



2025:DHC:11494-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3616/2021**

MR. ABC

.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Divya Aggarwal, Mr. Pradeep Kumar, Ms. Anjali Bansal, Mr. Lovekesh Chauhan, Ms. Kritika Matta, Ms. Shreya Gupta, Mr. Manas Verma, Mr. Nikhil Pawar, Mr. Shubham Bahl and Ms. Bhumica, Advs.

versus

BORDER SECURITY FORCE & ORS.Respondents

Through: Mr. Virender Pratap Singh Charak, Ms. Shubhra Parashar and Mr. Pushpender Pratap Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **16.12.2025**

C. HARI SHANKAR, J.

1. The petitioner is a HIV¹-positive appointee to the post of Constable (GD) in the Border Security Force². He was appointed to the said post on 17 April 2017.

2. On 6 July 2017, it was found that the petitioner had contracted HIV and was undergoing Antiretroviral Therapy³ and also had abdominal Kochs. The petitioner underwent ART and Ant-

¹ Human Immunodeficiency Virus

² "BSF", hereinafter

³ "ART", hereinafter



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Tuberculosis Treatment⁴ from 28 July 2017 to 31 January 2018 and was thereafter discharged from the hospital.

3. The petitioner was re-examined by a Medical Board on 15 November 2018. Consequent thereto, a show cause notice dated 30 December 2018 was issued to the petitioner. The show cause notice noted the fact that the petitioner was suffering from immune compromised status and was on ART and, therefore, opined that he was permanently unfit for recruitment to the BSF, as he had been placed in medical category S1H1A1P2(T-24+24)E1. The show cause notice, therefore, proposed to retire the petitioner from service and called upon him to show cause thereagainst.

4. The petitioner responded to the show cause notice.

5. However, by order dated 9 April 2019, the petitioner was discharged from service on the ground that he was physically unfit.

6. An appeal preferred against the said decision was also dismissed by the appellate authority on 9 October 2020.

7. Aggrieved by the aforesaid decisions, the petitioner has approached this Court by means of the present writ petition, praying that the order dated 9 April 2019, whereby the petitioner was discharged from service, and the order dated 9 October 2020, whereby the appeal against the said decision was dismissed, be quashed and set aside and the petitioner be reinstated in service.

⁴ “ATT”, hereinafter



8. We have heard Mr. Anuj Aggarwal, learned Counsel for the petitioner and Ms. Shubhra Parashar, learned SPC for the respondents.

9. Ms. Parashar submits that, as the petitioner had been discharged from service in accordance with the applicable provisions, as he was found medically unfit to continue with the BSF, even while he was on training, no case for interference exists.

10. The petitioner has placed reliance on Section 3(a)(i) and (ii) read with the proviso to Section 3⁵ of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017⁶.

11. Mr. Aggarwal submits that there has been no compliance with Section 3(a) of the HIV Act and, in these circumstances, the presumption would be that the petitioner did not pose any significant risk if he was permitted to continue to discharge his duties. Mr.

5 3. Prohibition of discrimination.—

No person shall discriminate against the protected person on any ground including any of the following, namely—

- (a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with—
 - (i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant-risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and
 - (ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;

Provided that, in case of failure to furnish the written assessment under sub-clause (i) of clause (a), it shall be presumed that there is no significant-risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship.

⁶ “the HIV Act”, hereinafter



Aggarwal has also drawn our attention to Section 43⁷ of the HIV Act, which accords, to the HIV Act, overriding effect over any other law for the time being in force.

12. Mr. Aggarwal has also placed reliance on Section 20(4)⁸ of the Rights of Persons with Disabilities Act, 2016⁹, read with Section 2(s)¹⁰ of the said Act.

13. Ms. Parashar does not have any ready answers to these submissions.

14. On perusing the aforesaid provisions, we find that there is merit in Mr. Aggarwal's submissions.

15. Section 3 of the HIV Act contains an absolute proscription against termination, from employment, of a person suffering from HIV, unless

- (i) the person is furnished with a copy of a written assessment of a qualified and independent healthcare provider that he possesses a significant risk of transmission of HIV to other persons in the workplace, or is unfit to perform the duties

⁷ 43. **Act to have overriding effect.—**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time in force or in any instrument having effect by virtue of any law other than this Act.

⁸ (4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

⁹ "RPWD Act", hereinafter

¹⁰ (s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally



of the job, and

(ii) a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing the petitioner reasonable accommodation is forthcoming.

16. There is, in the present case, not even an attempt to comply with Section 3(a) of the HIV Act.

17. The proviso to Section 3 of the HIV Act makes it clear that, in the event of failure to comply with Section 3(a)(i) and (ii), it would be presumed that there is no significant risk to others if the person is allowed to work in the establishment, and that there is no undue administrative or financial hardship in that regard.

18. The sequitur can only be, therefore, that the termination of the petitioner, on the ground that he was unfit to hold the post in the BSF, is in the teeth of Section 3(a) of the HIV Act.

19. We may note that it is not the case of the respondents that, except for the fact that the petitioner was suffering from HIV, he was otherwise unsuitable for his job or that there was any complaint regarding the manner in which the petitioner was discharging his functions.

20. We also find substance in Mr. Aggarwal's reliance on the RPWD Act. An HIV positive employee would unquestionably be suffering long term physical impairment, which would hinder his full



and effective participation in society. Ergo, he would be a “person with disability” as defined in Section 2(s) of the RPWD Act. Section 20 of the RPWD Act.

21. The RPWD Act, in a vein similar to the HIV Act, does not permit any government establishment to discriminate against any person with disability in any matter relating to employment. Section 20(2) requires reasonable accommodation to be provided by the government to employees who suffer from disability. Section 20(4) specifically proscribes dispensing with the services of an employee who acquires a disability during his service.

22. Thus, whether one views the case from the point of view of HIV Act or the point of view of RPWD Act, the petitioner could not have been treated as unfit to discharge his duties in the BSF solely on the ground that he was HIV positive.

23. In the event that the medical condition of the petitioner does not allow him to perform the duties of the post of Constable (GD) to which he was originally appointed, the respondents would have to extend reasonable accommodation to the petitioner by offering him an alternate appointment in any other equivalent post to which he is suitable. If no such post is immediately forthcoming, he would have to be placed in an equivalent supernumerary position.

24. The impugned orders dated 9 April 2019 and 9 October 2020 are, therefore, quashed and set aside. The petitioner shall stand reinstated in service, subject to the conditions stated hereinabove.



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25. The petitioner would be entitled to continuity of service and all other benefits including fixation of pay, but would not be entitled to back wages.

26. The writ petition stands allowed in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 16, 2025/gunn