

Bijaya Kumar Sahoo Vs. Commandant, 149 Battalion, Crpf and ors.

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Court : Orissa

Decided On : Jun-26-2009

Reported in : 108(2009)CLT285

Judge : B.P. Das and; R.N. Biswal, JJ.

Appellant : Bijaya Kumar Sahoo

Respondent : Commandant, 149 Battalion, Crpf and ors.

Judgement :

B.P. Das, J.

1. The Petitioner, who was serving as a Constable (General Duty) in the Central Reserve Police Force (CRPF), has filed this Writ Petition challenging the order of his termination dated 6.1.2005 assessed by the Commandant, 149 Battalion, CRPF, Bhubaneswar, O.P. No. 1, vide Annexure-4, as well as the Order Dated 1.9.2005 passed by the Appellate authority, i.e., Inspector General of Police, E.S., CRPF, Kolkata, O.P. No. 3, vide Annexure-7, affirming the order of termination, as being illegal & arbitrary.

2. Briefly stated, the case of the Petitioner is that after being successful in the written as well as physical test held for recruitment to the post of Constable (GD), he was appointed as a Constable (GD) in the CRPF by Order Dated 15.5.2003 issued by the Addl. D.I.G., CRPF Group Centre, Bhubaneswar. The Petitioner

joined the service and was sent to 149 Battalion, Bhubaneswar, to undergo the basic training. He completed 9 months training in the field. During the training period, the Petitioner suffered pain on his leg for which he was admitted to the Group Centre Hospital, Bhubaneswar, for treatment. After discharge from hospital and as per the advice of the doctor, the Petitioner resumed the training. But unfortunately while on duty, the Petitioner received the notice of termination dated 7.12.2004 followed by the order of termination dated 6.1.2005, vide Annexure-4.

According to the Petitioner, against the aforesaid order of termination he filed a representation under Rule 5(2)(a) of the Central Civil Services (Temporary Services) Rules, 1965, vide Annexure-6, with a prayer to recall the order of his termination and to allow him to continue in service. Further, it is submitted that as the Petitioner is unable to undertake the strenuous duties of a Constable because of the injury in his leg, he prayed to adjust him in any Class-IV post. The appeal/representation filed by the Petitioner against the order of termination was rejected by the Inspector General of Police, E.S., CRPF, being devoid of any merit by the order in Annexure-7.

According to the Petitioner, both the impugned orders are illegal, arbitrary and not sustainable in law in view of the fact that the Petitioner could have been considered for adjustment in any Class IV post. Under the aforesaid facts and circumstances, the Petitioner prays to quash the impugned orders in Annexure 4 and 7.

3. Opposite Party Nos 1 and 2, i.e., the Commandant, 149 Battalion, CRPF, Bhubaneswar, and the Addl. D.I.G., Group Centre, CRPF, Bhubaneswar, have filed a counter affidavit wherein they have averred that the Petitioner was appointed as a Constable (GD) in the CRPF with effect from 30.5.2003 and he reported to duty on 1.8.2003 at 149 Battalion, Bhubaneswar, for undergoing the basic training. During such training, on 24.12.2003 while the Petitioner was running on the parade ground along with others, he fell down and sustained injury on his left knee. He was admitted to the Group Centre Hospital, Bhubaneswar, on 26.12.2003 after being diagnosed to have sustained a fracture of upper third tibia left. The Petitioner remained in the hospital till 4.2.2004 and on 5.2.2004 he was

declared fit. He went on mid term break from 7.2.2004 to 20.2.2004 whereafter he resumed the training. On 30.3.2004 the Petitioner while on his way to the lecture room, he was called by his Instructor and when he turned to his left, he suffered a fracture on his left knee for which he was immediately shifted to the G.C. Hospital where he remained under treatment till 2.4.2004. On 3.4.2004 he was referred to the S.C.B. Medical College Hospital, Cuttack, for specialized treatment and remained there till 10.5.2004. The Petitioner underwent an operation on his left knee and on 11.5.2005 he was re-admitted to G.C. Hospital. On 12.6.2004 he was sent to the S.C.B. Medical College Hospital for check up. The Medical Officer of the S.C.B. Medical College Hospital opined that the broken knee was not set properly for which he advised for regular check up at an interval of one month till the knee was set completely. The Court of Enquiry, which was set up to find out the circumstances in which the Petitioner had sustained injury, came to find that the Petitioner sustained the injury during the basic training and no one was responsible for such injury/incident. On the recommendation of the Court of Enquiry, final opinion was sought for from the Chief Medical Officer, I/C. of G.C. Hospital, Bhubaneswar, who opined that the Petitioner with a pathological fractured tibia was not fit to resume training due to past illness and accordingly the services of the Petitioner were terminated after giving one month's notice under Rule 5 (1) of the Central Civil Services (Temporary Services) Rules, 1965.

4. There is no dispute that the Petitioner during the basic training sustained injury on his leg for which he was ultimately found not fit to resume the training as the duty attached to the post of Constable involves strenuous physical movement of leg.

In our considered opinion, the declaration of the authorities that the Petitioner was not fit to resume the training for the post in question is neither illegal nor arbitrary and we do not find any infirmity in such declaration. But as regards the questions whether the Petitioner could have been considered for his adjustment in some other job which does not require strenuous duty, keeping in view the prayer of the Petitioner to adjust him in any class IV post, we find that the same have not been taken into consideration by the authorities. But in the circumstances of the case, we cannot direct the authorities to adjust/ appoint the Petitioner in a Class IV post.

However, it is open to the authorities to do so. But as the aforesaid aspects have not been taken into consideration by the Appellate authority while passing the impugned order in Annexure-7 on the appeal preferred by the Petitioner against the order of termination of his service, we quash the impugned order in Annexure-7 and direct the Appellate authority to re-consider the case of the Petitioner, if he can be adjusted in any Class IV post keeping in view the fact that he was selected and appointed as Constable (GD) after coming out successfully in the written test as well as in the rigorous physical tests and is eager to serve the Force. Let Opposite Party No. 3 re-consider the appeal preferred by the Petitioner and dispose of the same afresh by passing a reasoned order within a period of two months from the date of receipt of this order.

The Writ Petition is disposed of accordingly.

R.N. Biswal, J.

I agree.

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