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EMPLOYER CANNOT TERMINATE EMPLOYEE FOR BEING HIV POSITIVE

The Delhi High Court (**HC**), in *Mr. ABC v. Border Security Force* case,¹ held on December 16, 2025, that employers cannot terminate an employee on the sole ground of the employee being diagnosed as Human Immunodeficiency Virus (**HIV**) positive as it is arbitrary and unlawful.

Brief Facts

ABC² (**ABC**) was a Constable in the Border Security Force (**BSF**) in April 2017. In July 2017, he was diagnosed with HIV and abdominal Kochs while undergoing Antiretroviral Therapy. He was discharged from his treatment in January 2018. He was re-examined by a medical board in November 2018, following which a show cause notice (**SCN**) was issued to ABC also advising him to retire as he was considered permanently unfit. A responded to the SCN and was thereafter dismissed from his services in April 2019 on the ground of being physically unfit. He appealed against his termination order, which was also dismissed in 2020. Aggrieved by the dismissal, ABC approached the HC *via* this writ petition.

ABC's Contentions

- Termination was not in compliance with Section 3(a)(i) and (ii) read with the proviso to Section 3 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (**HIV Act**)³ and Section 20(4) of the Rights of Persons with Disabilities Act, 2016 (**RPWD Act**).⁴
- Termination in compliance with Section 3 of the HIV Act would indicate that ABC was fit for employment and that the BSF did not have any administrative or financial difficulty in sustaining his employment.

¹*Mr. ABC v. Border Security Force & Ors*, 2025 LiveLaw (Del) 1753.

² The name of the petitioner has been kept confidential in this judgement to protect his right to privacy.

³ Section 3 of the HIV Act prohibits termination of employment unless there is a medical certificate from an independent healthcare provider stating the person is a risk for employment and a written statement by the employer explaining the administrative or financial difficulty in providing employment to such person.

⁴ Section 20(4) of the RPWD Act prohibits any Government establishment from terminating or reducing the rank of an employee, who acquires disability during the term of employment.

- Therefore, ABC the termination order should be quashed, and ABC be reinstated for employment.

BSF's Contentions

The termination of ABC was well reasoned, in compliance with applicable laws and that ABC was found medically unfit for training.

HC's Judgement & Reasoning

The HC:

- Concluded that other than ABC being HIV-positive, there was no other ground for deeming him unfit for employment.⁵
- Upheld ABC's application of the RPWD Act and the HIV Act and that he could not have been treated as unfit for employment solely on grounds of being HIV-positive. If no such post is available, he would have to be placed in an equivalent supernumerary position until such post was available.⁶
- Stated that the BSF should extend reasonable accommodation by offering him any other alternate post in case his medical condition prevents him from discharging his duties.⁷
- Quashed the termination order and directed ABC to be reinstated in service, with continuity of service, and all other benefits such as fixation of pay but without back wages.⁸

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁵ Paragraph 19 of the Judgement.

⁶ Paragraph 20 of the Judgement.

⁷ Paragraph 23 of the Judgement.

⁸ Paragraphs 24 & 25 of the Judgement.