

Surender (Ex. Constable) vs.union of India and Ors.

Surender (Ex. Constable) vs.union of India and Ors.

SooperKanoon Citation : sooperkanoon.com/1224041

Court : Delhi

Decided On : Jul-17-2019

Appellant : Surender (Ex. Constable)

Respondent : Union of India and Ors.

Advocate for Def. : Mr. Jivesh Tiwari

Advocate for Pet/Ap. : Mr. J.K. Singh, Mr. Varun Bhadola

Judgement :

\$~42. * + % W.P.(C.) No.2819/2019 SURENDER (EX. CONSTABLE) IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:17.07.2019

... Petitioner

Through: Mr. J.K. Singh with Mr. Varun Bhadola, Advs. versus UNION OF INDIA & ORS.Respondent Through: Mr. Jivesh Tiwari, Sr. Panel Counsel. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MR. JUSTICE RAJNISH BHATNAGAR VIPIN SANGHI, J.

(ORAL) 1. The petitioner has preferred the present writ petition to seek quashing of the order dated 02.11.2018, as well as the order dated 23.07.2018 passed by the respondents under Rule 25 of the BSF Rules, 1969. By the earlier order dated 23.07.2018, the petitioner was retired from service on the ground of his physical unfitness w.e.f. 23.07.2018 under Rule 25 of the BSF Rules, 1969 without any pensionary benefits, as he had not completed 10 years of qualifying service. The

subsequent order dated 02.11.2018 was passed on the petitioners representation submitted to the Inspector General, BSF, wherein the petitioner sought reinstatement in service by placing reliance upon the medical certificate issued by Pt. B.D. Sharma PGIMS, W.P.(C.) No2819/2019 Page 1 of 7 Rohtak, Haryana.

2. The brief facts are that the petitioner was enrolled in the BSF as Constable (GD) ON2711.2012. At the relevant time, he was serving in the 157 Battalion. The petitioner was produced before the duly constituted Medical Board held at Composite Hospital, BSF, Jodhpur on 19.03.2018 for examination of his medical fitness for efficient discharge of duties as Constable (GD). After medical examination, the Medical Board placed the petitioner in low medical category S5H1A1P1E1 with 59% disability due to the Bipolar Affective Disorder (BPAD) and declared him medically unfit for further service in the force. The proceedings of the Medical Board were approved by the Competent Authority on 09.05.2018. Consequently, the petitioner was issued a show cause notice under Rule 25 of the BSF 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, 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 W.P.(C.) No2819/2019 Page 2 of 7 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), and order passed under sub-rule (3), shall not take effect till it is confirmed by such superior officer.

3. The show cause notice, inter alia stated as follows: If you are not agreed with the view of medical board then you may sent a representation to Inspector General, Force Head Quarter, BSF (Medical Directorate), through DIG, BSF, Bikaner along with certificate issued under Manual - IX, Append pix-C, received from specialist medical officer and enclosed it with your representation and send the same to Establishment Branch of battalion within 15 days from receipt of this Show Cause Notice. (Proforma of Force Head Quarter, W.P.(C.) No2819/2019 Page 3 of 7 BSF (Medical Head Office) Manual -IX, Appendix-C is attached along with Show Cause Notice). If your representation would not received within given time limit under rule 25, BSF1969(Sub -rule-4) then it would be understood that you have nothing to say against medical board and you will have been sending a retirement letter on ground of medical unfitness.

4. Admittedly, the petitioner did not make any representation in response to the show cause notice till the date of his retirement i.e. 2307.2018. Thereafter, he

produced a medical certificate from the Institute of Mental Health, UHS, Rohtak addressed to the Medical Superintendent - Pt. B.D. Sharma PGIMS, Rohtak, prepared by a Board of three doctors. The communication dated 10.08.2018 reads as follows: Medical Board of following doctors was constituted for examination of Mr. Surender

2.

3. Dr. Priti Singh Dr. Purushottam Dr. Bhupendra Singh Board reviewed his old treatment records, examined and assessed him and is of the opinion that he is suffering from Bipolar affective disorder, he treatment and presently asymptomatic. His current disability is <40% (mild disability). is on regular He needs regular continuation of medication. follow up in psychiatry OPD and 5. On the basis of the aforesaid document, as aforesaid, the petitioner sought re-consideration of his retirement by the Inspector General but the Inspector General has rejected the said representation. W.P.(C.) No2819/2019 Page 4 of 7 6. The submission of learned counsel for the petitioner is that Rule 25 of the BSF Rules, 1969 itself does not contemplate the enrolled person providing any other medical certificate about his fitness. He submits that since the show cause notice gave that opportunity to the petitioner, with a view to obtain the medical certificate, he took leave on 14.06.2018 for one week to proceeded to Rohtak. However, the concerned doctors were on leave during that period. Consequently, the petitioner had to return to his service after a week. It is for this reason that the petitioner could not submit the reply to the show cause notice.

7. Learned counsel further submits that his representation to the Inspector General was rejected only on the ground that he had not sent a reply to the show cause notice, and while rejecting that representation the respondents have not taken into consideration the medical certificate produced by the petitioner dated 10.08.2018, which certified that the current disability of the petitioner was less than 40% (mild disability). He submits that since the disability was found to be less than 40%, he could not be retired under Rule 25 of the BSF Rules, 1969.

8. On the other learned counsel for the respondent submits that the petitioner was not prevented from replying to the show cause notice even without the medical

certificate. In any event, he had ample time before the actual date of his retirement on 23.07.2018 to get himself medically examined, which he failed to do. Learned counsel further submits that there is no basis for the petitioner to claim that with less than 40% disability, the petitioner could not have been retired under Rule 25. It is further pointed W.P.(C.) No2819/2019 Page 5 of 7 out that the medical certificate produced by the petitioner is not even in accordance with the proforma/ appendix which was enclosed with the show cause notice dated 31.05.2018. Thus, counsel submits that the present petition has no merit and it deserves dismissal.

9. We have heard the submissions of learned counsels and perused the record and having done so, we are of the view that there is no merit in the present petition.

10. Firstly, we may observe that the petitioner was granted an opportunity to respond to the show cause notice and, if he chose, he could have produced a medical certificate to counter the opinion of the experts at Composite Hospital, who found him to be suffering from 59% disability due to BPAD. Nothing prevented the petitioner from getting himself examined before his retirement on 23.07.2018 and getting the requisite certificate in the prescribed format. We find that the certificate obtained by the petitioner - apart from being highly belated, is not even in conformity with the proforma annexed to the show cause notice.

11. The material difference in the format prescribed and the certificate obtained by the petitioner dated 10.08.2018 is that the certificate dated 10.08.2018 does not record the knowledge of the Medical Board with regard to the medical de-categorization of the petitioner by the Medical Board of the respondent. Thus, the medical opinion of the Composite Hospital, BSF, Jodhpur was evidently not placed before the Medical Board, which issued the certificate dated 10.08.2018. W.P.(C.) No2819/2019 Page 6 of 7 12. In any event, the medical certificate obtained by the petitioner dated 10.08.2018 also confirms that the petitioner is suffering from BPAD. It assesses the current disability at less than 40%. It does not state that he is not suffering from the said disease - which is the requirement of the format prescribed by the respondents. The petitioner has placed no material before this Court to substantiate his plea that if the disability is less than 40%, Rule 25 of the

BSF Rules is not attracted.

13. Considering the fact that the BSF is a disciplined and armed force, discontinuance of the petitioners service by resort to Rule 25 in view of the disability suffered by the petitioner cannot be described as unjustified.

14. We, therefore, find no merit in this petition. Dismissed. VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY17 2019 N.Khanna W.P.(C.) No2819/2019 Page 7 of 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com