

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17708 of 2013

Shivdani Kumar S/O Shidheshwar Prasad Resident Of Village- Asthawan,
P.O- Asthawan, District- Nalanda.

... .. Petitioner/s

Versus

1. The Union Of India
2. The Director General Directorate General Border Security Force Block 10
Cgo Complex, New Delhi.
3. The Inspector General Border Security Force, Siliguri Kadam Tala North
Bengal
4. The Deputy Inspector General Border Security Force Campus, Kishanganj,
Khagra Camp
5. The Commandant- 14, B.N. Border Security Force, Kishanganj, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sudish Kumar, Adv.
For the UOI : Mr. Bindhyachal Rai, Sr. Panel Counsel

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 19-01-2026

1. The present Writ petition is filed for
the following reliefs:

(i) For issuance of a writ in
the nature of certiorari quashing the
order dated 31.05.2013 vide order
No. 549(A/MBO/E SH/14Bn/ 13.9940-
46 passed by Commandant, 14 Bn
B.S.F., Kishanganj, Bihar
(respondent No. 2(Annexure-2))
whereby and whereunder the
petition has been terminated from
his service as a post of constable of
14 Bn B.S.F.

(ii) For issuance of a writ



in the nature of mandamus directing the respondent to restore the service of petitioner with consequential benefits.

(iii) For issuance of such other writ(s), Order(s) or direction(s) as your lordship may deem fit and proper.

2. The brief facts, as culled out from the writ petition, are that the petitioner joined service on 19.06.2012 as a Constable of 14 Bn., B.S.F., Kishanganj, vide Commandant No. 12/08/801. The petitioner was recruited to the post of Constable after successful examination by the Medical Board, at the time of recruitment. Subsequently, the petitioner got the treatment for tuberculosis but at present, he is medically fit to discharge his duties, as is evident from the certificate/prescriptions dated 14.01.2013 issued by Kishanganj Government Hospital. Without issuing any show-cause notice, the petitioner was terminated from his service vide Order No. 549(A)/M.B.O./East/14Bn/13/9940-46 dated 31.05.2013 by respondent No. 5, and no copy of the medical report was served upon him. Being aggrieved by the same,



the petitioner preferred an appeal under Border Security Force (BSF) Act, 1968 before D.I.G, B.S.F., Kishanganj on 25.09.2013. Thereafter, vide letter No. 5546-47 dated 08.07.2013, he was informed that the appeal was required to be preferred before the I.G., B.S.F., North Bengal instead of the D.I.G. Accordingly, the petitioner preferred an appeal before the I.G. (respondent No. 3) on 12.07.2013. However, due to inaction of the respondents, the present Writ petition was filed.

3. During the pendency of the Writ petition, the petitioner filed an I.A. No. 6568 of 2013 challenging the order of the appellate authority, and the said I.A. was allowed. The relief sought reads as follows:

(i) For issuance of a writ Certiorari to quash the order contained in letter (Estt 1/WO(CF) shivdani/NBF/2013/11376-79 dt. 29.8.2013 issued by Respondent no 3 by which the petitioner application/representation dt. 12.7.2013 for reconsideration of termination of petitioner dt. 31.5.2013 on the recommendation of medical Board for reinstatement in service was rejected having no



grounds or no merit in the representation.

(ii) Petitioner further prays after quashing of representation of petition dated 29.8.13 the petitioner be resumed the service along with all the consequential benefits the period of termination of petitioner be counted as continued as service.

4. A detailed counter affidavit was filed on behalf of the respondents, denying the allegations made in the Writ petition. The counter affidavit disclose that the petitioner was terminated by Commandant, 14 Bn., B.S.F., after due compliance with the procedure and provisions as envisaged under the B.S.F. Act and Rules. The petitioner was found permanently unfit, for further service in the B.S.F. by the Medical Board of doctors, as he was suffering from "Tubercular Pleural Effusion(LT)", and thereafter, his services were terminated.

5. The counter further disclose that the order dated 31.05.2013 was issued in accordance with the procedure prescribed under Rule 13, Appendix-I, Part-II (Condition No.2) of B.S.F. Rules,



1969, and the instructions issued by FHQ, Pers. Dte. (Rectt. Section) vide Letter No. 29/40/(WO)/99-2002/ Rectt/BSF/1441-1741 dated 28.01.2003. It was further submitted that there was no requirement to give any advance notice to the petitioner, prior to termination, as he was still on probation, and this fact had been duly intimated to him, in the offer of appointment dated 07.06.2012, vide para (2)(b).

6. Further, the petitioner was examined by Dr. N.K. Prasad, Head of Department of the Revised National Tuberculosis Control Programme, Sub-Divisional Hospital, District- Kishanganj, and was diagnosed as “a suspected case of Pulmonary Effusion(LT)” and CAT-I treatment was started after examination.” Subsequently, the petitioner was examined by the Medical Board, which found him a case of “Tubercular Pleural Effusion(LT)” and declared him unfit for further service in B.S.F.

7. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents. Perused the records.



8. The Learned counsel for the petitioner relied on Rule 25(5) of The Border Security Force Rules, 1969, which reads as follows:

25. Retirement of subordinate officers and enrolled persons on grounds of physical unfitness.-

[(1) Where a Commandant is satisfied that a Subedar Major, an Inspector], a Sub-Inspector, an Assistant Sub-Inspector or an enrolled person is unable to perform his duties by reason of any physical disability, he may direct that the said Subedar-Major, the Inspector, the Sub-Inspector, the Assistant Sub-Inspector or the enrolled person, as the case may be, 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 Subedar-Major, Inspector, Sub-Inspector, Assistant Sub-Inspector or enrolled person 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 finding of the Medical Board order the retirement of the Subedar-Major, the Inspector, the Sub-Inspector, the Assistant Sub-



Inspector, or as the case may be, the enrolled persons:

Provided that before the said Subedar-Major or Inspector or Sub-Inspector or Assistant Sub-Inspector or as the case may be, the enrolled person is so retired the finding of the Medical Board and the decision to retire him shall be communicated to him.

(4) The Subedar-Major, the Inspector, the Sub-Inspector, the Assistant Sub-Inspector or, as the case may be, the enrolled person may, within a period of fifteen days from the date of receipt of such communication, make a representation to the officer next superior in command 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 finding 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.

9. It is the contention of the Learned



counsel for the petitioner that, as per the said Rule, the petitioner ought to have been referred to a Review Medical Board, which is to be constituted in the manner determined by the Director General. However, without referring the petitioner to the Review Medical Board, he was terminated from the service which is illegal and arbitrary in nature.

10. On the other hand, the Learned counsel for the respondents contended that this Rule applies only to regular government employees and not to the probationers. Further, the Learned counsel for the respondents contended that the petitioner was initially examined by the Civil Surgeon of the Government Hospital and thereafter, he was referred to the Medical Board. The Medical Board diagnosed the petitioner and found that he was not fit for further service, as he is suffering from "Tubercular Pleural Effusion(LT)." Basing on the report of the Medical Board, his service was terminated, and therefore, there is no error or irregularity in the orders passed either by the Commandant or by the appellate



authority.

11. Taking into consideration the entire material available on record and the submissions advanced by the Learned counsel for both the parties, this Court is of the considered view that the Medical Board itself found the petitioner unfit to continue the service. Moreover, the petitioner was a probationer, and the letter of appointment disclose that there was no requirement of issuing any advance notice, prior to termination of service.

12. Therefore, this Court finds that there is no merit in the case. Accordingly, the Writ petition is dismissed, as it devoid of merits.

13. Interlocutory Application, if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

AMANDEEP/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

