

**Surendra Kumar Vs. Additional Deputy Inspector General of Police and anr.**

**Surendra Kumar Vs. Additional Deputy Inspector General of Police and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/769908](http://sooperkanoon.com/769908)

**Court :** Rajasthan

**Decided On :** Jul-11-2008

**Reported in :** [2008(119)FLR1034]; RLW2008(4)Raj3585

**Judge :** Mohammad Rafiq, J.

**Appellant :** Surendra Kumar

**Respondent :** Additional Deputy Inspector General of Police and anr.

**Advocate for Def. :** Shri. Sumit Khandelwal

**Advocate for Pet/Ap. :** Shri. M.R. Yadav

**Disposition :** Petition allowed

**Judgement :**

**Mohammad Rafiq, J.**

1. This writ petition has been filed by petitioner-Surendra Kumar, who was serving in the Central Reserve Police Force in its 124th Battalion as Cook. He was appointed on 1/4/1993. When he was posted at Pinjore in the State of Haryana, he was subjected to medical examination by the respondents on 28/4/2000 and was found to be suffering from Schizophrenic illness. On the same day, the medical board also examined him and opined that he was not fit to be retained in service of any kind or as a Cook. The respondents vide their letter dated 11/5/2000 served a

notice upon the petitioner that since he has been declared unfit by the medical board, his services are liable to be discontinued in view of the provisions of Rule 38 of the Central Civil Service (Pension) Rules, 1972 (for short, 'Rules of 1972') and Central Civil Service (Medical Examination) Rules, 1957 (for short, 'Rules of 1957'). He was informed that in case he wanted to be examined by the review medical board, he should send his written representation in that behalf positively within a period of 30 days. He was also informed that if he wanted his review examination by the Medical Board, he would also be required to pay the fee.

2. Shri M.R. Yadav, learned Counsel for the petitioner has argued that petitioner requested the Deputy Inspector General of Police (Group Centre) CRPF Pinjore (Haryana) vide letter dated 28/5/2000 for constituting review medical board in which he stated that disease was curable and that he was likely to be fit. But, surprisingly, his request for review medical board was rejected and petitioner was invalidated out from service with effect from 12/6/2000 by the order passed on the same day. Learned Counsel for the petitioner argued that request of the petitioner for review medical board was rejected on the ground that petitioner did not furnish any documents which may indicate any error in the opinion of the medical board whereas, petitioner was never informed that while making such representation, he was required to furnish any such material.

3. It was argued that even then the application of the petitioner dated 28/5/2000 was accompanied by medical certificate. Had he been informed of this, the petitioner would have substantiated his request by producing other relevant material but he has been illegally deprived of his right to get himself re-examined by the review medical board.

4. Shri Sumit Khandelwal, learned Counsel for the respondents opposed the writ petition and argued that petitioner had history of medical treatment at Jammu Medical College Jammu in the year 1997 for Psychosis. In 1998, when he was posted in 124 Battalion CRPF, he attempted suicide and was sent to GC Hospital, Bantalab for further treatment. He was suffering from Schizophrenic illness and the medical board found him permanently incapable for further service in CRPF. Petitioner was as per Government of India decision No. (1) below the Rules of

1957 informed by delivering him a copy of opinion of the medical board that he was proposed to be invalidated out from service. Though petitioner vide his application dated 28/5/2000 which was received by the office on 31/5/2000, made a request for his review medical board but his application was not supported by the prima-facie evidence. His application was turned down by the Competent Authority as was conveyed to him by the Assistant Commandant vide letter dated 2/6/2000. In his application dated 28/5/2000, the petitioner could not bring any new fact which could be taken to as prima-facie evidence to the effect that there was any justification for review medical board. Hence, request was rightly turned down. Learned Counsel for the respondents in this connection has placed reliance upon Rule 5 of the Rules of 1957. It was prayed that the writ petition be dismissed.

5. Consideration of the arguments aforesaid and the material available on record, show that rejection of request of the petitioner for review medical board was based on the ground that Rule 5 of the Rules of 1957, entitles a government servant, proposed to be invalidated out from service, to ask for his re-examination by the review medical board provided that such a request made is supported by prima-facie evidence that good grounds exist for doing so. Rule 5 of the Rules of 1957 provides so, which for the facility of reference is quoted in extenso:

5.(1) A Govt. servant declared by the examining medical authority to be permanently incapacitated for further service shall be retired from service before the Govt. servant is actually retired from service, the authority which directed him to undergo the medical examination shall inform him in writing of the action proposed to be taken in regard to his indicating briefly the grounds on which such action is proposed to be taken.

Perusal of the aforesaid Rule 5(1) indicates that a government servant who has been declared by medical board to be permanently incapacitated for further service, before he is actually retired from service, the authority which directed him to undergo the medical examination, shall inform him in writing of the action proposed to be taken in regard to him indicating briefly the grounds on which such action is proposed to be taken. Sub-rule (1) of Rule 5 therefore, requires adherence to the principles of audi partem and obviously, therefore, respondents

have served upon the petitioner notice requiring him to retire on the ground of his medical unfitness for further retention in service. However, Sub-rule (2) of Rule 5 of the Rules of 1957 reads as under:

2. The Govt. Servant shall also be informed that:

(a) subject to the provisions of Rule 233(1)(b) and (2) or the Note below Article 82-A, CSR as the case may be and orders regarding grant of leave to per suffering from specified diseases like tuberculosis, his retirement will have effect on expiry of a period of one month from the date of communication unless desires to retire from an earlier date.

(b) he may submit, if he so desires, within a period of one month, a request to be examined by Medical Review supported by prima-facie evidence that good ground exists for doing so.

(c) if he prefers a request for examination by a Medical Review Board, he shall be liable to pay the fees prescribed under paragraph 7.

6. Giving notice to the government servant proposed to be retired on medical grounds was therefore a mandatory requirement not only for Informing him about his right to ask for review medical board but compliance with this mandatory requirement would be complete only If the competent authority also simultaneously Informed him that his request for such reexamination should be supported by prima-facie evidence that good grounds exist for doing so. The respondents, as would be evident from the facts, though served a notice under Rule 5 supra upon the petitioner vide their letter dated 11/5/2000 informing him that if he did not agree with the opinion of the medical board and wanted to his re-examination by review medical board, he can submit his representation within 30 days from the date of receipt of the said letter for his review medical board. However, no information was given to the petitioner that such a request was required to be supported by prima-facie evidence that good grounds exist for doing so. Even then, the competent authority rejected the request of the petitioner stating that petitioner has not furnished arty documents which may indicate any error in the opinion of the medical board. This, in my considered view, was a

serious violation of Rule 5(2) while serving notice dated 11/5/2000 upon the petitioner, depriving him of a legitimate right.

7. In view of what has been discussed above, petitioner has made out a case for mandamus to be issued to the respondents requiring to his review medical board.

8. In the result, the writ petition is allowed. The order dated 12/6/2000 (Annexure-4) terminating services of the petitioner is set-aside and petitioner is held entitled to reinstatement with consequential benefits with further opportunity to the respondents to get him re-examined by a review medical board.

Compliance of the judgment be made within a period of three months from the date, copy of this judgment is produced before the respondents.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**