reliance has been placed by the petitioner, it relates to the Government officials who have retired from the services on account of physical or mental infirmity, while in the present case, the petitioner was yet to be given confirmation of his appointment and therefore, he is not covered by the said Office Memorandum.

10. Keeping in view the peculiar facts of the present case, therefore, we do not find it to be a fit case for interfering with the Impugned Order dated 21.12.2020.

11. The petition is accordingly dismissed.

12. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 30, 2024/Arya/as

Click here to check corrigendum, if any