

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 2673 of 2018

1. Shreekant Singh S/o Shri Ram Sagar
2. Sabita Kumari W/o Shreekant Singh Both Resident of Village-Sisai, P.S.-Goreakothi District-Siwan

... .. Petitioner/s

Versus

1. The Union Of India through Secretary, Ministry of Law & Justice, Government of India, New Delhi
2. The Director General, Border Security Force, CGO Complex, Lodhi Road, New Delhi.
3. The Deputy Inspector General, Regional Headquarter, Border Security Force, Bahrapur, West Bengal.
4. Department of Home, Government of India, through Home secretary, New Delhi.
5. Deputy Commandant/Adjutant for Commandant, 15th Btalion, Border Security Force, Nadia, West Bengal

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Mukesh Kant, Advocate
For the Respondent/s : M/s Nirmala Singh, Girish Nandan Abhishek, Advs

CORAM: HONOURABLE MR JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 18-09-2023

Heard Mr Mukesh Kant, learned counsel for the petitioners and Ms Nirmala Singh representing the respondents.

2 The prayer is for the following relief:

“That this is an application for issuance of a writ for quashing the office order No/Estt-15Bn/Phy-Unfit (retire)/order/2017/15784-92 dt 30.08.2017 whereby the petitioner was conveyed to retire on the grounds of physical unfitness as per Rule 25 (3) of BSF Rules 1969 with admissible pension under the provisions of Rule 38 of CCS (Pension) Rules and



further it was conveyed that his name will be struck of from strength from 31.08.2017 (Annexure 1) and/or for issuance of any other writ/writs, order/orders, direction/directions which seem just and equitable in the facts and circumstances stated hereunder.”

3 Petitioner No1 was serving with the 43 Battalion, BSF in the Naxal prone area of Malkangiri district in the State of Odisha. Due to an IED blast during search operation, he was severely injured. He was evacuated to Kalimela Civil Hospital and, thereafter, to Malkangiri Civil Hospital. Ultimately, he was referred to 7 Hills Hospital, Visakhapatnam in the State of Andhra Pradesh where he remained admitted from 28.03.2014 to 07.05.2014. Subsequently, his left leg was imputed and suffered 77% disability.

4 In view of the aforesaid injury/disability, the petitioner was found unfit for further service in BSF. Accordingly, the Medical Board put him on notice and while communicating the findings on 21.01.2016 also informed that he may file an appeal within 15 days.

5 Petitioner No 1 made an application to the IG, BSF for allowing him to continue for couple of years whereafter review Medical Board was constituted at STC, BSF, Jodhpur on 28.05.2016 and he was found to be suffering from 77% disability.



6 Another Medical Board of 11.08.2016, after examination, opined that petitioner No 1 is unfit for further service in BSF with 76% disability (Annexure R-5/E of the counter affidavit). This followed another Medical Board in 2017 and finally vide order No 15784-92 dated 30th August, 2017 (Annexure 1 to the writ petition), the Commandant, 15 Battalion, BSF passed an order as follows:

“As conveyed by the HQ BSF Berhampore Sector vide order No Pers/SKS/Med/15Bn/SHQ-BHP/17/14308-10 dated 26 Aug 2017. Whereas, No 870033326 ASI (GD) Shree Kant Singh of 15 Bn BSF appeared before medical board on 15.02.2017 at CH BSF Kolkata and board after having him, is the of the opinion that he is a case of : Effects of IED injury (i) below knee amputation (Lt) (ii) deformity left index finger and DM type – 2 under control with 70% disability, and awarded Medical category S1H1A5 (U,L) (left) P2E 1.

2 Whereas, medical board find him and considered unfit for further service in BSF. On the basis of finding, opinion and recommendation of medical board which has been approved by Inspector General/Director (Medical) FHQ BSF New Delhi on 28.03.2017 and has confirmed medical category S1H1A5 (U,L) (left) P2E 1.

3 Hence, in pursuance of Commandant (Medical) Ftr HQ SB letter No Med/SB/FTR/Med Board/17/2017/634-35 dated 20th June 2017, approval of DIG BSF Berhampore is hereby conveyed to retire No 870033326 ASI (GD) Shree Kant Singh of 15 Bn BSF on the ground of physical unfitness as per Rule 25 (3) of BSF Rules 1969 with admissible pensionary benefits under the provision of Rule 38 of CCS (Pension) Rules 1972 being a case of 70% disability w e f 31st August 2017.



4 No 870033326 ASI (GD) Shree Kant Singh will be struck of strength from this unit w e f 31st August 2017 (AN)."

7 Aggrieved, the writ petition.

8 A counter affidavit has been filed on behalf of the respondent-BSF and they have raised preliminary objection stating that the writ petition is not maintainable due to lack of jurisdiction as no cause of action fall within the jurisdiction of Patna High Court and secondly, the petitioners have not availed the statutory remedy under Rule 28A of the BSF Rules. Sections 28A reads as follows:

"[28-A. Petition.- Any person subject to the Act, who considers himself aggrieved by any order of termination of his service passed under this Chapter may, in the case of an officer, present a petition to the Central Government, in the case of an Assistant Sub-Inspector or a subordinate officer, present a petition to the Director-General and in the case of an enrolled person, present a petition to the Inspector-General, who may pass such orders on the petition as deemed fit.

Provided that the limitation period for filing such petition shall be three months from the date of order of termination or from the date of its receipt, whichever is later]."

9 Ms Nirmala Singh further took this Court to different paragraphs of the counter affidavit and it is important to incorporate paragraphs 14 and 15 of the same which read as follows:



“14 That thereafter, the case of the petitioner for retirement on the ground of physical unfitness as per Rule 25 of BSF Rules- 1969 with pensionary benefits as admissible under rules in r/o No. 870033326 ASI/GD Shree Kant Singh has been forwarded to Sector Headquarter BSF Berhampur (SHQ BSF BHP) and after approval of the same, the approval of the appointing authority i.e. DIG BSF Berhampur, SHQ BSF BHP was conveyed vide Order No. Pers/ SKS/ Med/ 15Bn/SHOBHP/ 17/ 14308-10 dated 26 Aug 2017 to retire the petitioner (i.e. No.870033326 ASI/GD Shree WEST BE Kant Singh) on the ground of physical unfitness as per Rule 25 (3) of BSF Rules-1969 with admissible pensionary benefits being a case of 70% disability w.e.f. 31 August 2017.

Consequently vide order No. 15784-92 dated 30.08.2017 issued by 15 Bn, BSF, the petitioner was boarded out from service under Rule 25 of BSF Rules-1969.

15. That in the instant case, the petitioner was board out from service due to disability which he sustained during Anti-Naxal operations; hence his case falls under category- 'E' of policy letter No.14/ 52/ 01-Rectt/ BSF/ 33172-471 dated 29/07/2010 as a case of disability which is attributable to extremist acts by exploding mines (i.e. IED).

Being a case of Category-'E', the petitioner is entitled for pension and gratuity at higher rate. Besides that as he was boarded out from service due to injury sustained during operational injury he is entitled for ex-gratia amount in proportion to the percentage of his disability as per MHA, Gol Office Memorandum No.27011/64/2009-R&W dated 21st April 2011 and No.27011/64/2010-R&W (Part) dated 7th June 2017.

Besides that, in view of his board out from service on account of medical grounds, the petitioner can apply for appointment of any of his eligible next of kin (NOK) under the compassionate appointment scheme. Hence the financial and other benefits to be payable to the petitioner on his retirement from service



on medical grounds is more than what he would have got, had he remain in service. As on date, case for payment of following pensionary benefits of the individual is under process with the Unit i.e. 15 Bn, BSF and the same will be paid to the petitioner.

(a) Ex-Gratia case for injury sustained during Anti-Naxal operation has already been forwarded by 43 Bn, BSF to State Govt. Rs. 10 lakh has been paid to petitioner on 21 Feb 2018 into petitioner SBI account No 30213762828.

(b) SPBY (Group Insurance) Claim for 3,50,000/- is pending with LIC.

(c) CGEGIS for Rs. 37,614/- is under process at PAD, BSF, New Delhi.

(d) Leave Encashment for Rs. 3,55,310/-, bill is under process at PAD, BSF, New Delhi

(e) Financial Assistance from BSF welfare fund for Rs. 25,000/- paid to the petitioner on 26.10.17.

(f) GPF amount of Rs. 10,38,378/- paid to the petitioner on 19.12.17.

(g) GJSPKK for Rs.9500/- is under process at Adm Dte, FHQ, BSF w.e.f 06.09.17

(h) Case for Ex-gratia lump sum compensation payable as per OM No.27011/64/2009-R&W dated 21 April 2011 & OM No. 27011/64/2010-R&W (Part) dt. 07th June 2017 of MHA, GoI is under process at Unit.

(i) Case for payment of Disability pension and Gratuity (at enhanced rate) as applicable to Category-"E" personnel as per policy letter No.14/52/01-Rectt/ BSF/ 33172-471 dated 29/07/2010 is under process with the unit and the same will be forwarded to PAD, BSF, New Delhi after fixation of pay of the petitioner on grant of 3rd financial up-gradation under the MACP scheme which is under process."



10 From the aforesaid facts enumerated by the respondents, it is clear that though the petitioner has been boarded out of service on account of medical ground, the respondents have taken every care to see to it that he does not suffer economically inasmuch as besides all the payments, which he was entitled to, was also granted compensation. Further, they have offered appointment to any of the eligible next of kin of the petitioner on compassionate ground.

11 Mr Mukesh Kant, learned counsel for the petitioners submits that in view of the comprehensive counter affidavit filed by the respondents, the petitioners are satisfied and will be approaching them for providing employment to one of their kin within a period of 8 weeks from today. It is his further submission that though the respondents have narrated the amounts to be payable to the petitioners, some of it has/have still not been paid.

12 The petitioners shall be submitting two different applications, one for compassionate appointment, if any one in the family is eligible and the other for payment of due amount, if the same is due, as claimed.

13 If such representation/s is/are filed within 8 weeks from today, the same shall be taken care of by the respondents and



will pass necessary orders within four months after the receipt of the representation (s).

14 Before parting, this Court would like to put the word of appreciation for the respondent-BSF. Though they have boarded the petitioner No 1 out of service; from the counter affidavit, it is clear that they have taken all the care and attention for one of their soldier who suffered due to IED blast during Naxal operation.

15 This Court further has same word of appreciation for Ms Nirmala Singh for the assistance rendered by her on behalf of the respondents.

16 This writ petition stands disposed of.

(Rajiv Roy, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2023
Transmission Date	NA

