



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

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CWP-524-2025

Date of decision: 03.04.2025

AMARNATH RAM

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Deepak Jindal, Advocate and
Mr. Ashok Kumar, Advocate
for the petitioner.

Mr. B.S. Khaira, Senior Panel Counsel
for respondents-Union of India.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order dated 27.12.2023 passed by the Deputy Inspector General (Estt.) on behalf of respondent No.2-the Director General, Border Security Force vide which the respondents have conveyed that the petitioner cannot be offered any alternate employment in the BSF as all posts in the BSF would require a person to undergo the basic recruit training and have further offered that in case any other dependent family member of petitioner applies for compassionate appointment in BSF through the STC, BSF Kharkan Camp,

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Punjab, such a request shall be examined as per the procedure and appropriate action will be taken.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was provisionally selected for appointment in Border Security Force as a Constable (General Duty) and was directed to report to the Subsidiary Training Center (STC), BSF Kharkan Camp, Hoshiarpur, Punjab by 15.04.2011. Consequent upon reporting of the petitioner to the Camp, he was appointed as a Constable General Duty w.e.f. 15.04.2011 and was allotted 'J' company for basic recruit training with Batch No. 204 which started w.e.f. 30.05.2011. The petitioner, however, reported to the BSF, Hospital Kharkan Camp, Punjab in September, 2011 with a complain of fever; pain in the left shoulder and right hip for 10-15 days prior to being admitted and was diagnosed as a suspected case of Bone TB whereupon Anti-Tubercular (ATT) medication was started for CAT-I tuberculosis (Extra Pulmonary TB). The case of the petitioner was further referred to the PGI, Chandigarh wherein the diagnosis of Bone TB was confirmed after conducting investigations. The petitioner remained under treatment with the consultant Orthopedic Surgeon at PGI, Chandigarh and he was declared fit by the PGI, Chandigarh to resume normal activities and a fitness certificate dated 10.05.2012 was issued by the Medical Superintendent, Nehru Hospital, PGI, Chandigarh. The respondent-authorities, however, did not accept the said report of the doctors of PGI and he was made to face the Medical Board again at Composite Hospital, Headquarter BSF, Jalandhar on 07.10.2012 for assessing the suitability of the petitioner for retention in service. The Medical Board found the petitioner unfit to undergo the basic

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recruit training and hence held not suitable for further retention in service in view of FHQ (Pers Dte-Rectt Section) Circular dated 28.01.2003. A Show Cause Notice dated 03.10.2012 for termination of service was accordingly issued under Rule 13 of BSF Rules, 1969. The petitioner submitted his response alongwith the medical documents for Review Medical Board, which was convened again on 18.02.2013, which again held the petitioner to be unfit to undergo the basic recruit training. The services of the petitioner were thereafter terminated under Rule 25 of the BSF Rules, 1969 w.e.f. 23.04.2014 afternoon on the ground of Bone TB with Psoas Abscess Rt with Rt Inguinal LAP with discharging sinus, without any pensionary benefits.

3. Aggrieved thereof, the petitioner filed CWP-26018 of 2017 before this Court. Vide order dated 02.09.2023, the writ petition was disposed of with a direction to the respondent-authorities to reconsider the case of the petitioner sympathetically and to pass a speaking order in relation to consideration of the case of the petitioner for appointment to any post other than the post of Constable. In compliance thereto, the impugned order dated 27.12.2023 has been passed by the respondents, declining the claim. The operative part thereof reads thus:-

“08. Whereas, in respectful compliance of Court Order dated 02.09.2023, in the said CWP, the petitioner was heard by the DG BSF on 12.12.2023 virtually through 09 BN NDRF, Patna (Bihar). During the hearing the petitioner requested for revoking his termination order dated 23.04.2014 and reinstate him in service, since, he had regained his physical fitness and on grounds of



his poor financial condition. On asking about his dependent family members, the petitioner told that his younger brother is 16-17 years of age.

09. Whereas, on completion of the hearing of the petitioner, the DG BSF has examined the complete case. It is noted by the DG BSF that the petitioner was a case of bone TB once he was examined in Sept 2011 when he complained of Fever and Pain in his shoulder and number of other ailments. Board of medical officers in the review medical board so constituted, examined the petitioner and declared him 'Unfit' for basic recruit training. DIG, STC, BSF, Kharkan Camp. Punjab, the competent authority, accordingly boarded out the petitioner on grounds of physical unfitness under Rule 25 of BSF Rules, 1969 after following due procedure. Termination of the petitioner from service has been found in accordance with law and is just and proper. Petitioner being a combatant was expected to have certain level of physical fitness which enables him to undergo BRT and to perform the duty which requires absolute physical fitness.

10. Whereas, there is no post in BSF which does not require the person so enrolled not to undergo Basic Recruit Training and give him some kind of sheltered appointment/duties. Thus, the petitioner cannot be offered any alternate employment in the BSF.

11. Whereas, the DG BSF taking a sympathetic view observed that any dependent



family member of the petitioner may apply for compassionate appointment in BSF through the STC BSF Kharkan Camp, Punjab. Such a request shall be examined as per the procedure and action will be taken accordingly.

12. This order is being issued in respectful compliance of the solemn Order dated 02.09.2023, passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No. 26018/2017 titled, "Amarnath Ram Vs UOI & Others"

4. The rejection of the claim of the petitioner has thus prompted institution of the present writ petition.

5. Learned Counsel for the petitioner reiterates his argument that the claim of the petitioner needs to be sympathetically considered and that since he has already been found fit by the PGIMER, hence, the determination of fitness by the Medical Board and the Review Medical Board of the respondent-authorities should not stand in the way of the respondents from issuing the appointment to the petitioner as Constable General Duty.

6. Counsel for the respondents on the other hand contends that the fitness level as ascertained by the PGIMER is at variance with the fitness level required for Uniformed Para Military Services. There is a necessity of a minimum physical endurance and strength which is required to be possessed by every member of the force. The certificate issued by the PGIMER does not specify that the said certification of physical fitness is as per the parameters prescribed for the uniform Services. Hence, the

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determination of fitness by the Medical Board constituted by them on the standard fitness parameters has to be considered paramount. He further contends that the petitioner had earlier come before this Court challenging the order of termination after a lapse of three years. Be that as it may, the claim of the petitioner for being appointed as Constable General Duty was not accepted by this Court even then and only a direction was issued to consider the claim of the petitioner sympathetically for appointment to any other post. Thus, the petitioner cannot at this stage, re-agitate an issue that has already been foreclosed by this Court vide its previous order. He further submits that the matter has hence been sympathetically reconsidered by honoring the direction given by this Court and it is specifically recorded that there is no post in BSF which does not require a person to undergo the basic recruit training and would expose the petitioner to enhanced dangers and may prove fatal. He further submits that as a measure of sympathetic approach, the respondents have already conveyed that a dependent family member of the petitioner may apply for compassionate appointment in BSF and that in the event such a request is submitted, the same shall be examined as per procedure and an appropriate action will be taken. Thus, the benefit stands extended to the petitioner.

7. No other argument has been advanced by the Counsel for either of the parties nor any judgment cited.

8. Counsel for the petitioner has been confronted by this Court with the reasons assigned by the respondents in Para No. 10 of the impugned order wherein the reason for inability to offer any alternative appointment

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has been given since basic recruit training is mandatory for each and every post. It was also posed to him as to whether the petitioner can indicate any post with the respondent-BSF for which the basic recruit training is not required to which he fairly concedes that there is no such post.

9. In view of the aforesaid peculiar condition, this Court has no reasons to disbelieve the reasons assigned by the respondents. Further, this Court is also of the opinion that the physical endurance and strength required for discharging functions in uniformed services would be at a pedestal higher than what the assigned parameters of physical fitness might be under the general standards. The Certificate issued by the PGIMER is a certificate only to the extent that the petitioner stands cured of the disease that was detected, however, the same cannot be construed as a fitness certificate on all parameters as prescribed for the respondent-BSF. Having not been evaluated on the physical parameters of endurance and strength as prescribed for uniformed services, hence, the said certificate cannot be read in supersession of the medical examination and the results drawn by the respondent themselves.

10. It was also put to the Counsel as to whether he could refer to any rules/instructions under which the reasons assigned by the respondents in the impugned order can be assailed or held invalid. He fairly concedes that he is not in possession of any such rules or instructions under which the claim of the petitioner could nonetheless be considered.

11. Under the given circumstances, it would not be appropriate for this Court to none-the-less direct the respondents to appoint the petitioner to

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a post with the BSF by exempting him from undergoing the basic recruit training as the same would amount to diluting the basic fitness standards of the respondent-BSF and is likely to have a cascading effect on the overall suitability, endurance, strength and battle readiness of the Uniformed Services.

12. It is also noticed that the respondents have already made an offer to the petitioner that any dependent family member may apply for compassionate appointment and that in the event of any such application, the case shall be examined as per procedure and appropriate action shall be taken. I find that the said offer is a fair offer made to the petitioner.

13. Hence, while holding that there is no substantive merit in the prayer made by the petitioner and hence the same cannot be accepted, it is left open to the petitioner/his dependent family member to move an appropriate application for seeking appointment on compassionate grounds. Needless to mention that in the event of submission of any such application, the respondents shall take an appropriate decision and examine the case as per procedure, in view of the assurance/undertaking recorded by them in their order of 27.12.2023.

The present petition is accordingly disposed of.

(VINOD S. BHARDWAJ)**JUDGE****APRIL 03, 2025***Vishal Sharma*

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No