

Madan Pathak Vs. Chief Security Commissioner (E.R.) and ors.

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Court : Allahabad

Decided On : Oct-26-2002

Reported in : 2003(3)AWC1759; (2003)1UPLBEC149

Judge : Rakesh Tiwari, J.

Acts : Railway Protection Force Rules, 1987 - Rules 83 and 85

Appeal No. : C.M.W.P. No. 45688 of 2002

Appellant : Madan Pathak

Respondent : Chief Security Commissioner (E.R.) and ors.

Advocate for Def. : Tej Pratap and ;T. Verma, Adv.

Advocate for Pet/Ap. : R.N. Pandey, Adv.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.

2. The father of the petitioner was appointed as a constable in Railway Protection Force, Eastern Railway, Sonpur. He moved an application before the Divisional

Security Commissioner, Eastern Railway, Sonpur, for voluntary retirement on ground that due to health reasons, he is unable to perform his duties. His application was accepted and the petitioner's father was given voluntary retirement.

3. The mother of the petitioner made a representation to respondent No. 2, Divisional Security Commissioner, Eastern Railway, Sonpur, for consideration of her husband's premature retirement and for treating her husband in continuous service. From the record, it appears that no application for reconsideration of premature retirement was moved by the father of the petitioner. In the meantime, father of the petitioner died and a representation was moved for appointment on compassionate ground. The representations were decided informing her that (i) there is no provision for reappointment or re-employment after premature retirement, (ii) there is problem of surplus employment or overstaffing and (iii) there is no provision for appointment on ground of mercy.

4. The counsel for the petitioner relied upon Rule 85 of the Railway Protection Force Rules, 1987 and contends that whenever an appointing authority, on receipt of a 'report', considers that a member of the Force has become unfit to perform his duties as a member of the Force because of his physical or mental conditions, he may order that the member be examined by the Medical Board and in case the Medical Board comes to the conclusion that the member is unfit for service, the appointing authority shall communicate to the said member, the findings of the Medical Board and call upon him to submit any representation. On receipt of such representation, the appointing authority may pass such orders as he deems fit.

5. It is contended by the respondents' standing counsel that since the appointing authority never received any report nor otherwise considered that petitioner's father was unfit for service, Rule 85 of the rules could not apply. It is submitted that the petitioner's father's case falls under Rule 83 and not Rule 85 of the Railway Protection Force Rules, 1987. Rule 83 of the Rules provides that a member of the Force can resign from service. A copy of the resignation letter, filed by late Rama Kant Pathak has been appended as Annexure-2 to the writ petition. It is stated in the said resignation letter by late Rama Kant Pathak that he wants voluntary

retirement from service as he is finding it difficult to serve the Force on health grounds. The representations made by the wife and son of late Rama Kant Pathak have already been decided by the concerned authority as stated above.

6. The case of the petitioner's father is of voluntary retirement sought by him and not of premature retirement by the authorities. There was no 'report' before the appointing authority from which he could gather that late Rama Kant Pathak was unfit to perform his duties as a member of the Force because of his physical or mental conditions. Voluntary retirement on health ground by a member of the Force and premature retirement given to a member of the Force by the authorities on a report have different connotation and voluntary retirement cannot be a synonym of premature retirement. The scope of Rules 83 and 85 of the Railway Protection Force Rules, 1987, is, therefore, different.

7. In view of the facts, stated above, it is not a fit case for interference under Article 226 of the Constitution.

8. The petition is dismissed.

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