

Item No. 2

15.12.2020  
Ct-24

In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
(Via Video Conference)

WPA No. 6536 of 2020  
Mukul Kanti Sinha  
v.  
Union of India & Ors.  
with  
IA No. CAN/1/2020  
( Old No. 5296 of 2020)

Mr. Topojit Dey  
... for the petitioner.

Mr. Bishwambhar Jha  
... for respondents.

The petitioner was a member of the Boarder Security Force (in short BSF). In view of his ill health he was “medically boarded out from service of BSF” with effect from June 29, 2020 as per the provision of Rule 25 of BSF Rules, 1969 read with Rule-38, 49(2) of CCS(Pension) Rules, as modified, with disability pension at the rate of 50% of notional pay as on January 1, 2016 plus reduced disability element proportionately lower subject to the provisions of Rule 6 of CCS(EOP) Rules subject to a minimum of Rs. 18,000/- per month with admissible gratuity.

The order dated June 29, 2020, which is impugned in the instant writ petition specifically mention that there is no legal/disciplinary/vigilance case pending or contemplated against the petitioner

which debars him from proceeding on retirement. The name of the petitioner has been struck off from the strength of the unit from June 29, 2020.

The petitioner is aggrieved by the said order.

The petitioner submits that as per provision of Rule 25(4) and (5) of BSF Rules his case is entitled to be looked into by a Review Medical Board. The petitioner submits that no Review Medical Board was constituted even though he applied for the same within the time as specified in law.

It appears from records that the petitioner filed an earlier writ petition before this Court being WP No. 23346(W) of 2019. In the said writ petition the petitioner has categorically averred that he requested the authority to hand-over the 'boarded out' papers to him and allow him to go to the Medical Board for medical pension.

The petitioner prayed for issuance of a writ of mandamus commanding the respondents to allow to go for medical pension on the basis of the decision taken by the Medical Board.

The above implies that the petitioner accepted the decision of the Medical Officer to board him out from service on account of his physical disability. Now, the petitioner, in my opinion, cannot turn back and pray for constitution of a Review Medical Board to review his case. As the petitioner already accepted to be boarded

out from service accordingly it is not open for him to pray for constitution of the Review Medical Board for reconsideration of his case.

However, if the petitioner is aggrieved by the amount of pension and other retirement dues directed to be paid to him then he will be at liberty to apply before the appropriate authority in terms of provision 28A of the BSF Rules.

With the above observations, the writ petition being WPA No. 6536 of 2020 and the application being IA No. CAN/1/2020(Old No. 5296 of 2020) are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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( Amrita Sinha, J.)