

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WP(C).No. 23847 of 2014 (E)

PETITIONER(S)/PETITIONER :

**PRAKASH O.C., AGED 41 YEARS,
(932988094-HC/RO)S/O.M.P.JANARDANAN NAMBIAR
"HEAD CONSTABLE/RADIO OPERATOR"
BORDER SECURITY FORCE, SECTOR HEAD QUARTERS BSF,
THIRUVANANTHAPURAM, RESIDING AT ILLATH HOUSE
MUZHAPPALA.PO, KANNUR-670611.**

BY ADV. SRI.B.HARISH KUMAR

RESPONDENT(S)/RESPONDENTS:

- 1. UNION OF INDIA
REPRESENTED BY THE HOME SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI-110010.**
- 2. THE DIRECTOR GENERAL(BSF),
MINISTRY OF HOME AFFAIRS, FORCE HEAD QUARTERS
LODHI ROAD, NEW DELHI-110003.**
- 3. INSPECTOR GENERAL(P),
FRONTIER HEAD QUARTERS BSF, YELHANKA
BANGALORE-560003.**
- 4. THE DEPUTY INSPECTOR GENERAL OF POLICE,
BORDER SECURITY FORCE, SECTOR HEAD QUARTERS, BSF
THIRUVANANTHAPURAM, KERALA-695024.**

R1-R4 BY SRI.JAISHANKAR V.NAIR, CGC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-11-2015,
ALONG WITH WPC. 27588/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

VS

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	COPY OF THE DISCHARGE SUMMARY ISSUED BY THE KIDWAI MEMORIAL INSTITUTE OF ONCOLOGY,BANGALORE.
EXT.P2	COPY OF THE DISCHARGE SUMMARY ISSUED BY THE M.S.RAMIAH HOSPITAL, BANGALORE.
EXT.P3	COPY OF THE STANDING DISABILITY ASSESSMENT BOARD CERTIFICATE DATED 24/2/2007 ISSUED BY THE DISTRICT HOSPITAL, KANNUR
EXT.P4	COPY OF THE REMARKS DATED NI/MARCH/2007 OF THE 3RD AND 4TH RESPONDENT
EXT.P5	COPY OF THE ANNUAL PERFORMANCE ASSESSMENT REPORT DATED 6/4/2010 ISSUED BY THE RESPONDENT FORCE.
EXT.P6	COPY OF THE CERTIFICATE DATED 8/2/14 ISSUED BY THE REGIONAL CANCER CENTRE.
EXT.P7	COPY OF THE PROCEEDING DATED 25/7/14 ISSUED BY THE 4TH RESPONDENT
EXT.P8	COPY OF THE APPLICATION DATED 7/8/2014 SUBMITTED BY THE PETITIONER.
EXT.P9	A TRUE COPY OF THE ORDER DATED 20.10.2014 PASSED BY THIS HONOURABLE COURT
EXT.P10	A TRUE COPY OF THE REPRESENTATION DATED 2.10.2014 SUBMITTED BY THE PETITIONER
EXT.P11	A TRUE COPY OF THE MOVEMENT ORDER DATED 2.10.2014 PASSED BY THE RESPONDENT FORCE.
EXT.P12	A TRUE COPY OF THE REPRESENTATION DATED 14.3.15 SUBMITTED BY THE PETITIONER.

WP(C).No. 23847 of 2014 (E)

RESPONDENT(S)' EXHIBITS

- EXT.R1(a) TRUE COPY OF LETTER DATED 19.3.2014 ISSUED FROM THE REGIONAL CANCER CENTRE, THIRUVANANTHAPURAM.
- EXT.R1(b) TRUE COPY OF GUIDELINES FOR DISABILITY ASSESSMENT PUBLISHED IN GAZETTE OF INDIA, 2001 ISSUED BY THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
- EXTR1(c) TRUE COPY OF SIGNAL NO.M/4451 DATED 2.9.2014 ISSUED FROM THE REVIEW MEDICAL BOARD
- EXT.R1(d) TRUE COPY OF LETTER DATED 24.9.2014 ISSUED BY COMMANDANT.CMO (SG) 148 Bn.BSF
- EXT.R1(e) TRUE COPY OF LETTER DATED 23.5.2007 ISSUED FROM THE OFFICE OF DIRECTORATE GENERAL, BSF PAY & ACCOUNTS DIVISION.
- EXT.R1(f) TRUE COPY OF LETTER NO.SHQ TVM/Comn/1325/2014/8551 DATED 25.7.2014 ISSUED BY DEPUTY INSPECTOR GENERAL, SHQ BSF TRIVANDRUM
- EXT.R1(g) TRUE COPY OF NOTIFICATION DATED 10.9.2002 ISSUED IN THE GAZETTE OF INDIA BY MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT.

/TRUE COPY/

PA TO JUDGE

VS

K.VINOD CHANDRAN, J.

**W.P.(C).Nos.23847 of 2014
& 27588 of 2015**

Dated this the 30th day of November, 2015

JUDGMENT

Petitioner by the above writ petitions, challenge the order of discharge the and subsequent transfer, after this Court stayed the order of discharge. W.P.(C). No.23847/2014 was filed, challenging Ext.P7 order, issued by the fourth respondent, by which the petitioner was discharged from service on account of his disability. The petitioner's contention is that the disability assessed by the Board as indicated in Ext.P3 is only 40% and he could be continued in service in a sedentary post. W.P.(C). No.27588/2015 was necessitated since while he was continuing by virtue of a stay of discharge, in the earlier writ petition; he was transferred to Mizoarm.

2. The contention is that the petitioner having suffered an accident had to amputate his leg. Clause XXI of

Part II of Schedule I of the Central Civil Services(Extra Ordinary Pension)Rules, provides that an amputation of right leg, below knee, with stump of 6 inches, to be assessed as only 40% disability. The petitioner also was assessed with 40% disability, as per Exts.P3 and P4 certificates, wherein it is clearly stated that the stump remaining after amputation was 16 cm(6 inches).

3. The petitioner contends that if the disability is below 60%, then a serving personnel, need not be sent out of service and could be continued in a sedentary post. The petitioner also relies on the statements made in the counter affidavit filed by the respondents in W.P.(C).No.27588/2015, wherein it is specifically stated that the petitioner has only 40% disability. The Schedule of the Central Civil Services (Extra Ordinary Pension)Rules stipulates the percentage of disability with reference to specific instances; for the purpose of determining the pension payable.

4. Respondents have filed counter affidavit in

both the writ petitions, W.P.(C).No.27588/2015 is with regard to a transfer ordered of the petitioner, to Mizoram. The learned Central Government Standing Counsel submits that the battalion of the petitioner; itself, is moving and if at all the petitioner has to be continued in-service the petitioner has to move along with the battalion. This Court had granted a stay in W.P.C.No.23847/2014 and based on that the petitioner was continuing, and now the petitioners battalion itself is moving out.

5. The learned Central Government Standing Counsel also submits that as per the Boarder Security Force Act, 1968 and the Rules framed thereunder, there is no stipulation as to any percentage of disability, exceeding which alone, a serving personnel could be discharged. The disability has to be assessed by the Commandant on the basis of the reports of the Medical Board, and it is the Commandants' satisfaction as to the capacity of the person to be continued in-service, that is relevant. In the present

case, it is submitted that the petitioner not only suffers from the disability of 40% but also is suffering from 'Papillary Carcinoma Thyroid'.

6. Further, it is submitted that, as against Ext.P7, there is a further Review Medical Board provided; which the petitioner had availed of. Relying on Annexure R1(c), produced along with the counter affidavit, the learned CGSC submits that in fact a Review Medical Board was scheduled on 12.09.2014, which could not be carried out only since the respondents had sought for a report from the Regional Cancer Centre. The petitioner immediately thereafter approached this Court and obtained a stay, by reason of which the petitioner could not be examined by the Review Medical Board.

7. This Court cannot but notice the incongruity in the guidelines and the Rules. The Central Civil Services (Extraordinary Pension) Rules by Schedule I Part-II, Sl.No.20, indicates that amputation below knee with stump exceeding

5 inches, being categorised as 40% disability. However, Exhibit R1(b) guidelines for disability of assessment, produced along with counter affidavit in W.P.C.No.23847 of 2014, in its evaluation of permanent physical impairment of amputees, indicates lower limb amputation upto lower one-third of leg as 60%. It is also stated that Exhibit P7 order of termination on the ground of disability has been passed based on the guidelines. The incongruity is insofar as, while relying on the guidelines and assessing the petitioner as disabled to an extent of 60% and discharging him, the disability pension granted would be only in accordance with the Central Civil Services (Extraordinary Pension) Rules, in accordance with which the assessment of disability would be only 40%. The guidelines cannot override the statutory rule. In such circumstance, the Review Medical Board shall only look into the Schedule of the Central Civil Services (Extraordinary Pension) Rules. It is also made clear that till the Review Medical Board is convened and an order passed,

the petitioner shall be continued in Thrissur itself, till the entire battalion moves out and after it moves out, the petitioner shall be accommodated in the Station Headquarters at Thiruvananthapuram. The petitioner shall also be given duty leave for appearing before the Review Medical Board.

8. Considering the fact that the petitioner's case is pending before the Review Medical Board, it is only proper that the petitioner be examined by the Review Medical Board as expeditiously as possible at any rate within a period of one month from today. Both the writ petitions are hence disposed of, directing the Review Medical Board, to be convened as directed herein above and the petitioner shall be informed of the date, well in advance, so as to enable him to appear before the Review Medical Board. The petitioner shall produce any reports of the Regional Cancer Centre, with respect to his ailment before the Review Medical Board, constituted.

9. In the circumstance of petitioner being found to be entitled to be continued, then necessarily retention in a sedentary post shall be considered, with reference to the stipulations in Ext.P.16 produced along with W.P.(C). No.27588/2015. It may then be also considered if the petitioner can be continued in his home state.

The writ petitions are disposed of as above. Parties are left to suffer their respective costs.

Sd/-
K.VINOD CHANDRAN
JUDGE

VS