

GAHC010163012021



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

Case No. : WP(C)/5455/2021

EX FORCE NO. 025090635 SHRI ABINASH BARMAN
RESIDENT OF VILLAGE , PO AND PS CHUNGAJAN DIST GOLAGHAT,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS NEW DELHI

2:THE DIRECTOR GENERAL
CRPF
CGO COMPLEX
PRAGATI VIHAR NEW DELHI 110003

3:THE DEPUTY INSPECTOR GENERAL
CRPF
RANGE HQ
9TH MILE
GUWAHATI
ASSAM 781023

4:THE COMMANDANT 128 BN.
CRPF
IOC COMPLEX
SECTOR III NOONMATI
DIST KAMRUP (M) ASSAM

5:THE DEPUTY DIRECTOR (MEDICAL)
DIRECTORATE GENERAL (MEDICAL BRANCH) CRPF
EAST BLOCK 7
LEVEL 1
SECTOR 1
R.K PURAM NEW DELHI 110066

6:MEDICAL INVALIDATION BOARD

REPRESENTED BY INSPECTOR GENERAL (MEDICAL) COMPOSITE
HOSPITAL
GUWAHATI 78102

Advocate for the Petitioner : MR R DHAR, MR. R MAJUMDAR,MRS. A BASUMATARY,MR B
C MUCHAHARY

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

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

05.09.2024

- 1.** Heard Mr. R. Dhar, learned counsel for the petitioner and Mr. R.K.D. Choudhury, learned Dy. SGI for the respondents.
- 2.** Challenge made by the petitioner is to the office order dated 02.12.2020 (Annexure-8) and to the communication dated 03.03.2021 (Annexure-10), by which his appeal was rejected.
- 3.** The facts of the case in brief is that the petitioner was appointed as Constable/Cook in the CRPF on 11.11.2002 in A/128 Battalion and his Force No.025090635. According to the petitioner in the year 2018 after his duty hours, he attended a party where he consumed some quantity of alcohol in the night. On the next day, although he attended his duty he had headache for which he was taken to the CRPF Hospital, Guwahati, where he was diagnosed to have Alcohol Dependence Syndrome (ADS) with depression. He was admitted in the hospital on 28.09.2018 and was discharged on 23.10.2018. The advice on his discharge was Category S-3(T-24) due to ADS, duty without firearms.

4. Thereafter the petitioner was admitted in the hospital again on 09.04.2019 and discharged on 30.04.2019. On his discharge, he was stated to be stable and the advice on discharge was S-3 (T-24) due to ADS, to perform duty without firearms.

5. The petitioner was again admitted in the hospital on 13.02.2020 and discharged on 12.03.2020 and the condition of his charge was remarked as "Unchanged". The advice of discharge was "Medical invalidate duty completed". Following his discharge, his case was taken up by the Medical Board of the CRPF and the Board vide its conclusion made a report that the petitioner's case was a case of ADS since 28.09.2018 and on LMC S-5 w.e.f. 30.04.2019. Accordingly, the petitioner was re-categorized as S-5 w.e.f. 30.04.2019 due to non-improvement and it was opined that the petitioner was not fit to be retained in the force and his retention would be detrimental to the moral of the force and a burden on his Unit. Accordingly, he was recommended unfit for service and medical invalidation. Following the conclusion of the Board, the impugned office order dated 02.12.2020 was passed ousting the petitioner from service from 02.12.2020 (Annexure-8). The appeal filed by the petitioner was also rejected vide communication dated 03.03.2021 as already stated hereinabove. Aggrieved, the petitioner is before this Court.

6. Mr. R. Dhar, learned counsel for the petitioner submits that as per the discharge summary of the petitioner as on 23.10.2018, he was found to have improved. Thereafter on his discharge on 30.04.2019, he was also found to be stable. Likewise, when he was discharged on 12.03.2020, his condition was found to be "Unchanged". Such being the position, the Medical Board could have not re-categorized him as S-5 w.e.f. 30.04.2019, on which date he was found to

be stable. The findings of the Medical Board is therefore most arbitrary and perverse and should be set aside.

7. Mr. R. Dhar, learned counsel further submits that against the Show-Cause-Notice issued to the petitioner, the petitioner submitted his reply by enclosing a Certificate issued by the Superintendent, S.S.K. Civil Hospital, Golaghat, who certified that the petitioner was examined by him and he was found to be mentally and physically fit. The said Certificate was issued on 08.10.2020. Mr. R. Dhar, learned counsel submits that without considering the said Medical Fitness Certificate produced by the petitioner, the respondents proceeded to oust him from service. The learned counsel thus submits that the impugned orders should be set aside and the petitioner should be reinstated back into service with all consequential benefits.

8. The learned counsel also submits that as per the Guidelines for Criteria of Physical/Medical Fitness for Awarding Police Medal to Police Officers issued by the Ministry of Home Affairs, Police-I Division, PMA Cell dated 28.09.2017, alcohol dependence/drug abuse cases would be observed in temporary LMC in S-3(T-24) initially if showing favourable response to treatment. If during the period of such observation vide 2(a) the condition relapses again, he should be placed in S-5 and invalidated out of service. The learned counsel submits that there are no materials available to show that the condition of the petitioner has relapsed and therefore, re-categorizing him as S-5 by the Medical Board is illegal and should be re-interfered with.

9. In support of his submission, the learned counsel has relied upon the following authorities :

(i) ***Dilip Kumar vs. Union of India & Others***, reported in **2023 SCC**

OnLine Del 2221 and

(ii) Judgment dated 03.10.2019 passed by the Supreme Court in Civil Appeal No.7672/2019 (**Narsingh Yadav vs. Union of India & Others.**)

10. Mr. R.K.D. Choudhury, learned Dy. SGI, on the other hand submits that there is nothing wrong with the impugned orders and that the same have rightly been passed. He submits that the petitioner was admitted on 28.09.2018 and after about a month, he was discharged on 23.10.2018 showing the diagnosis "ADS in withdrawal". The petitioner's condition on discharge was said to be "Improved". However, he was advised to take medicines and he was categorized as S-3 (T-24) due to ADS and to perform duty without firearms. The Dy. SGI further submits that the petitioner was again admitted on 09.04.2019 and discharged on 30.04.2019 showing his condition of discharge as stable. However, the advice given was that he was found to be S-3 (T-24) due to ADS and to perform duty without firearms. The petitioner was thereafter admitted again on 13.02.2020 and was discharged on 12.03.2020. Despite his hospitalization for a month, there was no sign of improvement on him and the condition of his discharge was remarked as "Unchanged". The advice on discharge was also remarked as "Medical invalidate duty completed". The learned counsel submits that this clearly shows that the condition of the petitioner had not improved and accordingly his case was taken up before the duly constituted Medical Board, wherein upon thorough investigation and examination of the condition of the petitioner, the Board opined that his medical condition should be re-categorized as S-5 w.e.f. 30.04.2019 and further opined that he was not fit to be retained in the force as the same would be detrimental to the moral of the force and a burden to his Unit. The petitioner was thus recommended as unfit for service and for medical invalidation. The learned

counsel submits that the opinion of the Board was based on proper investigation and examination of the medical records of the petitioner and therefore, it cannot be said that the same is without any basis as claimed by the petitioner. The petitioner despite being admitted on several occasions in the hospital did not show signs of improvement and therefore, it was on this count that his medical condition was re-categorized as S-5. Under the facts and circumstance, the learned Dy. SGI submits that there is no merit in the writ petition and the same should be dismissed.

11. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

12. The main thrust of the argument advanced by the learned counsel for the petitioner is that when the petitioner was shown to be improving and stable as per the two discharge slips for the period w.e.f. 28.09.2018 to 23.10.2018 and again from 09.04.2019 to 30.04.22019 respectively while shown his condition to be S-3 (T-24), the Medical Board could not have re-categorized the petitioner as S-5 w.e.f. 30.04.2019. Therefore, ousting the petitioner from service on the basis of the Medical Board recommendation is bad in law and should be set aside. Support in this regard is made by the learned counsel for the petitioner to the case of ***Dilip Kumar (supra)***, wherein the guidelines issued by the Ministry of Home Affairs on 31.07.2007 provided that if there are any sign of relapse due to ADS re-categorization of the person under examination would be justified but not in a case where the person under treatment for ADS was responding positively. Similarly in the case of ***Narsingh Yadav (supra)*** relied upon, wherein the Supreme Court referred to a judgment of the a three Judge Bench of the same Court namely, ***Veer Pal Singh vs. Secretary, Ministry of***

Defence, reported in **(2013) 8 SCC 83** where the Apex Court opined that opinion of the experts deserves respect but should not be worshiped. In other words, judicial/quasi-judicial forums deciding disputes relating to premature release/discharge from the army cannot in each and every case refused to examine the record of the Medical Board to determine whether or not the conclusion reached is legally sustainable.

13. On the basis of the reliance placed by the learned counsel for the petitioner on the authorities referred to hereinabove, this Court shall proceed to examine as to whether the action and order impugned by the petitioner is sustainable or not. The petitioner was initially admitted in the hospital on 28.09.2018, where he was diagnosed as ADS in withdrawal. When he was discharged on 23.10.2018, his condition was said to be improved as per the discharge slip (Annexure-1). Upon discharge, he was categorized as Category S-3 (T-24) due to ADS and duty without firearms, besides being prescribed certain medication. The petitioner thereafter was again admitted in the hospital on 09.04.2019, where he was diagnosed as "FUC of ADS". He was then discharged on 30.04.2019 and his condition was stated as stable. The advice on discharge was similar to the one as remarked in the discharge slip when he was discharged on 23.10.2018, besides being prescribed medication. It may be noticed that the condition of the petitioner when he was discharged on 23.10.2018 and thereafter on 30.04.2019 after being hospitalized for about a month on both occasions was the same. Thereafter when he was again hospitalized on 13.02.2020, his condition at the time of his discharge on 12.03.2020 was stated to be "Unchanged". The advice on discharge was with a remark "Medical Invalidate duty completed". It may be seen that the Medical Board assembled on 03.03.2020 which comprised of the Presiding Officer, two

Members and one Co-opted Member. The Board proceedings go to show that the petitioner was evaluated by conducting investigations on 15.02.2020, by performing various blood tests. It may be seen that the assessment admittedly was done during his hospitalization w.e.f. 13.02.2020 to 12.03.2020, wherein no particular categorization was given to him except for the remark "Unchanged" in the condition of discharge column. The Board taking into various aspect of the matter as can be seen from the Board proceedings opined that the petitioner be re-categorized as S-5 w.e.f. 30.04.2019. It may be noticed that 30.04.2019 is the date on which he was discharged after he was admitted for the second time. The discharge slip issued to the petitioner was authored by the Medical Officer of the hospital, whereas the opinion rendered by the Board comprised of four Members including the Presiding Officer, who took into account the past and present condition of the petitioner and therefore, the opinion rendered in considered view of this Court cannot said to be a retrospective re-categorization of the petitioner. The petitioner has also submitted a Medical Fitness Certificate issued by the Superintendent, S.K.K. Civil Hospital, Golaghat which however does not disclose as to how the assessment was made on the health of the petitioner. In other words, the same cannot be accepted on its face value alone.

14. Thus upon due consideration, this Court is of the considered view that the writ petition has no merit and therefore the same is accordingly dismissed. The parties are directed to bear their own cost.

JUDGE

Comparing Assistant