

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 304 of 2019

Ramesh Ch. Jena

....

Appellant

Mr. N. S. Panda, Advocate

-versus-

State of Odisha and others

....

Respondents

Mr. Ishwar Mohanty, ASC

CORAM:

THE CHIEF JUSTICE

JUSTICE M.S. RAMAN

ORDER

01.11.2022

Order No.

03.

1. The challenge in the present appeal is to an order dated 28th June 2019, passed by the learned Single Judge dismissing W.P.(C) No.2685 of 2019 filed by the Appellant questioning his discharge as Home Guard by an order dated 30th April 2005, passed by the Commandant General of Home Guards, Odisha, Cuttack.

2. The aforementioned writ petition was the second round of litigation. Initially, the Appellant had filed W.P.(C) No.20775 of 2012, which came to be disposed of by the learned Single Judge by an order dated 18th December 2012, noticing that the discharge order was an appealable one and permitting the Appellant to avail of the said remedy.

3. Pursuant to the aforementioned order of the learned Single Judge, the Commandant considered the appeal and rejected the request of the Appellant for reengagement on the ground of "old age and

weakness”. This order dated 18th March 2013, which purportedly was communicated to the Petitioner only on 7th January 2019, was again assailed by him in W.P.(C) No.2685 of 2019, which has been dismissed by the learned Single Judge by the impugned order. The learned Single Judge noted that the Commandant General had opined that on account of weakness, the Appellant is unable to discharge his duties, and had “rightly disallowed the appeal filed by him.”

4. Learned counsel for the Appellant contends that the mandatory procedure under the relevant rules prior to discharging a Home Guard has not been complied with in the present case. He maintains that the Appellant was only 31 years at the time of his discharge and could not be therefore said to be of ‘old age’. As regards the ground of ‘weakness’, he seeks to assail the determination by the Medical Board.

5. It is seen that the Appellant was not able to produce before the learned Single Judge any contemporaneous medical certificate, which could have countered the determination by the Medical Board as to the physical condition of the Appellant particularly as regards his ‘physical weakness’.

6. Considering that the job was that of a Home Guard, if the Appellant wanted to challenge the determination of his medical condition by the Medical Board, he should have placed on record before the learned Single Judge some material that could have persuaded the Single Judge to send him again for a fresh evaluation by an independent medical board. However, since the Appellant did not avail that opportunity, the learned Single Judge deferred to the

determination of the Appellant's physical condition as determined by the Respondent Authorities.

7. The Court is unable to find any error having been committed by the learned Single Judge in dismissing the Appellant's writ petition. There is no ground made out for interference with the impugned order. The appeal is dismissed. The interim order passed earlier stands vacated.

S. K. Guin

