

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1489 of 2015

IN

Civil Writ Jurisdiction Case No 7784 of 2015

Nihal, son of Sri Om Prakash Choudhary, permanent resident of Opposite Chand Mishra Mahal, K.N. Jha Lane, Nath Nagar, Police Station- Nath Nagar, District- Bhagalpur through his father namely Om Prakash Choudhary, Son of late D.P Choudhary, resident of opposite Chand Mishra Mahal, K.N. Jha Lane, Nath Nagar, Police Station- Nath Nagar, District- Bhagalpur.

.... Appellant/s

Versus

1. The Union of India through the Chief of Army Staff.
2. The Chief of Army Staff, Sena Bhawan, New Delhi.
3. The College of Military Engineering, Pune through its Commandant.
4. The Commandant, the College of Military Engineering, Pune.

.... Respondent/s

Appearance :

For the Appellant/s : Mr Sandeep Kumar, Advocate

For the Respondent/s : Mr S D Sanjay, ASG with
Mr Arvind Kumar Tewary, SCCG

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 11-01-2016

We have heard learned counsel for the appellant and learned Additional Solicitor General for the Army.

2 The dispute lies in a very narrow compass. The appellant Nihal was a young boy who had been selected for training in the Army Engineering College after having completed Intermediate. He had undergone one year's training as required in the Officers'

Training Centre, Gaya and then, for further studies and training, was transferred to Military Engineering College, Kirkee at Pune. There he suffered with severe illness, later diagnosed as meningo-encephalitis. He was hospitalized. He recovered. But subsequently, he had severe seizures which required further hospitalization.

3 The case of the appellant is that though he was required to take rest in the post recovery period, that was not taken care of and in the name of military discipline, he was forced to undergo training. This led to certain disputes between him and allegedly his seniors. It is his apprehension that it is because of that, he had been victimized and ultimately ordered to be medically discharged. He had appealed without success. To the part of the allegation that there were serious differences between him and the seniors, we have no doubt. But the question is whether it is that which motivated and/or actuated the appellant to be discharged on medical ground. Keeping in view the career of young cadet, we have summoned the entire original records and we have perused the same. We note that the responsible officers have reviewed the entire medical history and being specialist (Neurologist), have come clearly to the opinion that because of his early ailment which he is completely cured, he is fit for all civilian works or civilian employment but would be a risk in Army. To use the expression of the specialist "as he is a

cadet, the same is not commensurate with the training, he used to undergo and is being recommended for invalidation from service in medical category P5 for the same.” In other words, for normal life, the appellant suffers no disability but for working in defence services, he may pose potentiality not commensurate to the service.

4 Having considered this and considered that these are findings of an expert body, we do not think it would be appropriate for this Court to interfere in the matter. There is no stigma so far as the appellant's health or reputation is concerned. It is unfortunate that a boy coming from humble background, who had an opportunity to rise in an organized disciplined service, had to meet the end of his career because of things which were not in his control.

5 We only observe that the seniors should have appreciated his health conditions when he had seizures and sympathized rather than became strict disciplinarian, putting a young boy of hardly 16 to 17 years of age to the Army discipline.

6 For the reasons aforesaid, we are unable to interfere in the matter. But, however, as the appellant has spent sometime learning formal courses after engineering while medically discharging the appellant, we would direct the defence authorities to issue him due credit certificates for courses he has completed successfully so that the appellant may, if possible, get lateral entry into any other educational

institutions, outside the disciplined force. That would go a long way in protecting the life, career and future of the appellant who has been visited with unfortunate circumstances which was beyond his control. It is expected that defence authorities would shun away technicalities and extend the helping hand while parting with the relationship. We hope that the authorities would take this matter seriously and co-operate to grant the certifications and any other benefits the appellant is entitled at the earliest, keeping in mind that the appellant would have already, ordinarily, lost two valuable years of his education and life.

7 In the hope, that the authorities would not disappoint the appellant and this court in the matter, this proceeding stands terminated.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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