

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

Reserved on: 11.01.2016

Pronounced on: 18.03.2016

+ **W.P.(C) 1252/2013, C.M. NO.2370/2013**

RATI RAM

.....Petitioner

Through: Sh. Arun Srivastava, Advocate.

Versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Sh. Ruchir Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

%

1. The petitioner is aggrieved by his discharge from the Border Security Force [hereafter referred to as "BSF"/ "Force"], on the ground that he no longer fulfilled the medical standards stipulated. The order was issued by the respondent, (hereafter "BSF") after he completed 22 years service.

2. The petitioner was enrolled as Constable (General Duty) in the BSF, on 24.03.1990. On 03.12.1994, the petitioner, then posted as "D" Coy of 29th Battalion BSF (Now 33rd Battalion) was deputed to perform Road Opening Party (ROP) duty between K.P. Chowk to Mehandi Kadal Area in Anantnag, Kashmir. He completed patrolling, and moved a wooden log and sat on it. A powerful explosion occurred which resulted in serious injuries to him. The injuries were a result of mines placed by insurgents. He was evacuated to 92 Base Hospital, Srinagar, where his left leg was amputated below the knee. The petitioner was subsequently treated from time to time in various government hospitals, including 92 Base Hospital; Base Hospital, Jalandhar (upto 01.01.1996); Safdarjung Hospital, Delhi; PGIMS,

Chandigarh, etc. He was fitted with a prosthetic leg at the Artificial Limb Centre. Earlier, a Staff Court of Inquiry (hereinafter referred to as “SCOI”) was conducted to investigate the circumstances under which the petitioner got injured on 03.12.1994. It completed its report, which concluded that injuries sustained by petitioner were attributed to active *bona fide* government duty.

3. The BSF’s Board of medical officers on 24.02.1996 placed him under “Low Medical Category CEE (Temp)” for six months. Thereafter, his medical category was assessed from time to time, and the last board of medical officers had assessed his medical category as S1H1A5 (L) (P) P1E1 and the petitioner was found unfit for further service in BSF. Thereafter, the BSF issued the impugned order, discharging him from its services.

4. The petitioner impugns his discharge from service as arbitrary. It is argued that the BSF did not consider all the materials including the previous medical records, and took an uninformed decision. The petitioner argues that the competent authority failed to appreciate that in Para 10 of Part A, which relates to “further treatment/investigation recommended” was ‘*as advised by Ortho Specialist.*’ It is urged that with respect to the details of period and date of injury/disease/injuries, both the Medical Board as well as the Competent Authority overlooked that the petitioner is capable of doing various light duties, which is generally assigned, to P1 Category personnel. Here, it is argued that in the Medical Board Proceedings Part-I Para (VIII) which deals with Specialist opinion taken from time to time, states that:

‘On 17.07.2008 by Orthopedic Surgeon Distt. Hospital Bareilly to continue wearing prosthesis.’ On 22.10.2011 by Orth. Specialist, Govt. Civil Hospital, Hisar - advised for light duty.’
‘On 27.03.2012 by visiting Orth. Specialist FHQ Hosp. – I, R.K.

Puram, New Delhi’ – Patient is independent to perform all his activities, however prosthesis needs to be installed. Disability be granted as per rule.’ On 23.05.2012 case seen by Senior Resident Deptt. of Orth. PGIMS, Chandigarh, opined that Adv. – Patient is fit to do light duty.’ ‘ On 29.08.2012 case seen by Senior Resident Deptt. of Orth. PGIMS Chandigarh who opined that – no specific complaint and advised to review after 4 months’.

5. As far as the petitioner’s suitability is concerned, urges counsel, there is no specific finding that he is unfit to serve the force. The opinion of Dr. Bablesh Kumar, Senior Medical Officer (SMO) 33rd Battalion., is relied upon. BSF took a fresh opinion on 11.09.2012 from Orthopedic Specialist, Govt. Civil Hospital, Hisar, which did not state anything adverse. However, the said SMO had made *mala fide* recommendations that the petitioner was “not fit for category SHAPE-I” and arbitrarily recommended that he be placed under medical category S1H1A5 (L) P1E1 for 60% disability. It was highlighted that having regard to more than 15 years reports, the SMO had arbitrarily changed the Petitioner’s medical category with the intention of dispensing with his services. It is submitted that the BSF ignored vital facts such as the fitting of the new prosthesis from PGIMS Chandigarh after which the petitioner’s working efficiency improved. In fact the SMO had recommended the case of the petitioner to be processed before a fresh Medical Board, without waiting for the positive result of new prosthesis, which was still under observation of senior doctors of PGIMS, Chandigarh. These are urged to say that the order of discharge was taken in haste.

6. The BSF in its counter affidavit, states that medical fitness of Force Personnel is assessed under 5 factors denoted by code “SHAPE”. The 5 factors/elements included in “SHAPE” are:

S	-	Psychological
H	-	Hearing
A	-	Appendages
P	-	Physical Capacity
E	-	Eye Sight

7. The functional capacity/efficiency and employability limitations for duties in the Force under each of the above 5 factors is graded on a scale of 1 to 5. It is contended that after the above incident of anti-personnel mine explosion, the petitioner was produced before a Court of Inquiry, whose determination led to his medical downgrading. However, in keeping with the policy, BSF did not terminate or discharge the petitioner from its services, but retained him. He was provided with prosthetics and assessed medically to determine his category and suitability to continue in service. The various dates on which the petitioner was assessed medically, and his categorization on each occasion, has been set out in a chart, which is extracted below:

<i>Sl. No.</i>	<i>Date of assessment</i>	<i>Petitioner's medical category</i>
<i>1</i>	<i>24.02.96 by Medical Officer</i>	<i>CEE (T) for 6 months</i>
<i>2</i>	<i>24.09.96 by Medical Board</i>	<i>CEE (T) for 1 year</i>
<i>3</i>	<i>17.11.98 by Medical Board</i>	<i>CEE (P) for 1 year</i>
<i>4</i>	<i>04.05.01 by Medical Board</i>	<i>CEE (P) for 2 years</i>
<i>5</i>	<i>18.06.04 by Medical Board</i>	<i>SIH1A3(L) (P) P1E1 for 2 Years</i>
<i>6</i>	<i>19.07.06 by Medical Board</i>	<i>SIH1A3(L) (P) P1E1 for 96 Weeks</i>

7	28.01.09 by Medical Board	SIH1A3(L) (P) P1E1 for 96 Weeks
8	09.11.11 by Medical Board	SIH1A5(L) (P) P1E1 for 60% weeks
9	05.11.12 by Medical Board	SIH1A5(L) (P) P1E1 for 60% disability
10	22.01.13 by Review Medical Board	SIH1A5(L) (P) P1E1 for 60% disability.

8. BSF submits that factor A under the SHAPE Medical category denotes Appendages i.e. functional efficiency of upper and lower limbs (including amputees, loss of fingers and toes), shoulder girdle pelvic girdle and associated joints and muscles. One placed in numerical grade A2 is generally fit for duties anywhere except in hilly terrain. Someone placed in numerical grade A3 is not fit for operational/Counter insurgency duties. The numerical figure A4 stands for sick, in Hospital/rest on medical ground and such personnel are temporarily unfit for force duties. The figure A5 denotes severe derangement of functional efficiency and liable to be permanently unfit for force duties. It is further stated that the functional capacity and employability limitations of a person who is placed under categories A1 to A5 is as under:-

<i>Numeric grade</i>	<i>Functional capacity</i>	<i>Employability limitations</i>
<i>A-I</i>	<i>Has full functional capacity though may be having minor impairment</i>	<i>Fit for all duties anywhere.</i>
<i>A1 (L)</i>	<i>Loss of terminal phalanges of 3rd and 4th toe of any one</i>	<i>Fit for duties anywhere</i>

	<i>foot</i>	<i>except operational/IS duties/ during hostility.</i>
<i>A2 (L)</i>	<i>Has a defect/disease or disability of a moderate nature in one limb below knee capable of marching upto 8 KM and standing for 2 hours</i>	<i>Fit for all duties which do not involve crawling, running, jumping long marching, hill climbing and handling of weapons.</i>
<i>A3 (L)</i>	<i>Has a disease or disability above knee on one side including pelvic girdle, but should be able to walk upto 5 km at his own place.</i>	<i>Fit for sedentary duties only. Not fit for high altitude/operational/ CI/IS duties.</i>
<i>A-4</i>	<i>Sick, in hospital/rest on medical ground</i>	<i>Temporary unfit for force Duties</i>
<i>A-5</i>	<i>Severe derangement of functional efficiency</i>	<i>Permanently unfit for Force duties.</i>

The BSF has produced a copy of the elaborated functional capacity and employability limitations of its employees with its counter affidavit.

9. According to the BSF, the petitioner has not disclosed to this Court that he applied for compensation in the year 1998 which was forwarded by letter dated 16.06.1998 of the Coy Commandant 25th Battalion BSF. The Medical Board at that time examined him, assessed his disability to the

extent of 60% and the Board's proceedings were approved by the competent authority on 16.02.1999. Therefore, the BSF denies that the petitioner was assessed as disabled to the extent of 60% to throw him out of BSF service; the fact of the matter is his disability was determined to the extent of 60% by the Board of Officers on 17.11.-1998 itself. Based on the prevailing guidelines, the sum of ₹ 49,518/- (Rupees forty nine thousand five hundred eighteen only) was paid to the petitioner as disability compensation and entry was made in his service records. BSF relies on Rule 9 (4) of CCS (EOP) Rules, and Circular No.04/2000 dated 25.08.2000 of BSF *inter alia*, stipulating that if a Force personnel is retained in the service despite the fact that he has been disabled and the amount of capitalized value is claimed and paid under Rule 9 (4) of CCS (EOP) Rules such claims on account of that disability stand settled. In case such person (who has been paid disability compensation) is boarded out later, he will get only normal invalidation pension even if he is boarded out on account of that particular disability. And that, no person who has been paid lump-sum compensation for disability, will be entitled to disability pension in the event of being medically boarded out subsequently.

10. With regard to the petitioner's further retention in service and the suitability certificate given by the then Commandant, 25 Battalion BSF to perform sheltered appointment/sedentary duties and also that he was suitable for retention, it is urged that the petitioner was retained in BSF service as per policy decision circulated by Medical Directorate FHQ BSF New Delhi L/No.13/19/80-CMO/BSF dated 02.03.1981, regarding Low Medical Category (LMC) personnel and which was further inserted as a guideline in the BSF Medical Directorate Manual (Vol-IX). It is stated in this context

that according to the policy, all mine blast injuries or amputated cases whose disability is attributable to service should be retained till they complete 20 years of service. It is submitted that such person needs to be encouraged to proceed on voluntary retirement for pension on completion of 20 years of service, which is mandatory for earning normal pension benefits. Accordingly, the petitioner was retained on duty. He completed 20 years' service. The BSF alleges that the petitioner has suppressed the fact that he is not performing any duty including sedentary duty in the unit (33rd Battalion BSF, Hissar) since August, 2010. It is submitted that the petitioner appeared before Medical Board on 09.11.2011 where he was placed in medical category S1H1A5 (L) (P) P1E1 w.e.f. 09.11.2011 and considered unfit for further service in BSF with 60% disability. Thereafter, he was produced before Medical Board on 05.11.2012 to assess his present medical category. Then the Board of medical officers again placed the petitioner under low medical category S1H1A5(L) (P) P1E1 with 60% disability of permanent nature and declared him as unfit for further service in BSF. He appeared before the Review Medical Board on 22.01.2013, and was found unfit for service in BSF with 60% disability. It highlighted that the petitioner has not challenged the conclusion and findings of Medical Board by which he was found unfit for service in BSF. Consequently, he is not entitled to seek quashing of order, dated 05.02.2013 and the order dated 19.02.2013 as they have been passed on the findings and assessment of petitioner's medical fitness.

Analysis and Findings

11. It is apparent from the above factual narrative that the petitioner was enrolled in the BSF, in 1990; on 03.12.1994, he suffered injuries on account

of a mine blast incident, whilst on duty. A Court of Inquiry was conducted; he was hospitalized for some time and received treatment for quite a while. The injuries led to amputation of his leg, below the knee. The BSF continued to employ him; he underwent treatment whenever required. He was given the compensation (less than ₹ 50,000/-, at the relevant time, in 1999.

12. This Court had called for the records at the time of hearing and has considered the same. A reading of the record would show that from 18.06.2004 onwards, his medical category was assessed as S1H1A3(L) (P) P1E1. According to the applicable guidelines, this categorization meant that he was fit only for sedentary duties. This categorization continued right up to 2011. On 09.11.2011, for the first time, the categorization was revised, downwards; it was recorded as S1H1A5(L) (P) P1E1. No doubt this grading was recorded by three doctors and confirmed later, 05-12-2012 and 22-01-2013 in review. The Court notices that the petitioner was on sedentary duties throughout; the last time he was posted, was in August 2010, when he was stationed to man a milk booth. The medical records show that in respect of all other vitals, the petitioner was assessed as fit. In these facts, the BSF doctors might well have followed its instructions zealously in assigning the S1H1A5(L) (P) P1E1 category to the petitioner, since he had put in 22 years' service. The Court is of the opinion that the BSF's policy to "encourage" its personnel who incur combat injuries to seek voluntary retirement after 20 years of service is a "one size fit all" one, which when applied uniformly, would result in situations like the present case; the entire Force would be geared to ensure that the injured personnel is made to feel unwanted. The medical establishment too would be in such background in a frame of mind that would lead to the personnel's exit.

13. There is no doubt that the BSF does not have a disability related rehabilitation policy; it is also a fact that the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* does not apply to the para-military forces. The blind uniformity of treatment in seeing injured members of the Force out of the service, as a general policy (by encouraging them to seek voluntary retirement after 20 years) would rob individual members of a fair chance to continue in the BSF, having regard to the experience gained in other work, which is not field or combat related. A force as large as the BSF- with over 2.5 lakh personnel would have a significant administrative and support staff component, where these injured personnel can be assessed for work.

14. The petitioner had received medical treatment; the BSF helped him to secure better prosthetics just before issuing the impugned order. The petitioner was on sedentary duties from August, 2010. There is no document showing that any effort was made by the BSF to locate a sedentary type of job or posting for the petitioner. Unlike in cases of disease or chronic conditions that members of the para-military forces develop during their career, in the case of the petitioner, the injuries incurred were virtually combat related, or incurred in war-like situations. In these circumstances, the BSF could not have, consistent with its duty to be fair to someone who was retained for over 15 years after the injury, not have explored ways of ensuring how he could be further retained in service. Even otherwise, the BSF owed a duty to ask the petitioner- after finding out whether he could be retained in desk posting or sedentary jobs - whether he was willing to seek premature or voluntary retirement according to its policies. These steps were not followed. As a result, his 22 years might well result in deprivation of

pension and a life with no further prospects, despite his fitness in other parameters.

15. In these circumstances, the Court is of the opinion that the BSF must, consistent with its policies, reinstate the petitioner, first explore the possibility of assigning a sedentary job and if there is none available, then offer the option of voluntary retirement to him. In the event of the latter, the period between 28.02.2013 and the later date of voluntary retirement shall be treated as having been spent on duty- in other words, the said period shall be added to his service, so as to ensure that his service benefits also increase proportionately (pension, gratuity, commutation, etc). However, he shall not be entitled to arrears of salary, etc. The writ petition is allowed in these terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

MARCH 18, 2016