

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.419 of 2016

In

LPA 1489 of 2015

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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/Petitioner.

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.
- Respondents/Respondents.

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Appearance :

For the Petitioner : Mr. Sandeep Kumar, Adv.
Mr. Alok Kumar @ Alok Kr Shahi, Adv.
For the Respondents : Mr. S.D. Sanjay, Additional Solicitor General
Mr. Arvind Kumar Tewary, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

08 15-02-2017 Heard Mr. Sandeep Kumar, learned counsel for the review petitioner and Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India.

Petitioner had filed the review application claiming that he had been unfairly treated by the army authorities, being given a medical discharge from the army. He was a cadet under training. The writ petition, observing that he was held by a competent medical board to be unfit for the defence service, was disposed of. The review application was filed on the ground, *inter*



- 2 -

alia, that there were other candidates, which petitioner came to know, children of senior army personnel, under some what similar circumstances, were taken back in service. We called for the record and examined. The other plea taken was that petitioner went to All India Institute of Medical Sciences (AIIMS), New Delhi, disclosing that he wanted a fitness report in respect of army service. Accordingly, he was examined and the AIIMS certified (Annexure-1) that he was fit for military service. On this basis, we called upon learned counsel for the Union of India to satisfy us why petitioner could not be taken back in army. It was submitted that it is for the military doctors' tribunal to judge the fitness.

We are not very sanguine about the stand taken because AIIMS, which is a premier institution, also knows about defence services and when it has certified that the petitioner is fit for military service, ordinarily defence doctors cannot or should not take a different view. But, the problem does not end there. What has been submitted on behalf of the Union of India is that considering the type of ailment, as suffered by the petitioner, though he may be completely normal today, there is probability of its reoccurrence at any time. Even the report of the AIIMS clearly states that petitioner should avoid sleep deprivation. It is also submitted on behalf of the Union of India that considering the



- 3 -

nature of duties of an army personnel, this cannot be as any episode would jeopardize the life of others.

Having given our anxious thought and consideration, we are of the view that it would not be advisable for this Court to interfere in this matter.

Before parting, we may observe that the respondents should grant and clear the disability pension and disability certificate, which had already been directed by the Writ Court in the writ proceedings.

Accordingly, this civil review application is dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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