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WPO 191 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

LIEUTENANT COLONEL RAJNEESH TIWARI
VERSUS
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 4th August, 2021.

APPEARANCE:

Mr. Ranajit Chatterjee, Adv.
Mr. Partha Sarathi Mullick, Adv.
....for the petitioner.

Mrs. Chandreyi Alam, Adv.
...for respondent no. 1.

Mr. Y.J.Dastoor, Ld. ASG
Mr. Siddhartha Lahiri, Adv.
...for respondent nos. 2 to 6.

The Court:-The petitioner is a lieutenant Colonel lastly posted as Officer Commandant 17 CIB, Katihar Military Cantonment, Bihar. The petitioner alleges that having reported about several anti national and smuggling activities amongst a section of the army personnel in Seemanchal area of Bihar while he was posted at Katihar. The petitioner alleges to have been victimised thereafter. The petitioner further alleges that as an aftermath of such reporting he was

forcefully moved to the Bengdubi, 158 Base Hospital near Siliguri in North Bengal on 1st March, 2021. On 5th March, 2021 he was referred to the Eastern Command Hospital, Kolkata for psychiatric treatment. The petitioner was at Eastern Command Hospital from 9th March, 2021 and was released therefrom on 22nd March, 2021. The petitioner also alleges that no medical reports or documents pertaining to his medical treatment was made available to the petitioner. The petitioner also alleges to have been treated at the Hospital against his will and was administered medicine without his consent. The petitioner also alleges to have been kept forcefully confined at the Eastern Command Hospital, Kolkata till his release on 22nd March, 2021. Challenging such activities, the petitioner approached this Court by filing the instant writ petition on 13th April, 2021, inter alia, seeking a direction for psychiatric evaluation by an independent medical board in any reputed civil hospital and for furnishing the medical reports and documents with a further prayer to allow him to resume his work. Acceding to the petitioner's prayer, by an order dated 30th April, 2021, the petitioner was referred for evaluation by the Psychiatry Department of SSKM Hospital, Kolkata. The SSKM Hospital at Kolkata has communicated its finding after examining the petitioner through a medical board. The result of such examination was made known to this Court by a memo bearing no. IP/21/539 dated 13th July, 2021. The said memo has also been brought on record by the petitioner by way of a supplementary affidavit.

After the psychiatric evaluation being allowed, the writ petition remains pending for consideration of a limited prayer – whether to allow the petitioner to

resume his normal duties in the Indian army at his place of posting and production of records so that any adverse order or report or medical diagnosis of the petitioner may not be endorsed in the petitioner's service book.

The respondents have raised a preliminary point as to the jurisdiction of this Court in granting a mandatory prayer by issuance of mandamus allowing the petitioner to resume his normal duties in the Indian Army at his place of posting. The respondents say that even after the report of the SSKM Hospital, Kolkata, no order of mandamus can be passed. Moreover, in view of two contradictory reports – one by the Eastern Command Hospital while treating the petitioner and that by the SSKM Hospital pursuant to an order of this Court and in particular the finding of SSKM Hospital, Kolkata the petitioner cannot be automatically allowed to join his duty by way of a mandatory order. The respondents also say that the resumption of work by the petitioner shall have to be in compliance of the applicable service law and rules to the petitioner. The respondents also say that this Court, only on the basis of the report of the SSKM Hospital, cannot direct respondents to allow the petitioner to resume his work de-hors the applicable service rules.

Reverting to this contention of the respondents, it is submitted by the petitioner that the report of SSKM hospital, an independent agency should be given more weightage than any adverse report that may be there against the petitioner from the Eastern Command Hospital. The petitioner, on being found to be not suffering from any psychiatric disorder, should be automatically allowed to resume his work at his place of posting without any further scrutiny from the

side of the respondents. The petitioner cites two judgments – one reported in 2020(2) SCC 442 (Balkrishna Ram vs. Union of India & Anr.) and the other in 1993 SCC Online AP 272 (Dr. P.C.Kakar and Capt. (Mrs.) Latha Sharma vs. Commandant, Military Hospital, Secunderabad & Ors.). The second judgment is a Division Bench judgment of the Andhra Pradesh High Court. By relying upon Balkrishna Ram (supra), it is submitted by the petitioner that this Court has the jurisdiction to pass a mandatory order allowing the petitioner to resume his work at his place of posting. Relying on Latha Sharma (supra), the petitioner says that in view of the report given by the SSKM Hospital, Kolkata, the petitioner should be allowed to resume work at his place of posting. The petitioner is also apprehensive about an adverse recording of his service book in view of any report said to have been made by the Eastern Command Hospital.

After hearing the parties and considering the materials on record and the judgments relied upon by the petitioner, I find that no mandatory order in the nature of mandamus can be issued allowing the petitioner to resume work at his place of posting as the same will amount to encroaching into the domain of service jurisprudence left to an employer by the settled position of law and that too in Indian Army. It will also not be proper for this Court only on the basis of the report of SSKM Hospital to pass any mandatory order when there may be contradictory medical reports either from the hospital at Siliguri or the Eastern Command Hospital, Kolkata. The best course open will be allowing the petitioner to approach his employer within a period of seven days from date with all medical reports and documents available to him with a prayer to allow him to join his

duty. The Competent Authority/Officer authorised to allow the petitioner to resume his work either at his place of posting or elsewhere shall take a decision within a period of a fortnight from being approached by the petitioner whether to allow the petitioner to resume work. The decision should be a reasoned one after affording the petitioner a reasonable opportunity of hearing. In the event the Competent Authority/Officer intends to rely upon any document including medical reports and prescriptions apart from those produced or submitted by the petitioner, he shall supply copies thereof to the petitioner and afford the petitioner an opportunity to deal with the same. The Competent Authority/Officer shall immediately communicate his decision to the petitioner. This exercise will, however, not be required to be performed if the petitioner is allowed to resume work on having approached the Competent Authority/Officer without going into a detailed enquiry for allowing the petitioner to resume his work. So far as the petitioner's apprehension that a stigma may be attached to his service book on the basis of any adverse medical remark by any Hospital or authority is concerned, the Competent Authority/Officer authorised to allow the petitioner to join shall follow the same exercise of hearing by affording the petitioner an opportunity to controvert the same as has been indicated hereinabove within the same time frame. The petitioner, if, is debarred from joining his duty or a stigma being attached to his service book shall be entitled to challenge the same before an appropriate forum in accordance with law.

The petitioner will also be entitled to pray for regularisation of his medical leave which is spent during the period from 1st March to 22nd March, 2021 and

for the subsequent periods in terms of the orders passed by this Court before the Competent Authority/Officer authorised for such purpose and will be entitled to challenge any adverse finding in this score in accordance with law.

Nothing further remains to be adjudicated in this writ petition. The writ petition is, accordingly, disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent Photostat certified copy of this order be supplied, if applied for.

(ARINDAM MUKHERJEE, J.)