

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C). No.850/2021

Sri Sudip Kumar Ahir, S/O.-Sri Ram Raj Ahir, R/O.-Chotasurma, P/O.-
Maracherra, P/S-Kamalpur, District-Dhalai, Pin-799285.

.....Petitioner(s).

V E R S U S

1. The Assam Rifles, represented by its Director General, P/O-Shilong,
793011, Meghalaya.

2. The Director General, Assam Rifles, P/O-Shilong, 793011, Meghalaya.

3. The Brigadier, Head Quarter, 21 Sector, Assam Rifles, P/O-West
Agartala, District:-West Tripura, Pin:-799006.

.....Respondent(s).

4. The Union of India, represented by its Secretary, Ministry of Home
Affairs, Govt. of India, North Block, New Delhi-110001.

.....Proforma Respondent(s).

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate,
Mr. S. Dey, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Deputy S.G.I.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **03rd May, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

This is the third round of litigation by the petitioner in
connection with the appointment to the post of Rifleman (GD) under the
respondents conducted between 9th to 14th February, 2009 by the

respondent-Assam Rifles. Petitioner approached this Court in WP(C) No.176 of 2012. Petitioner contended therein that despite securing 80 marks in the selection test out of total 100 marks and being declared physically fit, his name was not included in the select panel. It was also pointed out that certain persons at Sl. Nos.44 to 49 and 51 who secured less than 80 marks were selected and appointed to the post of Rifleman (GD). Petitioner was not offered appointment as apparently there was no vacancy in OBC category. After consideration of the rival case of the parties and the pleadings on record, this Court vide judgment and order dated 04.01.2015 directed the respondents to consider the appointment of the petitioner on the post of Rifleman (GD) from the vacancies as declared by the press release dated 01.02.2009 within a period of three months. It was also made clear that if there is a shortage of vacancy, the respondents shall accommodate the petitioner in the vacancy that might have arisen even after the press release. In the event of his appointment, the seniority should be counted from the date in accordance with the merit and from the same date when the other candidates were appointed in terms of the merit list dated 02.04.2009. However, it was ordered that no arrear wages/salaries would be payable in such circumstances. This judgment was affirmed in Writ Appeal No.29 of 2016 vide judgment dated 08.11.2016 and finally upheld up to the Apex Court in Special Leave to Appeal (Civil) Diary No.16159/2017 vide

judgment dated 04.07.2017. Thereafter, petitioner was subjected to medical fitness and found to be suffering from defective eyesight. Petitioner again approached the Writ Court in WP(C) No.595 of 2019 which was disposed of on 16.01.2020 in the following terms:

"This litigation has a chequered history. It is not necessary to record full details. Suffice it to state that the petitioner had cleared the recruitment test but was not appointed on the ground that he belonged to OBC category for which no post was available.

Learned Single Judge of this Court directed that the petitioner shall be appointed with consequential benefits except back wages. Writ Appeal and SLP were dismissed. When the respondents implemented this decision, it was conveyed to the petitioner that he suffered from defective distance vision. Against such decision the petitioner has filed the present petition. Learned counsel for the respondents correctly points out that as per order dated 8th August, 2018 the petitioner was conveyed that if he desires to appeal against the said medical opinion, he may fill up the necessary documents upon which his case would be referred to the Review Medical Board under the Director General of Assam Rifles.

Whether the petitioner is fit to discharge his duties in a disciplined force on account of his medical condition, must first be judged by the authorities. When the respondents have provided an avenue to appeal against the decision, the petitioner must first avail of the same.

Under the circumstances, the petitioner shall apply to the respondents in proper format for referring his case to the Review Medical Board as mentioned in the said communication dated 8th October, 2018 within a period of 2(two) weeks from today. If the same is done, the Medical Board shall examine the petitioner and give its report within 4(four) weeks thereafter.

With these directions, the petition is disposed of at this stage. All other prayers are kept open."

2. The Review Medical Board was held thereafter but the petitioner was declared unfit on account of defective distant vision 6/12 right eye vide Review Medical Board report dated 04.11.2020. Meanwhile, the writ petitioner filed W.A. No.19 of 2021 which was dismissed on 05.03.2021 with a liberty in the following terms:

"Mr. A. Bhowmik, learned counsel appearing for the appellant has at the outset submitted that he may be allowed to withdraw this appeal with liberty reserved to the appellant to file a fresh writ petition in the event of emergence of the new cause.

Prayer stands allowed.

This appeal stands dismissed with liberty as prayed.

Mr. B. Majumder, learned ASGI appears for the respondents."

3. In the present writ petition, petitioner has made alternative prayers, i.e. either to appoint him on the post of Rifleman (GD)/Rifleman

(Driver) or any other equivalent post under the respondents in terms of the judgment dated 04.01.2015 passed in WP(C) No.176 of 2012 as affirmed up to the Apex Court or in the alternative to pay compensation of Rs.15,00,000/- (rupees fifteen lakhs) along with interest @ 9% per annum w.e.f. 02.04.2009. He has also prayed for quashing of the result/decision of the Review Medical Examination held on 03.11.2020 to 04.11.2020 communicated vide letter dated 05.11.2020.

4. Mr. Arijit Bhaumik, learned counsel for the petitioner, submits that his eyesight has been found to be normal by the AGMC Hospital, Agartala as per report dated 08.01.2018 (Annexure-8 to the writ petition). Petitioner has also been declared fit by Sri Sankaradeva Nethralaya, Guwahati, Assam as per report dated 05.11.2020 at page-118 (Annexure-1 to the rejoinder affidavit).

5. Learned counsel for the petitioner submits that the valuable right accrued in favour of the petitioner by virtue of the judgment rendered by this Court has been defeated on account of efflux of time. Had the appointment been made in the year 2009, petitioner who was declared medically fit at that point of time by the respondent-organization could have been appointed on the post of Rifleman (GD). A gap of 9(nine) years thereafter may have affected the eyesight of any person including those who

were appointed in the year 2009 under the same organization pursuant to the same recruitment exercise. Still petitioner is ready to serve in the organization in any other post/capacity which does not require a correct eyesight of 6/6 as may be necessary for a Rifleman (GD) or a Rifleman (Driver). He submits that there may be other post in the organization such as, Cook, Gardener etc. where petitioner can still be accommodated, otherwise it would cause grave injustice to the petitioner who has lost his youth by fighting litigation but has not been able to get the fruits of the judgment.

6. Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the respondent-organization, submits that the writ petition is not maintainable as no fresh cause of action has arisen after disposal of the Writ Appeal No.19 of 2021 where a liberty was granted to the writ petitioner/appellant to file a fresh writ petition in the event of emergence of the new cause. By that date, the Review Medical Board had already declared him unfit pursuant to the directions of the Writ Court in WP(C) No.595 of 2019, i.e. on 04.11.2020 itself.

It is submitted by the organization that the petitioner is not physically fit to hold the post of Rifleman (GD) as directed by the original

judgment dated 04.01.2015 passed in WP(C) No.176 of 2012, then the respondents can hardly be blamed.

However, learned counsel for the respondents submits that if the Court so directs, the representation of the petitioner may be considered in accordance with law for any other post available in the organization where medical fitness is not a strict criteria. However, at this stage, he is not in a position to say whether there are such post available in the organization or not.

7. I have considered the submissions of learned counsel for the parties in the background of the chequered history of the litigation which has reached to this stage when the petitioner is medically unfit obviously due to efflux of time though at the time of the original rally in February, 2009, he was found to be medically fit by the respondent-organization.

8. As regards the submission of learned counsel for the respondents regarding the construction of the order dated 05.03.2021 passed in W.A. No.19 of 2021, this Court would rather be persuaded to take a view in favour of the petitioner as the fresh cause of action had arisen after disposal of the WP(C) No.595 of 2019 but before disposal of the writ appeal which remained unadjudicated.

9. It is nobody's case that petitioner despite being medically unfit can still be appointed on the post of Rifleman (GD) or Rifleman (Driver) as only a fit candidate can be appointed to such post in a paramilitary organization like the respondent-Assam Rifles. However, in case the organization has other class of posts where such degree of medical fitness is not required or insisted upon, both interest of justice and equitable grounds persuade this Court to allow the petitioner to make representation before the competent authority under the respondent-organization for consideration of his case for appointment on any suitable post in accordance with law. Needless to say, such consideration be made within a timeframe, preferably 16(sixteen) weeks from the date of receipt of the copy of the order along with a fresh representation duly supported by all relevant documents.

10. With the above observations and directions, the writ petition is disposed of

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ