

GAHC010221912021



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

Case No. : WP(C)/8365/2022

NO. 10245224N LNK HEMANTA BORDOLOI
S/O LT. LATISINGH BORHOLOI R/O VILL. BHUGAL GHAT P.O. CHABUK
DHARA P.S MIKIR BHETA DIST. MORIGAON, PIN-782106

VERSUS

THE UNION OF INDIA AND ORS.
REP. BY ITS SECRETARY MINISTRY OF HOME AFFAIRS NEW DELHI-110011

2:THE CHIEF OF THE ARMY STAFF
COAS SECRETARIAT INTEGRATED HQ OF MOD (ARMY) D.H.Q.P.O NEW
DELHI 110011

3:THE DEPUTY DIRECTOR GENERAL DEFENCE SECURITY CORPS
GENERAL STAFF BRANCH INTEGRATED HEAD QUARTERS MINISTRY OF
DEFENCE ARMY WEST BLOCK III R.K. PURAM NEW DELHI-11066

4:THE DIRECTOR
HQ COMMAND
DEFENSE SECURITY CROPS

5:THE COHMMANDING OFFICER
1025 DSC PLATOON ATT WITH 14 BRD EASTERN COMMAND BORJHA

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate), MR. K M MAHANTA,MS N
BEGUM,M R Sharma

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

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

10.09.2024

Heard Mr. K M Mahanta, learned counsel for the petitioner and Mr. P S Lahkar, learned CGC for the respondents.

[2.] By filing this writ petition, the petitioner has challenged the Order dated 05.08.2019 (Annexure-7), by which he has been discharged from service in terms of Rule 13(3), Item-III(i) of the Army Rules, 1954.

[3.] The case of the petitioner is that he earlier served as Havildar in the Territorial Army for 20 years and thereafter retired from service. However, he was found fit for appointment in the Defence Service Corps (DSC) and was accordingly re-enrolled vide Order dated 14.10.2009 (Annexure-R1) of the affidavit-in-opposition of respondent Nos. 1 to 5. As per his re-enrollment in the DSC, the same was for a period of 10 years, extendable by 5 years at a time subject to his suitability and willingness up to the age of superannuation or 57 years of age. During the course of his service on 31.10.2018, while he was asked to build a sentry post with CGI sheets, his right middle finger was caught

between the CGI sheets, resulting into an injury. Later, the injury became gangrenous and thereby leading to its amputation. According to the petitioner, the Medical Board found his case to be of 97% disability and placed him under A2(P) Medical Classification SHAPE-2X and arbitrarily discharged him from duty. According to the petitioner, his case was neither sent to the release Medical Board nor any efforts was made to give him sheltered appointment. Aggrieved, he is before this Court.

[4.] Mr. K M Mahanta, learned counsel for the petitioner submits that the petitioner was wrongly discharged from service by applying Rule 13(3), Item-III(i) of the Army Rules, 1954. He submits that in view of the nature of the injury sustained by the petitioner, the respondent authorities ought to have passed an order under Rule 13(3), Item-III(iii)(a) instead. He submits that the petitioner ought to have been given a sheltered appointment or an invalid pension due to the disability suffered by him in the course of his employment.

[5.] The learned counsel, in support of his submission, has relied upon the recommendation of the Court of Inquiry annexed to the affidavit-in-opposition of respondent Nos. 1 to 5, where it was certified that the injury suffered by the petitioner is attributable to military service. The learned counsel, therefore, submits that the respondents authorities should be directed to either give the

petitioner a sheltered appointment or grant him an invalid pension, so that he can enjoy the pensionary benefits. In support of his submission, the learned counsel has relied upon the case of *Dharamvir Singh vs. Union of India & Ors.*, (2013) 7 SCC 316 and *Ex-Sepoy (Washerman) Ram Khilawan vs. Union of India* (2019) 8 SCC 581.

[6.] Mr. P S Lahkar, learned CGC, on the other hand, submits that the petitioner has been rightly discharged from service in terms of his appointment order. He submits that the petitioner has served for 10 years with the DSC and that he could not be continued with the service since he suffered from an injury on his middle finger in his right hand. He submits that his middle finger, on becoming gangrenous had to be amputated which ultimately led to him discharge from his service. He submits that according to the finding of the Medical Board, the percentage of his disability was 9% and not 97% as sought to be projected by the petitioner. He submits that after due examination of the case of the petitioner in consultation with the competent medical authority, it was decided by the competent authority that the petitioner is not entitled to disability pension in terms of Regulation 179 of Pension Regulations for the Army, 1961. He submits that only in cases of disability more than 20%, one can be entitled to receive disability pension. In case of the petitioner, the disability

was only up to 9%. He, therefore, submits that the petitioner is therefore not entitled to disability pension. Since he has already been discharged on 05.08.2019, there is no question of taking him back in service and to give him a sheltered appointment. He submits that the petitioner has also submitted his application for final settlement of AFPP fund. He, therefore, submits that the writ petition has no merits and the same should be dismissed.

[7.] I have heard the learned counsel for the rival parties and I have perused the materials available on record.

[8.] It may be stated herein that since the percentage of disability of the petitioner, as shown in the proceedings of the Medical Board, were not legible from the writ petition, the original records were requisitioned. The learned CGC has produced the original records wherein it is seen that whitener has been applied after the figure "9" against column 20(b) of the Medical Board proceedings. According to the petitioner, the same should read as "97%". However, facts not in dispute is that the only injury suffered by the petitioner before and after his appointment to the DSC was "crush injury" on his middle finger and for which, partial amputation was done. Therefore, it is unlikely that for the said injury, the petitioner can be said to have suffered 97% disability. In other words, the over-writing or whitener applied against the column showing

the percentage of disability of the petitioner would not make any difference. Further, in other pages of the Medical Report, the percentage of disability is clearly reflected as 9 to 10%. Therefore, there can be no suspicion about the correction made by whitener. As stated, the Medical Board, after making a detail assessment, came to the conclusion that the percentage of disability of the petitioner was 9% to 10% and for life. He was, therefore, recommended to be released in medical category S1H1A2 (P)P1E1. The same was approved and confirmed by the respondent authorities concerned.

[9.] As stated earlier, the petitioner, after serving in the Territorial Army for 20 years, was enrolled again in the DSC on 14.10.2009 for initial period of 10 years and extendable by 5 years. Admittedly, at the time of his discharged on 05.08.2019, he had rendered 10 years of service. Having been placed in the LMC, he was recommended to be released from service in view of his categorization as LMC. The learned CGC has submitted that extension of service in DSC cannot be granted to LMC personnel placed in permanent medical category irrespective of disease/disability. Therefore, having regard to the nature of injury/disability as recorded by the Medical Board, he is not eligible to be retained in service. The petitioner was also given the option to prefer an appeal to the Appellate committee on first appeal within 6 months from the date

of receipt of the Letter dated 19.11.2019 but admittedly, the petitioner has not filed such an appeal.

[10.] Under the facts and circumstances, this Court does not find any merit in the writ petition and the same is accordingly dismissed. The authorities relied upon by the learned counsel for the petitioner under the facts and circumstances of the instant case are found to be not applicable and therefore, they have not been referred to.

JUDGE

Comparing Assistant