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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) No.8392/2016 & CM No.34714/2016**

Date of decision: 18th August, 2017

DOMA YADAV Petitioner
Through: Mr.Arun Srivastava, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.G.Tushar Rao and Mr.Mukesh
Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Doma Yadav in the writ petition seeks quashing of the order dated 03.08.2016 discharging him from Border Security Force (BSF in short). He also prays for directions to the respondents to pay Seema Prahari Beema Yojna claim (in short SPBY Claim) and disability pension.

2. The respondents have paid the amount due under the SPBY Claim.

To this extent the writ petition is rendered infructuous.

3. Further, arguments have not been addressed on the claim for disability pension.

4. Grievance of the petitioner is against the boarding out order on account of low medical category. The petitioner claims violation of paragraph 'e' of the circular No.Med Dte. L/No.13/19/80-CMO/BSF dated 02.03.1981. This clause stipulates that all cases of permanent low medical category, would be reviewed immediately or on completion of two years permanent low medical category whichever is later and those who cannot be upgraded should be invalidated out of service.

5. In order to appreciate the aforesaid contention, we would like to reproduce the circular dated 02.03.1981, which reads:

Disposal of Permanent Low Medical Category Personnel
(vide Med Dte.L/No.13/19/80-CMO/BSF dated 2nd March 1981)

A large number of permanent low medical category personnel are serving in the Force. Being in permanent low medical category, these personnel have outlived their usefulness in the Force. With a view to lay down a rational policy for retention/invalidation of such personnel without being harsh to those personnel it has been decided to lay down the following guidelines for their retention/disposal in the Force:-

“(a) All GOs who are in permanent low medical category be retained in service till the age of superannuation.

(b) All those personnel with less than 10 years of service be retained till they completed 10 years of service irrespective of whether their disability is attributable or not to service.

(c) All mine blast injuries or amputated cases whose disability is attributable to service should be retained till they complete 20 years of service/date of superannuation whichever is earlier. They should be encouraged to go on voluntary retirement and avail 5 years benefit for pension on completion of 20 years of service.

(d) Any other deserving person on the merit who may seek retention after invalidation.

(e) All other cases of permanent low medical personnel be reviewed immediately or on completion of 2 years of being permanent low medical category whichever is later and those who cannot be upgraded should be invalidated out of service.”

6. The opening paragraph of the circular states that a large number of permanent low medical category personnel were serving in the Force. These personnel in permanent low medical category have outlived their usefulness in the Force. With a view to lay down a rational policy for retention/invalidation of such personnel without being harsh, it has been decided to lay down the guidelines for their retention/invalidation in the Force. Thereafter, specific guidelines and parameters have been fixed.

7. Clause 'a' of the said circular is not applicable to the petitioner as he is not a Gazetted Officer. Clauses 'b & c' are also not applicable. The petitioner in fact has relied upon Clause 'e'. We do not think that the case of the petitioner is covered under Clause 'e' which stipulates that all cases of permanent low medical personnel as on 02.03.1981 will be reviewed immediately or on completion of 2 years of being permanent low medical category whichever is later and those who cannot be upgraded should be invalided out of service. The reasons for our conclusion are recorded below.

8. The petitioner had joined BSF on 01.03.1989 as Constable. On 06.09.2012, the petitioner while on earned leave had suffered traumatic fracture of D-12 Vertebra, due to fall from the roof of his residential house in village Kripa patti, in Uttar Pradesh. As a consequence, the petitioner suffered paraplegia with bowel and bladder involvement. The petitioner was first treated at BSF Hospital, R.K.Puram, New Delhi and then referred to AIIMS Trauma Centre, where he was operated. Certificate dated 17.09.2013, declares the petitioner as physically handicapped with 100% temporary physical impairment in relation to his both lower

extremity. The condition it was recorded was likely to change and reassessment was recommended after two years.

9. The condition of the petitioner did not in the two years undergo much change. The petitioner is still suffering from paraplegia of the lower limbs and incontinence of bowel and bladder. This is clear from not one but from various medical certificates placed on record.

10. Counsel for the petitioner, however, relies upon medical certificate issued by the District Hospital, Gwalior, M.P. dated 05.08.2014. This certificate records the petitioner's disability as 60%. Thus, it is pleaded that the certificate would establish improvement. We would not agree. The fact of the matter is that the petitioner in the photograph in the certificate can be seen sitting on the wheel chair. The certificate did not specify whether the disability was permanent or temporary.

11. The medical board after considering the petitioner's physical condition and health, vide certificate dated 9th February, 2016, had declared the petitioner as unfit. They have opined that the physical disability of the petitioner is permanent. The percentage of disability is 100%.

12. The petitioner has been in the same position since he suffered from the said accident on 16th September, 2012. The impugned order invalidating the petitioner was passed after nearly four years on 3rd August, 2016. The petitioner was admittedly under treatment in different hospitals all along.

13. The respondents have relied on instructions for medical examination and classification of personnel service in the Central Para-Military Forces issued by the Ministry of Home Affairs dated 31.07.2007. Paragraph 2 states that this order supersedes all existing instructions on the subject. The respondents, therefore, submit that circular dated 2nd March, 1981 would not apply. The instructions is divided in different parts. Paragraph 9 of the said instruction states that temporary classification will be permissible for a maximum period of 24 weeks. If an individual requires observation beyond permissible period, he has to be placed in permanent low medical category, except in 'S' factor cases where the provision of paragraph 10 apply. The opinion given by the specialist for review in case of temporary classification is valid for the period of three months only. This being the position, we do not think that the petitioner can challenge, the invalidation order on the ground that it

has been passed contrary to the procedure prescribed by law i.e. the instruction or it has been passed in haste and hurry without following the procedure fixed under the guidelines.

14. Another contention raised in the petition pertains to the competence and authority of Dr.S.K.Srivastava, IG (MED)/MED Supdt., who had signed the discharge order. It is highlighted that earlier order dated 19th July, 2016 passed by the same officer was withdrawn, after the petitioner had preferred writ petition WP(C) 6496/2016. The assertion was that Dr.S.K.Srivastava as IG was not competent to direct discharge. The order dated 3rd August, 2016 under challenge, however, records that the same was issued after approval of the ADG/Director, BSF Academy, Tekanpur. The fault and defect noticed in the earlier order dated 19th July, 2016, which was the subject matter of challenge in WP (C) 6496/2016 has been rectified. The order dated 3rd August, 2016, does not suffer from the same vice and defect. It is valid.

15. Though, we are dismissing the writ petition, we would like to refer to the order passed in another writ petition WP (C) 1252/2013, **Rati Ram v. Union of India & Ors.**, decided on 18.03.2016. The relevant portion of said order reads as under:

“There is no doubt that the BSF does not have a disability related rehabilitation policy. It is also a fact that the Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 does not apply to the para-military forces. The blind uniformity of treatment in seeing injured members of the Force out of the service, as a general policy (by encouraging them to seek voluntary retirement after 20 years) would rob individual members of a fair chance to continue in the BSF, having regard to the experience gained in other work, which is not field or combat related. A force as large as the BSF-with over 2.5 lakh personnel would have a significant administrative and support staff component where these injured personnel can be assessed for work.”

In **Rati Ram** (supra), the fact position was different as the petitioner therein had suffered grievous injury in a mine blast. Different parameter had to be applied to the said case.

16. Nevertheless, we would call upon the respondents to examine and consider whether petitioner can be given any vocational training so that he can continue to maintain the financial status which he was enjoying before invalidation. Learned counsel for the petitioner states that the children of the petitioner may apply on compassionate ground. If any application is filed, the same be considered as per law.

17. With the aforesaid observation, the writ petition is dismissed with no order as to cost.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 18, 2017/vp

