

GAHC010138542014



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

Case No. : WP(C)/6239/2014

DHIRAJ THAKUR

S/O- SRI KANHAYA THAKUR, A PERMANENT R/O VILL. and P.O.- REOTI,
DIST.- BALLIA U.P., PIN- 277209. PRESENTLY RESIDING AT THE HOUSE OF
SRI SAMBHU CHAUDHURY, BASISTHA ROAD, BELTOLA, GHY- 28, DIST.-
KAMRUP M, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS

REP. BY THE SECY., HOME AFFAIRS DEPTT., GOVT. OF INDIA, NEW DELHI-
1.

2:ASSAM RIFLES

REP. BY THE DIRECTOR GENERAL OF ASSAM RIFLES
C/O- DGAR
SHILLONG- 1.

3:CHIEF MEDICAL OFFICER

ASSAM RIFLES
C/O- DGAR
SHILLONG- 1.

4:COMMANDANT

ASSAM RIFLES TRAINING CENTRE AND SCHOOL
P.O.- DIMAPUR NAGALAND

Advocate for the Petitioner : MR.N N JHA

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

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order(Oral)

Date : 19.06.2024

Heard Mr. S. Sahu, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC appearing for the respondents Union of India.

2. The petitioner, by way of instituting the present proceedings has assailed an order dated 24.06.2014, by which, he was discharged from his service w.e.f. 30.06.2014 on medical ground as a disability case of "seizure disorder". The petitioner had also challenged the discharge certificate dated 29.06.2014, issued to him in pursuance to the said order dated 24.06.2014.

3. The facts requisite for adjudication of the issue arising in the present proceedings is noticed as under:-

The petitioner, in pursuance to a recruitment process initiated by the authorities of the Assam Rifles was recruited as a "Recruit Clerk" vide a communication dated 22.07.2012. On the petitioner joining the services in terms of the said communication dated 22.07.2012, he was subjected to a medical examination and on being found to be suffering from High Blood Pressure, he was declared unfit for the service, however, it was noted that he may submit an appeal before the Medical Board within 15(fifteen) days. The petitioner had appealed before the Medical Board and the Board on examination, found him fit for recruitment into the service and accordingly, the petitioner was permitted to undergo the training involved.

It is seen that the petitioner failed to clear the Clerk course on three

chances as provided to him and accordingly, his trade was changed from "Recruit Clerk" to "Recruit General Duty (GD)".

It is contended that while the petitioner was undergoing his training, on 04.01.2014, he had an episode of loss of consciousness, for which he was admitted in the Unit M I Room and thereafter, referred to the Assam Rifles composite Hospital, Dimapur, on 16.01.2014 for treatment. The petitioner was thereafter, referred to the Command Hospital (EC), Kolkata, for examination by a Neurophysician as the seizure attacks were occasioning frequently in his case. The Specialist, on examination of the petitioner and after carrying out the necessary investigation, opined that the petitioner was suffering from "Seizure Disorder" and that he was unfit to carry out military duties in future. The petitioner was recommended to be boarded out from service during his training period.

Basing on the said opinion of the Specialist, an invalidment Medical Board was held at the Assam Rifles Training Centre and School, Dimapur, on 10.05.2014. The Medical Board, on examination of the petitioner, proceeded to recommend that he be invalidated out of service by placing him in Low Medical Category P-5 due to "Effects of seizure disorder unlikely to become an efficient soldier" with 60% lifelong disability. Accordingly, the petitioner was vide order dated 29.06.2014 discharged from his services on the said ground and thereafter, on 29.06.2014, he was issued with the discharge certificate. Being aggrieved, the petitioner has instituted the present proceedings.

4. The learned counsel for the petitioner has reiterated the facts as noticed hereinabove, and has contended that the discharge of the petitioner from his

services was not in terms of the provisions as existing in this connection under the Assam Rifles Rules, 2010. It was contended that the petitioner was not afforded with due opportunity to have his say in the matter and accordingly, the order dated 24.06.2014 and the consequent discharge certificate dated 29.06.2014 cannot be sustained and accordingly, this Court shall be pleased to interfere with the same with a further direction for reinstatement of the petitioner in his services.

5. In support of the said contentions, the learned counsel for the petitioner has referred to an opinion submitted in the matter by the Doctors of Batra Hospital and Medical Research Centre, New Delhi, which accordingly to the learned counsel for the petitioner, does not reveal the petitioner to be suffering from the ailments as forming the ground of his discharge from service.

6. Ms. A. Gayan, learned CGC appearing for the respondents have submitted that the petitioner was initially recruited as "Recruit Clerk" however, he having not cleared the trade tests involved in spite of three opportunities given to him, the respondent authorities taking a humanitarian ground in the matter had changed the trade of the petitioner from that of a "Recruit Clerk" to that of a "Recruit GD". It was contended that the petitioner on being having found to have been suffering from frequent seizures, he was provided with the requisite treatments and he was also sent to the Command Hospital at Kolkata for further investigation.

7. The Specialist of the Command Hospital, Kolkata, on examination of the petitioner and after carrying out the investigations as mandated, having concluded that the petitioner was suffering from "Seizure Disorder" and

having opined on that basis that he is unfit to carry out military dirties, an invalidment Medical Board was so constituted for further examination of the petitioner and it was only after the recommendation of the said Board was so received that the petitioner was discharged from his services vide the issuance of the order dated 24.06.2014 and the consequential discharge certificate dated 29.06.2014.

8. It is contended that the ailments as suffered by the petitioner having rendered him unfit for retention in the force, the mandatory steps as requisite in the matter before arriving at the decision to board out the petitioner from the force, having been so taken, the decision to discharge the petitioner from his services as being placed in a Low Medical Category does not require any interference from this Court.

9. I have heard the learned counsel appearing for the parties and perused the materials placed on record.

10. The petitioner has not denied in the writ petition of the episodes of seizures suffered by him as well as the examination as carried out in his case by a Specialist in the Command Hospital at Kolkata. The petitioner had only contended that the procedure as mandated in this connection for discharge of an enrolled member of the force was not followed in the matter by the respondents before issuing the discharge order dated 24.06.2014 and discharge certificated dated 29.06.2014.

11. In the case on hand, it is seen that after the opinion of the Specialist was received from the Command Hospital at Kolkata in respect of the petitioner's ailments, the case of the petitioner was placed before a invalidment Medical Board and therein after due involvement of the

petitioner i.e. the petitioner being made aware of the ailments suffered by him and also upon receiving his response in the matter, the Medical Board proceeded to opine that the petitioner would not be a fit person for retention in the force. It is seen from the proceedings of the said Board that the petitioner had also submitted before the said Board of having been suffering from seizure disorder w.e.f. 06.01.2014. It is only after the said recommendation of the Medical Board was so received that the petitioner herein was proceeded to be discharged from his services vide the order dated 24.06.2014 w.e.f. 30.06.2014, followed by issuance of the petitioner of a discharge certificate, indicating therein that he was being discharged from the service as a Trainee, basing on medical grounds. The procedure as demonstrated to have been carried out in the matter prior to issuance of the impugned order dated 24.06.2014, satisfies this Court that the procedure as mandated were duly complied with by the respondent authorities before proceeding to discharge the petitioner from his services.

12. It is also to be noted that while undergoing the said training, the petitioner had given a Certificate of Undertaking to the effect that if he is found unfit to become an efficient soldier during the course of his training, he is liable to be discharged from his services and he does not enjoy any privilege as Government servant until attested as a Rifleman. The petitioner in the present case was discharged from his services during the period of his training and the same was so based upon the opinion of a Specialist in the matter, which opinion was further evaluated by an invalidment Medical Board as constituted in the matter with the involvement of the petitioner, and as such the requisite procedure having been followed, no error in the decision arrived at by the respondents in the matter, is found by this Court.

13. In view of the above, this Court would not sit as an appellate authority over the findings as arrived at in the matter with regard to the fitness of the petitioner herein for retention in the force by the authorities of the Assam Rifles and the reinstatement in service by the petitioner after 10 years from his date of discharge from services on medical ground would also not be in the fitness of the service required to be discharged by an enrolled member in the force.

14. In view of the above conclusions, this Court is of the considered view that the writ petition is devoid of any merit and accordingly, the same stands dismissed, however, there would be no order as to costs.

JUDGE

Comparing Assistant