

GAHC010152932019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4700/2019

NO. EX-TC NO. 61611 RECT/GD SATISH
S/O- OM PRAKASH, R/O- VILL- PUNCH GAON, P.O- PUNCH GAON, P.S-
MANISAR, DIST- GURGAON, HARYANA, PIN- 134102

VERSUS

THE UNION OF INDIA AND 2 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, NEW DELHI- 110001

2:THE DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG
MEGHALAYA- 793011

3:THE DEPUTY COMMANDANT
STAFF OFFICER-1(RECRUITMENT)
DIRECTORATE GENERAL
ASSAM RIFLES
SHILLONG-1

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 15-12-2023

Heard Mr. R Mazumdar learned counsel for the petitioner
and Mr. S S Roy learned counsel for the respondents.

The petitioner was provisionally selected for enrolment as trainee recruit (General Duty) on 23.05.2001 subject found fit in the medical examination. The petitioner was found medically unfit due to "Fine Tremor of both hands" and was discharged from service.

The case of the petitioner is that the respondents had not issued any show-cause notice to the petitioner prior to his discharge from service nor was given any reasonable opportunity to defend his case before his discharge. Thereafter the petitioner had preferred a writ petition before this court being WP(C) No.1956/2010.

This Court under its order dated 11.09.2012 directed the respondents to constitute a fresh medical examination within a specified time frame by a board having expertise in relevant field of deformity as alleged by the respondents. Accordingly, on 12.10.2012 the respondent authorities directed the petitioner to appear before the Board for medical examination.

It is the case of the petitioner that the petitioner was examined without having any specialist in the field and his case was again rejected on the same ground.

In a similar circumstance like that of the petitioner, some other persons who were also discharged of being medically unfit approached this Court by filing writ petitions and their cases were rejected by a learned Single Bench of this Court. Thereafter those persons approached the division bench by preferring appeals and the hon'ble division bench allowed the writ appeals interfering with the decision of the learned single judge and directed to issue offer of appointment to those appellants subject to completion of basic

training course. Thereafter some other persons on the basis of the determination made by the hon'ble Division Bench approached this Court for similar relief as has been granted by the division bench, however, such writ petitions were dismissed by the learned single bench and thereafter those petitioners preferred a review petition being Review Petition (C) No.111/2018. In the review petition the earlier order was recalled and the writ petition was allowed in terms of the division bench judgment. Accordingly, the present petitioner now approach this Court for a similar relief.

The claim of the petitioner is that the respondents without having proper material before them concluded that the petitioner is unfit with a predetermined mind to make the petitioner unfit. In support of such contention Mr. Mazumdar, learned counsel for the petitioner refers to the affidavit filed by the Union of India to project that the petitioner was declared unfit on 29.10.2012 vide (Annexure – 3 to the writ petition) whereas, the recommendation of the Review Medical Board clearly reflects that the review was done on 31.10.2012. Accordingly, Mr. Mazumdar submits that the order of declaring the petitioner unfit cannot be based on the Review Medical Board which was purportedly done on 31.10.2012.

This Court has also found from the (Annexure – 3) appended to the affidavit in opposition filed by the respondent that the Appeal Medical Board, Assam Rifles declared the petitioner unfit in the said form on 29.10.2012 whereas, the medical board on the basis of which purportedly such declaration was arrived, was made on 31.10.2012.

That being the position, this court is of the view that the petitioner is entitled for a proper review by a Medical Board. Accordingly, the writ petition stands disposed of by directing the respondents to constitute a fresh Appeal Medical Board/Review Medical Board within a period of 2 (two) months from the date of receipt of a certified copy of this order for the purpose of examining the medical fitness of the petitioner. It is further directed that if the petitioner is found to be fit in the Appeal/Review Medical examination, then the respondents would have to consider the candidature of the petitioner for his continuation in service in Assam Rifles by recalling the discharge certificate dated 09.10.2001.

The Appeal/Review Medical Board shall examine the case of the petitioner in accordance with the Detailed Medical Examination Guidelines which was prevailing during the recruitment year, 2001.

It would be open to the respondents to determine whether the petitioner was within the permissible age on the date when he had applied for joining and/or enrolled in the Assam Rifles.

The writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant