

THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No. 02 of 2012

Sri Debashish Banerjee,
son of late Dilip Kumar Banerjee,
resident of 6H, Samar Sarani,
PO & PS – Cossipur,
District – Kolkata, West Bengal,
presently posted as SI/JE Civil, BSF at Sector Head Quarter,
Bagafa, District – South Tripura

.....**Petitioner**

- Vs -

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs, Government of India,
North Block, New Delhi
2. The Director General,
Border Security Force, having his office at Block-10,
CGO Complex, Lodhi Road, New Delhi, PIN – 110 003
3. The Deputy Inspector General,
Udaipur Sector, BSF, having his office at Santirbazar,
Bagafa, South Tripura, PIN-799 007
4. The Presiding Officer,
Court of Enquiry, BSF,
Udaipur Sector, BSF,
having his office at Santirbazar, Bagafa,
South Tripura, PIN – 799 007

.....**Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. Somik Deb, Advocate
For the respondents	: Mr. A. Lodh, Advocate
Date of hearing	: 24.08.2015
Date of delivery of Judgment and Order	: 31.08.2015
Whether fit for reporting	: YES

Judgment and Order

The petitioner while serving as the SI/JE in the Border Security Force, BSF in short, was certified in the *Low Medical Category (SHAPE-3)* by the order dated 25.09.2007, Annexure-P/1

to the writ petition. Thereafter, the Medical Board recommended his upgradation in the medical category and accordingly he was upgraded to SHAPE-1 by the order dated 13.11.2008, Annexure-P/2 to the writ petition. On 06.01.2009, the petitioner joined the Frontier Head Quarters, Tripura and was posted at SGQ BSF, Udaipur on temporary duty. On 02.08.2011, as the petitioner has asserted, he reported to Dr. CNSP Rao, CMO (SG) for having his annual medical examination for the year 2010-2011, as the said annual medical examination was not done due to his nature of job requiring him to stay away from his place of posting for a substantial duration. On conducting a series of medical tests and investigation including various categories of blood and urine examinations as well as ECG etc., Dr. CNSP Rao, CMO (SG) issued a medical certificate in favour of the petitioner on 07.08.2011 declaring him to be in the Medical Category, SHAPE-1. On 09.09.2011, as the petitioner has asserted, he was verbally informed by the authority that he belonged to low Medical Category, SHAPE-3 w.e.f. 12.04.2010 for a period of 48 weeks. The petitioner, thereafter, has alleged that the BSF authorities for their oblique intention towards depriving him from promotion came to an erroneous conclusion that the petitioner obtained a medical certificate by making false statement before Dr. CNSP Rao, CMO (SG) for purpose of promotion to the next grade. The BSF authorities brought against him unfounded allegation that he did not reveal his last medical status, certified by the Medical Board nor did he turn up before the review Medical Board despite repeated instructions.

The BSF authorities conducted a preliminary enquiry and gathered prima facie materials that the petitioner by suppressing his actual medical status has fraudulently obtained the medical category certificate from Dr. CNSP Rao, CMO (SG). The petitioner has also asserted that the SHAPE-1 certificate was issued by Dr. CNSP Rao, CMO (SG) after independently carrying out investigation. On such investigation, the petitioner was found with no physical abnormalities. On the basis of the said preliminary enquiry, by the communication dated 03.11.2011, Annexure-P/6 to the writ petition, the petitioner was apprised as under:

"It is to inform that you are found blameworthy for obtaining SHAPE-1 medical category certificate on 02/08/2011 at Bagafa from Dr. C.N.S.P. Rao, CMO (SG) on ground of promotion well knowing this statement to be false, whereas you are placed under LMC S1H1A1P3(T-48)E1 from 20 April 2010 to 19 April 2011 which has not been reviewed neither by the medical board nor turned up for the review medical board despite repeated instructions. Ftr HQ BSF Tripura vide their L/No.IGA/Estt-III/1041(Disc-SOs)/2011/28707-08 dated 05 Sept'2011 has directed that "Disciplinary action may be initiate against you as per rules by DIG SHQ".

2. Whereas, a summarily trial will be initiated against you under Section 55 of BSF Act, 1969 on 7.12.11. The following documents are enclosed herewith:-

- i) Typed copy of COI proceedings,***
- ii) Copy of Charge Sheet.***

3. Acknowledgement receipt of the documents be submitted to this Office in token of receipt of the documents."

Along with the said communication dated 03.11.2011, a copy of the chargesheet, Annexure-P/7 to the writ petition was also enclosed. The charge against the petitioner has been framed as under.

"The accused No.870000212 SI/JE (Civil) Debasis Banerjee of Ftr HQ BSF Tripura attached with SHQ BSF Udaipur is charged with:-

***BSF Act, 1968 OBTAINING FOR HIMSELF PRIVILAGE BY
SEC.35(E) A FALSE STATEMENT WHICH HE KNEW TO
 BE FALSE***

In that he

At Bagafa on 2/8/2011 obtained SHAPE-1 Medical Category certificate from Dr. C. N. S. P. Rao, CMO (SG) on ground of his promotion well knowing this statement to be false."

The said decision of the respondents as contained in the communication dated 03.11.2011 issued by the Deputy Inspector General, BSF, Udaipur Sector and the charge as available in the chargesheet, Annexure-P/7 to the writ petition, have been challenged in this writ petition by the petitioner.

02. Mr. Somik Deb, learned counsel appearing for the petitioner has emphatically submitted that the materials placed as the foundation to frame a charge under Section 35(e) of the BSF Act, 1968 do not constitute any offence within the ambit and meaning of Section 35(e) of the BSF Act, 1968 which provides as under:

"35. Falsifying official documents and false declarations.-Any person subject to this Act who commits any of the following offences, that is to say, -

- (a)***
- (b)***
- (c)***
- (d)***

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned."

03. Mr. Deb, learned counsel for the petitioner has advanced two-pronged submissions viz. (1) that the petitioner had no knowledge that he was certified as the SHAPE-3 medical category by the order dated 01.07.2010, Annexure-R/3 to the counter affidavit of the respondents, before 09.09.2011 that he was so certified in the low Medical Category and (2) that even if it is assumed but having not admitted that for the suppression committed by the petitioner, the said certificate dated 16.08.2011, Annexure-R/5 to the counter affidavit, was issued by Dr. CNSP Rao, CMO (SG), even then the said act/conduct cannot be brought within the ambit of Section 35(e) of the BSF Act, 1968. The petitioner has annexed with the writ petition the statement of Dr. CNSP Rao, CMO (SG), made in the preliminary enquiry on 16.09.2011, and his own statement made in the preliminary enquiry on 21.09.2011 along with some other statements and exhibits are the part of the records of the Court of Enquiry proceeding.

04. From a preliminary scrutiny of those statements, it has emerged that Dr. CNSP Rao, CMO (SG) has stated in the preliminary enquiry that he agreed to conduct his annual medical examination as he was due to appear before the DPC. Dr. Rao has also mentioned that the petitioner had signed in the annual medical examination register claiming his previous medical category as SHAPE-1. In response to a question whether he was placed in a low

Medical Category (temporarily) by the medical board held at CH FTR HQ TRA in April, 2010, the petitioner had stated in the preliminary enquiry in the negative and replied that he thought that he was in the medical category SHAPE-1 as he was only informed of that category on 09.09.2011. Mr. Deb, learned counsel for the petitioner for purpose of interpreting Section 35(e) has placed reliance on ***Parakh Foods Limited vs. State of Andhra Pradesh and another*** reported in ***(2008)4 SCC 584***. For interpretation of Section 35(e), according to Mr. Deb, learned counsel, the principle of *ejusdem generis* can be applied. It is well known that *Ejusdem generis* is a Latin expression which means "of the same kind". For example where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. In other words, it means words of similar class. According to the Black's Law Dictionary, the principle of *ejusdem generis* is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to the persons or things of the same kind or class as those specifically mentioned. It is a canon of statutory construction that where the general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. By means of that principle, Mr. Deb, learned counsel for the petitioner has asserted that the word 'advantage' appearing in Section 35(e) must be interpreted as the financial advantage. He

has also placed reliance on a decision of the apex court in **Mst. Zohara Khatoon vs. Mohd. Ibrahim** reported in **(1981)2 SCC 509** where one of the authors (Koshal, J) has interpreted the word 'obtained' in the context of Section 125 of the Cr.P.C. It has been held as under:

"The word 'obtained' may well be used in the sense of 'procured with effort' and would certainly describe correctly a situation where something is achieved by a person through his exertion in spite of opposition from others. According to Webster, again the word 'obtain' signifies:

"(a) to gain or attain possession or disposal of, usually by some planned action or method,

"(b) to bring about or call into being, etc."

05. Mr. Deb, learned counsel for the petitioner has also placed his reliance on a decision of the apex court in **Mohammed Ibrahim and others vs. State of Bihar and another** reported in **(2009)8 SCC 751** in the context of the provisions of Sections 464, 467, 468 and 471 of the IPC, where it has been held that :

"But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

06. From the other side, Mr. A. Lodh, learned senior panel counsel for the respondents has produced the records in terms of

the order dated 19.08.2015. From the record, the Dak Dispatch Register, it appears that on 01.07.2010 itself the petitioner had received the order dated 01.07.2010 by dint of which he was placed under low Medical Category (SHAPE-3) w.e.f. 12.04.2010 for 48 weeks as he was suffering from 'essential hypertension'. Mr. Lodh, learned counsel has submitted that if one individual is placed in temporary low Medical Category, it is obligatory for him to appear before the reclassification Medical Board at the stipulated time as given in the previous Medical Board proceedings/medical examination. No early premature review will be allowed in case of any temporary low Medical Category irrespective of the duration. In the permanent low Medical Category, the individual will be reviewed after two years. However, early review can be requested provided the AMA certifies that the individual's condition has improved materially along with the technical report on convincing grounds. This has to be recommended by the Unit Commandant certifying normal performance of the individual and this will be forwarded to the Director (Medical) for granting early review. Mr. Lodh, learned counsel has contended thus by referring the Manual of Instructions as regards the proceedings of the Medical Board that without approaching reclassification Medical Board, the petitioner had approached Dr. CNSP Rao, CMO (SG) on 16.08.2011 and he had demonstrated his earlier Medical Category at SHAPE-1 by suppressing the low Medical Category as was certified by virtue of the order dated 01.07.2010, Annexure-R/1 to the counter affidavit of the respondents, which was received by the petitioner on the very date of the issue of that order.

07. Mr. Lodh, learned counsel for the respondents has submitted that, that was not an unintentional but deliberate suppression of fact which led to issuance of the said medical category certificate dated 16.08.2011 by Dr. CNSP Rao, CMO(SG), Annexure-R/5 to the counter affidavit. Even the petitioner was given clearance for consideration of his promotion to the next grade. In this regard, Mr. Lodh, learned counsel has produced the records wherefrom it transpires that by the communication under No. IGA/Estt/204/2010/224-25 dated 13.08.2011, the petitioner was recommended along with his medical category certificate for consideration of his promotion to the higher grade of the engineering set up of the BSF. From the communication dated 10.08.2011 on Medical Category Certificate issued by the competent authority, the AC (ESTT) for IG BSF TRA FTR, it has emerged as under:

"2. No.870000212 SI/JE(Civil) Debasis Banerjee of this HQ was placed under Medical Category S1H1A1P3 (T-48)E1 w.e.f. 12.04.2010 for 48 weeks due to "Essential Hypertension" vide your order under reference. Now SHQ BSF Udaipur has forwarded medical category certificate wherein medical category of SO has been shown as SHAPE-1. As per said certificate, the medical examination of SO was kcarried out on 02.08.2011 by Dr. C N S P Rao, CMO (SG).

3. It is therefore requested that, intimate whether review medical examination in r/o No.870000212 SI/JE (Civil) Debasis Banerjee of this HQ has carried out or otherwise, If so, intimate present medical category of the SO at the earliest for onward submission to FHQ in c/w DPC."

[Emphasis supplied]

08. It, therefore, clearly transpires that after obtaining the medical category certificate from Dr. CNSP Rao, CMO (SG), the petitioner had submitted the said certificate for recommendation

for promotion. Mr. Lodh, learned counsel has further contended that there is no substance in the challenge as raised by the petitioner as the preliminary enquiry report has formed the foundation of the summary trial to be initiated against the petitioner under Section 55 of the BSF Act, 1968. He has submitted that the respondents have placed, in the form of records of the enquiry proceedings, adequate materials to substantiate the charge under Section 35(e) of the BSF Act, 1968.

09. Having regard to the rival contentions as projected by the learned counsel for the parties, this Court is persuaded to observe that the provisions of Section 35(e) of the BSF Act, 1968 since does not list or include any other person or things, the principle of *ejusdem generis* will have no application in interpreting the clause (e) under Section 35 of the BSF Act, 1968. The ambit and meaning of this Section is so unambiguous that further interpretation is not at all called for. Any person of ordinary prudence can well understand the meaning of the word 'advantage' in its own general meaning and in the context of Section 35(e) of the BSF Act, 1968. The meaning of 'obtained' as interpreted by the apex court even if accepted it would not tilt the interpretation to mean and imply a situation to exclude the ordinary meaning of this provision. Moreover, the provisions of Section 464 or Section 467 or Section 468 or Section 471 has been engrafted in the Penal Code to cover certain culpable act, whereas the provision of Section 35 (e) has encompassed certain act. As such, this Court is of the considered view that the decisions of the apex court as relied by the petitioner are hardly of any help to the petitioner. It is

apparent on the face of the records, that the petitioner did not disclose his low Medical Category, despite his knowledge, to Dr. CNSP Rao, CMO (SG) who issued the Medical Category Certificate dated 16.08.2011, Annexure-R/5 to the counter affidavit. From the Dak Dispatch Register it has transpired that the petitioner was served a copy of the order dated 01.07.2010 on certifying the petitioner in the low Medical Category (SHAPE-3) on 01.07.2010 itself.

10. Mr. Deb, learned counsel for the petitioner has made an attempt to dispute the signature put on the Dak Dispatch Register but this Court is constrained to reject such contention on comparing the signatures of the petitioner. Whether such suppression is adequate to bring the petitioner's action within the ambit and meaning of Section 35(e) of the BSF Act, 1968? Section 35(e) of the BSF Act, 1968 provides that any person who commits any of the offence viz. by obtaining for himself or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or the document containing a true statement would be subjected to punishment as prescribed. The principle of *ejusdem generis* cannot be applicable for the reasons that the provision has disjuncted 'other advantage or privilege' from the pecuniary benefits such as pension and allowance. When the petitioner was examined by Dr. CNSP Rao, CMO (SG), he was under low Medical Category but he

did not reveal that category to Dr. CNSP Rao, CMO (SG). Rather, he signed on the annual medical examination register claiming his medical category as SHAPE-1. On such false declaration, the petitioner obtained that medical category certificate from Dr. CNSP Rao, CMO (SG) and submitted the same for purpose of promotion. Thus, it cannot be stated that there is no material to frame a charge under Section 35(e) of the BSF Act, 1968 inasmuch as from the records produced by the petitioner, it has transpired that the petitioner's name was recommended for consideration for promotion by the communication dated 13.08.2011 and from the communication on the medical category certificate dated 10.08.2011, it has transpired that the petitioner had submitted the medical category certificate issued by Dr. CNSP Rao, CMO (SG) on 02.08.2011. It cannot be also ruled out from the materials so placed that the petitioner did not obtain the medical category certificate by a statement which is false and which he knows to be false or does not believe to be true and he has done so for the advantage of his promotion. Hence, this Court does not find any reason whatsoever to interfere with the decision as contained in the communication dated 03.11.2011, Annexure-P/6 to the writ petition and the chargesheet enclosed therewith, Annexure-P/7 to the writ petition. It is made clear that the proposed summary trial shall not be influenced, in any manner, by the observations which have been made above for the limited purpose of examining the challenge as projected in this writ petition.

Having held so, the writ petition merits no further consideration and accordingly it is dismissed. There shall be no order as to costs.

JUDGE

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