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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.989 OF 2005

ALLAHABAD THIS THE 14th DAY OF May, 2008

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J
HON'BLE MR. K. S. MENON, MEMBER-A

No.981390888,
Ex. Barber Mohd. Azam Hussain,
S/o Mohd. MatinR/o Village and Post Office-
Mircha, District-Ghazipur.

.....Applicant

By Advocate : Shri Nisaruddin

Versus

1. Union of India, through Secretary, Ministry of Home Affairs, New Delhi.
2. I.G.P., Central Sector C.R.P.F. through DIG, CRPF Allahabad.
3. DIG, CRPF, Allahabad.
4. Commdt. 93 Bn. CRPF through DIG, CRPF, Allahabad.
5. Additional DIG Group Centre CRPF, Allahabad.
6. Addl. DIG, Group Centre CRPF, Lucknow.

..... Respondents

By Advocate : Shri Tej Prakash

ORDER

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

This application is filed for quashing the impugned orders passed by the respondents, and for direction to the respondents to allow the applicant to join his duty.

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2. It is a case of the applicant that he was appointed as Class IV employee, after the selection the applicant was examined by the Medical Board and THE Medical Board found him medically fit for the job. After joining the service he is performing his duties to the satisfaction of his superiors and seniors. The applicant was admitted in CRPF hospital for treatment on 08.03.1999 and thereafter on 15.03.1999 the CRPF Medical Officers without proper investigation and treatment declared the applicant unfit. The applicant further states that declaring the applicant unfit was done vide officers who are not competent to declare unfit without proper Medical Board. The respondent no.4 passed the order terminating the services of the applicant in an arbitrary manner. The said order of termination is without giving opportunity to the applicant and the same is arbitrary and illegal, based on this, the applicant prays for the reliefs.

3. On notice the respondents have appeared and filed the counter affidavit and stated as follows:-

(i) That Mohd. Azam Hussain S/o Shri Mohd. Motin was selected to the post of Barber by GC, C.R.P.F., Lucknow and accordingly he was appointed as 'Barbar' against the existing vacancy of 93 Bn, C.R.P.F., with effect from 19.11.1998 vide Addl. D.I.G.P., G.C., C.R.P.F., Allahabad (Uttar Pradesh) office order number R-II-7/98-EC-V dated 02.11.1998. His appointment to the post of Barber was purely temporary and he was liable to be terminated at any time without

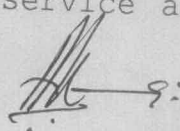


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assigning any reason. While posted in 93 Bn., C.R.P.F., his service ^{was} found unsatisfactory being on probation for two years and he was served with one month notice for termination from service on 20.05.1999. After expiry of one month notice period, No.981390888 B/B Md. Azam Hussain terminated from service with effect from 19.06.1999 under C.C.S. (Temporary Services) Rules 1965 by competent authority vide O/O No.D-V-1/99-93-EC-I dated 19.6.1999.

(ii) That aggrieved with the order, the applicant had preferred an appeal dated 30.11.1999 to IGP, CS, CRPF, Lucknow. The IGP, CS, CRPF, Lucknow had received the appeal of the applicant in accordance with brief history of the case as well as parawise comments preferred by 93 Bn, CRPF, the authority vide his letter No.R.XIII-36/99-CS-Adm.3 dated 21.08.2000 had rejected appeal with the remarks that the applicant had been terminated from service under the provisions contained in Rule-5 of CCS (Temporary Services) Rules 1965 duly served one month notice. Therefore, his services had been terminated within the limits of rules. Besides individual has not submitted appeal within the time frame in accordance with Rule-5(2) of CCS (Temporary Services) Rules 1965.

(iii) Aggrieved with the decisions, the applicant had filed a writ petition No.44994/2000 in the High Court of Allahabad against his termination from service and



rejection of appeal. The court dismissed the above writ petition on 5.7.2005 with the following decision.

- (a) The case was taken up in the revised list and the writ petition was dismissed accordingly. Before signing the order the counsel for the applicant appears and wants to argue the matter on merits.
 - (b) The petitioner was appointed as Barber in Central Reserve Police Force. The petitioner is a civilian employee therefore, the remedy against the impugned order dated 21.8.2000 is before the Central Administrative Tribunal. Now it is well settled that without approaching the Central Administrative Tribunal, the writ petition cannot be entertained.
 - (c) That in view of the aforesaid facts the writ petition is dismissed on the ground of alternate remedy. It is open to the petitioner to approach the Central Administrative Tribunal, Allahabad Bench, Allahabad, if so advised.
 - (d) That if the petitioner approached the Tribunal within a period of one month from today, the claim petition will be decided on merits without taking into consideration the question of limitation.
- (iv) It is stated that the applicant was not performing his duties satisfactorily. While posted in

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93 Bn CRPF, his services found unsatisfactory being on probation for two years and he was served with one month notice for termination from service on 20.5.1999. Thereafter, he was terminated from service with effect from 19.6.1999 under CCS (Temporary Services) Rules 1965 by competent authority vide O/O No.D-V-1/99-93-EC-I dated 19.6.1999.

(v) It is stated that argument made in this para are not relevant with the facts. The applicant had not been terminated on the basis of medical unfitness instead he was terminated from service only as per provisions contained in Rule 5 of CCS (Temporary Services) Rules 1965 as his services was not found satisfactory. Hence, question of medical report/unfitness does not arise.

(vi) It is stated that it is again contended that the applicant has not been terminated on the basis of medical unfitness. The applicant was terminated from service as his service was found unsatisfactory being on probation for two years under the provisions of Rule 5 of CCS (Temporary Services) Rules 1965. Hence, question of statutory requirement regarding medical unfitness does not arise.

(vii) It is stated that argument of the application are based upon his presumption. The commandant is appointing authority for Group 'D' Follower Staff and very much competent to terminate any person of the




rank-barber (Group 'D' Follower) in which the applicant was appointed in CRPF. However, indication of statutory powers of Addl. DIGP and Commandant are same and equal. Moreover, he was appointed to the rank of Barber against the existing vacancy of 93 Bn CRPF.

(viii) It is stated that the IGP, Central Sector, CRPF (U.P.) had rejected the appeal of the applicant with remarks that applicant was terminated from service duly serving one month notice under the provisions contained in Rule 5 of CCS (Temporary Services) Rules 1965. Termination order was passed within the limit of existing rules.

(ix) It is stated that contention of the applicant is not tenable. Orders of termination and rejection of appeal of the applicant were very much in order and as per the existing rules on the subject matter.

Based on the statements sought for the dismissal of the OA. The applicant has filed the rejoinder for the counter affidavit he has not stated anything relevant more than what he has stated in his original application.

4. We have heard the learned counsel for the parties and perused the pleadings and the materials on record. The appointment of the applicant to the post of Barber was done on purely temporary basis by the respondents,

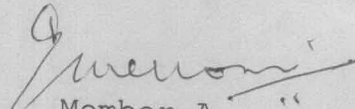
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liable to be terminated at any time without assigning any reasons. Having regard to the contention of the learned counsel for the applicant that the order of termination is illegal and was passed without giving any opportunity by not following proper procedure before passing the impugned order of termination. This contention of the learned counsel for the applicant cannot be sustained in view of the fact that the order of appointment of the applicant is purely on temporary basis and the same can be terminated at any time without assigning any reasons is seen from the order issued to the applicant by the respondents, therefore, before terminating the service of the applicant the respondents have issued a one month notice of termination to the applicant i.e. dated 19.05.1999, and thereafter the expiry of one month the applicant was terminated from service. The said action of the respondents is based on rule 5 of CCS (Temporary services) Rule 1965, therefore, the order of termination of the applicant cannot be said to be illegal or arbitrary as contended by the learned counsel for the applicant. On the other hand, the respondents have produced the material to the effect that the appointment of the applicant was purely temporary in nature and the services of the applicant was terminated on the ground that he was found unsatisfactory on probation period, and therefore, the statutory requirement regarding medical unfitness not necessary in the case of the applicant, therefore the contention of the applicant cannot be sus

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for grant of the reliefs as prayed for, on the other hand the respondents have made out a case for dismissal of the OA. Accordingly, accepting the contention of the respondents the following order is passed.

The OA is dismissed. No Costs.


Member-A


Member-J

/ns/