

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 456 of 2018

Date of Decision: 14.12.2023

Shri. Jagat Bahadur Khawash Vs. Union of India & 4 Ors.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. R. Jha, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.

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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

This writ petition has been preferred by the petitioner seeking quashing and setting aside of the impugned order issued vide letter No.81021/1 AR/IMB/2018/Adm-VI/555 dated 27-08-2018 whereby the petitioner was discharged/released from service on medical ground w.e.f. 30-11-2018. The petitioner also prayed for grant of disability pension/invalid pension considering the other circumstances of the case.

1. The brief fact of the case is that the petitioner was enrolled in the service of Assam Rifles on 03-10-2010 as a Rifleman (General Duty) in 1st Assam Rifles and he was posted in Aizawl, Mizoram from 2001 till 2004. The petitioner was thereafter posted in Kamjong, Manipur from 2004 till 2008. The petitioner was again posted in Tuensang, Nagaland in 2008 where he continued till 2012. From 2012 to 2015 he was posted in Khonsa, Arunachal Pradesh and, thereafter he was posted in Lunglei, Mizoram in 2015. On 27-08-2018, the discharge/release order of the petitioner was issued on medical ground which is under challenged in this writ petition.

2. Mr. R. Jha, learned counsel appearing for the petitioner submits that the petitioner was never placed in Low Medical Category of P - 4 or P - 5 at any point of time in his service career. Referring to the report of medical board proceeding dated 26-07-2018, the learned counsel submits that the petitioner was placed under P- 2 (P) category, which would not lead to discharge/ release of the petitioner from service as per the related rules of the service.

3. The contention of the petitioner raised in the writ petition is that the petitioner was placed directly in permanent Low Medical Category of S- 5 without placing him first in temporary Low Medical Category of S- 3 in gross violation of norms and instructions issued from time to time. It is contended that as per paragraph 23 (f) (ii) of the Health Care System in Central Paramilitary Force instructions for Medical Examination and Classification in CPMFs dated 28-09-2007, it is obligatory to observe a person in temporary Low Medical Category in S- 3 (T- 24) initially before he can be categorized and placed in S- 5 and invalidated out of service. The case of the petitioner is that though he was discharged/release from service on account of alcohol dependency, the respondents could not have

done so without adhering to the aforesaid procedure contained in paragraph 23 (f) (ii). The impugned order, as such, cannot be sustained.

4. Dr. N. Mozika, learned DSGI appearing for the respondents, on the other hand submits that though the petitioner has never been placed in Low Medical Category of P- 4 or P- 5, he was placed in Low Medical Category S- 5 which resulted in his discharge/release from service in terms of the related provisions of Assam Rifles Medical Examination (Categorization and Invalidation) Rules, 1988 and instructions issued with regard to the Health Care System in Central Para-Military Forces. He submits that the petitioner when in service developed the habit of excessive liquor consumption and became addict to alcohol. The petitioner was briefed and counseled on a number of occasions, but petitioner did not pay any heed to the advice. The learned DSGI by drawing attention to the various documents submits that because of the downfall of the health condition of the petitioner and dependency on alcohol, he had to be hospitalized on number of occasions and after detailed medical investigation was diagnosed as a case of “Alcohol Liver Disease and Seizure Disorder (Alcohol Withdrawal)”. He submits that the petitioner was placed under Low Medical Category P- 3 (Temporary) vide Medical Board proceeding dated 22-08-2017 for 24 weeks. Thereafter, again on 30-01-2018 the petitioner was placed in Low Medical Category P- 2 for the same ailment for another period of 24 weeks. The petitioner was further downgraded to Low Medical Category P- 2 (permanent) by the Medical Board on 26-07-2018. He submits that while the petitioner was categorized in ‘P’ class for Alcohol Liver Disease and Alcohol Withdrawal Seizure, he was also diagnosed with ‘S’ class for psychological disability and was placed in Low Medical Category S- 3 (Temporary) for 24 weeks w.e.f. 20-11-2017 for disability of Alcohol

Dependence Syndrome. He further submits that the petitioner was ultimately placed in Low Medical Category S- 5 category on the basis of the evaluation of the psychiatrist which was approved by the Invalidating Medical Board proceeding dated 01-08-2008. The learned DSGI submits that once any member is placed under SHAPE- 5 for any medical condition, he is considered as permanently unfit to be retained in service. He further submits that the petitioner has also not preferred any appeal against the order of the Invalidating Medical Board under Rule 13 of the Assam Rifles Medical Examination (Categorization and Invalidation) Rules, 1988 and, as such, cannot have any grievance to be redressed by this Court.

5. In the light of the submissions made by the rival parties, averments made in the writ petition and the affidavits filed in the matter and on the scrutiny of the documents available on record, it transpires that the petitioner, while in service developed the habit of excessive liquor consumption and became an addict to alcohol. He continued with the habit inspite of all the medical treatments and advises which resulted in awarding of 7 days rigorous imprisonment to the petitioner on 16-04-2015 in Assam Rifles custody under Section 35 of Assam Rifles Act, 2006. The Medical Board proceeding dated 22-08-2017 indicates that the petitioner was placed under Low Medical Category P- 3 (Temporary) for Alcohol Liver Disease and Seizure Disorder w.e.f. 09-08-2017 for 24 weeks. Again, the petitioner was examined by the Medical Board 30-01-2018 and he was placed in Low Medical Category P- 2 (Temporary) for the same ailment for a period of 24 weeks. Subsequently, on 26-07-2018, the Medical Board on examination of the petitioner further downgraded him to Low Medical Category P- 2 (Permanent) for principal disability of

Alcohol Liver Disease and Alcohol Withdrawal Seizure w.e.f. 16-07-2018 for a period of 2 years.

6. The materials on record further reveal that while the petitioner was suffering from the aforesaid disabilities for which he was categorized in factor 'P' on account of Alcohol Liver Disease and Alcohol Withdrawal Seizure, he was also placed in Low Medical Category S- 3 (T) for 24 weeks from 20-11-2017 for disability of 'Alcohol Dependence Syndrome'. It appears that the petitioner was referred to the psychiatrist on 11-06-2018 for recategorization and opinion. After evaluation of the health condition of the petitioner, the Commandant (CMO/NFS), MD Psychiatry, Assam Rifles Composite Hospital, vide his opinion dated 11-06-2018 found that the petitioner was a relapse case and recommended for placing him in Low Medical Category S- 5 for Alcohol Deficient Syndrome relapse. Relying on the opinion of the Psychiatrist, the Invalidating Medical Board vide proceeding dated 01-08-2018 placed the petitioner in Low Medical Category S- 5 and recommended him to be invalidated out of service. The recommendation was approved by the DIG (Medical) Director General Assam Rifles and confirmed by the Additional Director General Assam Rifles. Thereafter the impugned order dated 27-08-2018 was issued discharging the petitioner from service w.e.f. 30-11-2018.

7. As explained by the respondents in their affidavit dated 15-09-2023, under the Assam Rifles Medical Examination (Categorization and Invalidation) Rules, 1988 the following factors of fitness are taken into consideration:

- (i) S : Psychological
- (ii) H : Hearing
- (iii) A : Appendages

- (iv) P : Physical Capacity
(v) E : Eye Sight

Further, the efficiency of each factor is again denoted in numerals 1, 2, 3, 4 and 5 as follows:

- (1) 1 : Fit for all duties.
(2) 2 : Fit for all duties but may have limitations as to type of duty and area of employability.
(3) 3 : Excepting 'S' factor, fit for sedentary duties but may have limitations of employability at high altitude (beyond 2700 Mtrs, extreme cold/hilly areas" for long assignment.
(4) 4 : On Sick Leave/In Hospital (Temporarily unfit for force duties).
(5) 5 : Permanently unfit for duty in the Force.

8. It appears from the above that the different factors collectively are referred to as "SHAPE" classification and the various grade under each factor are to be awarded to officers depending on their physical capacity. It is also clear that if any officer is categorized in numerical Grade 5 in any one of the factors of "SHAPE" classification, the officer will be rendered permanently unfit for force duties. Further, as per the policy on Health Care System in Central Para-Military Force dated 31-07-2007, if any member of the force is placed in Low Medical Category SHAPE - 5 for any medical condition, he becomes liable to be invalidated out of service.

9. The petitioner in this case was placed in composite category of S-5, H-1, A-1, P-2(P), E-1. Before the petitioner was placed in Low Medical Category S-5 on 01-08-2018, he was placed in Low Medical Category S-3 (T) for 24 weeks w.e.f. 20-11-2017. Therefore, it is clear that the

petitioner was kept under observation in temporary Low Medical Category of S-5 as per the requirement of the instruction dated 31-07-2007 contained in the Health Care System in Central Para-Military Forces. The contention of the petitioner that he was directly placed in Low Medical Category S- 5 without placing him first in Low Medical Category S- 3 for observation is factually incorrect and, therefore, not acceptable.

10. With regard to the other contention of the petitioner that he was never placed in Low Medical Category P- 4 or P- 5, it can be seen from the proceeding dated 01-08-2018 of the Invalidating Medical Board that the petitioner was recommended to be invalidated out of service on account of his placement in Low Medical Category S- 5 and not because of his placement in Low Medical Category for factor 'P' of "SHAPE" classification. Thus, the contention has no impact in the merit of the present matter.

11. It is submitted by the learned DSGI that the petitioner has already signed the required pension paper and the same has been processed by the department. In view of the submission, no order is called for at this stage with regard to the release of disability pension/ invalid pension of the petitioner.

12. For what has been discussed above, there is no merit in this writ petition and the same is accordingly dismissed.

13. There will be no order as to costs.

JUDGE

Meghalaya
14.12.2023
"Biswarup-PS"