

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.373/2018

Reserved on: 01.03.2024

Pronounced on: 03.05.2024

Shri.Ram Pal

..... Petitioner

Vs.

1. The Union of India through the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi.
 2. The Director General of Assam Rifles, Laitkor, Shillong-10, Meghalaya.
 3. The Deputy Inspector General, Assam Rifles Training Centre and School, Dimapur, Nagaland.
 4. Commandant, Assam Rifles Training Centre and School, Dimapur, Nagaland.
- Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Appearance:

For the Petitioner	: Mr.E.Laloo, Adv. Vice Mr.S.Chakrworthy, Sr.Adv.
For the Respondents	: Dr.N.Mozika, DSG with Ms.A.Pradhan, Adv.

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| i) Whether approved for reporting in Law journals etc.: | Yes |
| ii) Whether approved for publication in press: | Yes |

ORDER

The present writ petition has been filed, challenging the Certificate of Discharge dated 29.11.2005, by which he was ordered to

be discharged as trainee with effect from 30.11.2005 (AN). Aggrieved by such discharge, the petitioner is before this Court.

2. It was the case of the petitioner that he was selected for the post of Rifleman (GD) vide appointment order dated 28.03.2004 issued by the respondents. In the appointment letter, there was a stipulation that his final selection would be subject to his fitness in the medical examination. It was further case of the petitioner that during the course of training at the Assam Rifles Training Centre and School, Dimapur, Nagaland, pursuant to his illness, he was referred to the Assam Rifles Hospital at the 1 Construction Company, Laitkor, Shillong, where he underwent treatment for his Tuberculosis for six months. After complete recovery from the disease, he was again sent back to the Assam Rifles Training Centre and School, Dimapur, Nagaland. It was further case of the petitioner that again he was referred to the Army Hospital at Rangapara and thereafter, he was discharged from service on the ground of medical invalidation with effect from 30.11.2005.

3. Learned DSG contended that after his provisional appointment as Rifleman (GD) in the Assam Rifles, he had the complaint of chest pain and dry cough, on account of which, he was provided medical treatment and he was diagnosed with Pulmonary Koch

(TB). Due to his illness, he did not participate in the basic training and he was found in Low Medical Category. Learned DSG further contended that as per Gazette Notification dated 10.09.2002, personnel of Assam Rifles are exempted to get protection of Disability Act and therefore, he was relieved from the Assam Rifles with effect from 30.11.2005. Learned DSG also contended that the petitioner is not entitled to any service benefits, including pensionary benefits in terms of the provisions of Central Civil Services (Classification, Control and Appeal) Rules (in short 'CCS (CCA) Rules'), as he cannot be considered to be a Soldier in view of the fact that he was provisionally selected as a recruit and after successful completion of training and taking oath, an employee would be a complete soldier and allowed to serve for the nation. A plea of delay and laches has also been taken by the respondents.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Admittedly, the petitioner was provisionally appointed as Rifleman (GD) vide order dated 28.03.2004 with a clear stipulation that his final selection is based on the medical fitness certificate issued by the Medical Board. In the medical examination, he was found to be unfit, as he was diagnosed with Pulmonary Koch (TB) and the Medical Board

also advised the individual to be under observation in Civil TB Centre for 3 years. Finally, the petitioner was discharged from service on 30.11.2005 and after a delay of nearly 13 years, the petitioner has filed this Writ Petition. Though he was successful in the recruitment process, he was medically unfit to undergo further training and to be absorbed as a fulltime soldier in the Assam Rifles. According to the respondents, unless a person completes the training period successfully and renders required years of service, he is not entitled to any pensionary benefits.

6. The petitioner has stated that in the light of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, he is entitled to employment. Section 47 of the Act, 1995 reads as follows:

“47. Non-discrimination in Government employment.

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any

establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

7. In my considered opinion, the above submission cannot be accepted for the reason that as per Ministry of Social Justice and Empowerment Notification dated 10.09.2002, published in the Gazette of India Extraordinary Part-II Section 3(H), the provisions of the Act, 1995 have been exempted for all categories of posts of combatant personnel. For the sake of understanding, the said Notification is extracted hereunder:

“NOTIFICATION
NEW DELHI, THE 10TH SEPTEMBER 2002

S.O.995(E) – In exercise of the powers conferred by proviso to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), the Central Government having regard to the type of work carried out hereby exempt all categories of posts of “combatant personnel” only of the Central Para Military Forces (CPMFs) namely, Central Reserve Police Force (CRPF), Border Security Force (BSF), Indo-Tibetan Border Police (ITBP), Central Security Force (CISF) and Assam Rifles from the provisions of the said section.”

8. That apart, the petitioner has knocked at the doors of this Court after a delay of 13 years and therefore, the Writ Petition is liable to be dismissed on the said ground. In the light of the judgment of the Apex Court in Allahabad Bank and Others vs. Krishna Narayan Tewari, reported in (2017) 2 SCC 308, a writ court must be very slow in

interfering with the decision of authorities. In yet another case in **J.K.Bansal Vs. Union of India and Others**, reported in **(2005) 7 SCC 227**, the Apex Court observed as follows:

“12. It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in Public Sector Undertakings. ***The scope of interference by courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted....***”

9. In view of what is stated hereinabove, W.P.(C) No.373 of 2018 is dismissed as devoid of merits.

(S.Vaidyanathan)
Chief Justice

Meghalaya
03.05.2024
“*Lam* DR-PS”

PRE-DELIVERY ORDER IN
W.P.(C) No.373/2018