

JPD-6  
Ct. No. 01  
13.08.2025  
AKG

CALCUTTA HIGH COURT  
In The Circuit Bench at Jalpaiguri  
Appellate Side

MAT 51 of 2025  
With

CAN 1 of 2025

The Union of India, through the Secretary, Ministry  
of Home Affairs & Ors.

Vs.

Himanshu Kumar

Mr. Sudipto Kumar Mazumder, Ld. DSGI,  
Mr. Tridip Saha,  
Mr. Saurab Kar

... for the Appellant

Mr. Jagriti Mishra,  
Mr. S. K. Dhar,  
Mr. Ashit Kumar Das,  
Ms. Ananya Bhattacharya,  
Ms. Mrinmoyee Das

...for the Respondent

The impugned order dated June 18, 2025, directs the reinstatement of the petitioner, who was appointed as a Constable (General Duty) under the Sashastra Seema Bal, along with back wages. The facts leading to the termination of the petitioner's service have been succinctly recorded by the learned Single Bench and are summarised below:

The petitioner was appointed as a Constable (General Duty) [CT/GD] pursuant to an appointment letter dated 12.03.2021 under the Sashastra Seema Bal (SSB) and was posted to the 53rd Battalion, SSB,

at Falakata-Simlabari, West Bengal. The appointment included a probationary period of two years, extendable by an additional two years for reasons to be recorded in writing. The appointment was further subject to the successful completion of the Basic Recruit Training Course (BRTC) conducted by the SSB. The petitioner was to be given two opportunities to pass the said training, failing which his services would be liable to termination.

Upon accepting the aforesaid terms and conditions, the petitioner reported to the Commandant, 39th Battalion, Palia, Uttar Pradesh, on 20.04.2021.

While undergoing the BRTC from 10.05.2021, the petitioner sustained a serious injury on 06.10.2021 during a mid-term test firing exercise at the SSB firing range in Shahjahanpur, Uttar Pradesh. A spent cartridge case, ejected from a co-trainee's rifle, struck his left eye. He was immediately taken to Sitarpur Eye Hospital, where corneal surgery was performed. He remained under treatment at Sitarpur Eye Hospital from 06.10.2021 to 13.10.2021 and again from 06.01.2022 to 31.01.2022, amounting to a total of 32 days of medical care. As a trainee who suffered a significant injury and remained out of training for over 30 days, he was relegated under Paragraph V of SOP

No. 83/2024. However, contrary to Paragraph III of the said SOP, he was never referred to a Medical Board.

Due to incomplete recovery from the treatment received at Sitarpur Eye Hospital, the petitioner sought further medical attention at Shankara Nethralaya, Chennai, where he was under care from 22.04.2022 to 19.09.2022. Owing to his medical condition, he was placed in the SHAPE-II medical category. Subsequently, on 07.09.2023, the Medical Board declared him fit and reclassified him as SHAPE-I.

A Court of Inquiry (CoI) was convened in connection with the incident of 06.10.2021, which concluded that the injury sustained by Reg. No. 210800866 RCT/GD Himanshu Kumar of the 53rd Battalion was attributable to Government service in the course of discharging bona fide duties. The findings were accepted by the competent SSB authority, which further directed the provision of all necessary financial and medical assistance to the petitioner and instructed that he be allowed to complete the BRTC within the permissible two-year period.

Due to his medical condition, the petitioner was not sponsored for BRTC during his initial two-year service period. After his medical classification was upgraded from SHAPE-II to SHAPE-I, he was re-

nominated for BRTC at Alwar with effect from 04.12.2023, pending consideration of a proposal for exemption from the two-year limitation by Headquarters.

The competent SSB authority informed the Deputy Inspector General (DIG), Centre, Alwar, that the Commandant (Personnel-II), FHQ SSB, New Delhi, via WAN/Fax message No. VI/35/prob/SSB/CT(GD)/HK/Pers-II/2023/3701 dated 18.03.2024, had directed that appropriate action be taken in accordance with the Recruitment Rules for Constable (GD). Accordingly, the DIG was requested to relieve the petitioner immediately and direct him to report back to the 53rd Battalion.

Consequently, the petitioner resumed training for the second time but was withdrawn on 30.03.2024, prior to the completion of the full course.

Thereafter, a Show Cause Notice dated 10.04.2024 was issued to the petitioner, calling upon him to explain why his services should not be terminated for failing to complete the BRTC within the stipulated two-year period. The petitioner submitted a reply dated 09.05.2024. However, his services were terminated by the impugned order dated 11.05.2024.

The petitioner preferred a statutory appeal before the Director General, SSB. However, the appeal was rejected by order dated 24.09.2024.

Challenging the order of the Commandant, 53rd Battalion, SSB, Simlabari-Falakata dated 11.05.2024, as well as the order of the Appellate Authority dated 24.09.2024, the petitioner filed the present writ petition, which was allowed by the learned Single Judge.

The sole point that falls for consideration before this Bench is whether the respondent authorities were justified in invoking Rule 26 of the Sashastra Seema Bal Rules, 2009, to terminate the petitioner's services. The relevant Rules 26 and 27 are reproduced below:

**“26. Termination of service of enrolled persons on the grounds of unsuitability.-** Where a Commanding Officer not below the rank of Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force, the enrolled person shall be-

- (a) so informed;
- (b) furnished with the particulars of all matter adverse to him; and
- (c) called upon to urge any reasons he may wish to put forward in favour of his retention in the service:

Provided that clauses (a) (b) and (c) shall not apply, if the Commanding Officer not below the rank of Commandant is satisfied that for reasons to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof;

Provided further that such competent authority may not furnish to the enrolled person any matter adverse to him, if in his opinion, it is

not in the interest of the security of the state to do so.

(2) After considering the explanation, if any, the Commanding Officer not below the rank of Commandant, may call upon the enrolled person to retire or resign and on his refusing to do so, the enrolled person may be compulsorily retired or discharged from the service.

**27. Retirement or discharge of subordinate officers and enrolled persons on grounds of physical unfitness.-** (1) Where a Commanding Officer not below the rank of Commandant is satisfied that a subordinate officer or an enrolled person is unable to perform his duties by reason of any physical disability, he may direct that the said subordinate officer or enrolled person, as the case may be, be brought before a medical board.

(2) The medical board shall consist of such officers and shall be constituted in such manner as may, from time to time, be laid down by the Director-General.

(3) Where the said subordinate officer or the enrolled person is found by the medical board to be unfit for further service in the Force, as the case may be, the authority as specified in rule 18, if he agrees with the finding of the medical board, communicate to the said person the findings of the medical board and thereupon, within a period of thirty days of such communication, the person may make a representation against it to the competent authority supported by a prima-facie evidence of error of judgment in the opinion expressed by the medical board and such an evidence shall be from a government doctor not below the status of Civil Surgeon and shall contain specific mention that he has taken into consideration the findings of the medical board before giving his opinion.

(4) Where the person declared to be unfit for further service makes a representation under sub-rule (3), the same shall be forwarded to the next superior officer, who shall have the case referred to be reviewed by a fresh medical board, which shall be constituted in such manner as may from time to time, be laid down by the Director-General.

The superior officer may, having regard to the findings of the fresh medical board, pass such order as he may deem fit.

(5) Where no representation is made against the decision of the medical board under sub-rule (3), the authority as specified in rule 18, as the case may be, may (if he agrees with the findings of the medical board) order the retirement or discharge of person declared to be unfit for further service in the Force.”

As noted above, the order of termination has been passed based on a finding of unsuitability of the petitioner, as per a note appended to the Schedule of the Sashastra Seema Bal Combatants (General Duty) Group ‘C’ Posts Recruitment Rules, 2011.

The Schedule is referred to in Rule 4 of the said Rules. Rule 4 reads as follows:

**“Method of recruitment, age limit, qualifications etc.-** The method of recruitment to the said posts, age limit, qualifications and other matters relating thereto shall be as specified in columns (5) to (13) of the said Schedule”

The note appended to the said Schedule is also reproduced below:

**“Candidates on direct appointment will qualify the Basic Recruit Training Course within a period of two years from the date of appointment. Not more than two chances will be given to qualifying Basic Recruit Training Course failing which services are liable to be terminated.”**

Mr. Sudipto Kumar Mazumder, the learned Deputy Solicitor General of India, appearing for the appellant, submits that the petitioner was afforded due opportunity of hearing. He contends that the petitioner was granted liberty to submit a reply to the show-cause notice after being heard. The concerned Commandant has, according to him, rightly invoked Rule 26 of the Sashastra Seema Bal Rules, 2009, to terminate the petitioner's service. There has been no procedural impropriety in the termination process. Accordingly, it is submitted that, in the exercise of judicial review, this Court ought not to interfere with the order of termination.

He further submits that the order passed by the learned Single Judge is devoid of any legal reasoning. It is contended that the learned Single Judge allowed the writ petition without proper analysis of the applicable legal provisions governing the termination of the petitioner's service, and as such, the said order is unsustainable in law.

In support of his submissions and with reference to the settled position of law laid down by the Hon'ble Supreme Court, he placed reliance upon the following decisions:

1. 2013 (6) SCC 530 (Chariman, LIC of India & Ors. Vs. A. Masilamani – Paras 9 & 10)

2. 2022 (15) SCC 254 (The State of Uttar Pradesh & Ors. Vs. Rajit Singh–Paras 7& 9)
3. (2023) 3 SCC 622 (Union of India & Ors. Vs. Sunil Kumar- (Paras 6.2 and 6.3)
4. (2001) 9 SCC 592 (Union of India Vs. R. K. Sharma-Para 17)

Mr. Jagriti Mishra, the learned Advocate appearing for the writ petitioner/respondent, on the other hand, submits that the present case is squarely covered by the judgment of a Division Bench passed in **MAT 23 of 2021 (*Union of India & Ors. vs. Shri Biplab Barman*)**.

He contends that, in the facts and circumstances of the present case, the authority could not have validly invoked Rule 26 of the Sashastra Seema Bal Rules, 2009, to terminate the petitioner's service.

Before addressing the controversy arising from the respective submissions of the parties, it must be noted that the facts of the present case are peculiar and do not align squarely with the factual matrix of the cases cited before us. As already noted while discussing the factual background, it is admitted that the petitioner was unable to complete the Basic Recruit Training Course within the stipulated period of

two years due to an injury sustained during the course of training.

The fact remains that, after the expiry of the said two-year period, the petitioner was declared medically fit by the Medical Board of the Sashastra Seema Bal, and the competent authority, on its own volition, permitted the petitioner to resume the Basic Recruit Training Course.

An analysis of Rules 26 and 27 of the Sashastra Seema Bal Rules, 2009, makes it clear that where an enrolled person sustains an injury resulting in physical incapacity rendering him unfit for service, he may be discharged or retired under Rule 27 on grounds of physical unfitness.

While Rule 26 authorises the competent authority to terminate the services of an enrolled person on the ground of "unsuitability," it is pertinent to note that the term "unsuitable" is not defined under the Sashastra Seema Bal Rules, 2009 or under the Sashastra Seema Bal Act, 2007.

Therefore, the sole question that arises for consideration is whether the petitioner could be deemed "unsuitable" merely for failing to complete his training within the prescribed two-year period.

To appreciate the said provision, it must be understood that the two-year condition has been

framed pursuant to the power conferred under Section 55 of the Sashastra Seema Bal Act, 2007, through subordinate legislation.

Any decision to terminate the services of an enrolled person on the basis of such a provision must involve a proper exercise of discretion, taking into account the facts and circumstances of each individual case.

It must also be appreciated that delay in completing training may occur for various reasons. The test would be whether the failure to complete the training within the stipulated period of two years was due to any reason attributable to the enrolled person.

In our considered view, the provision prescribing a two-year period for completion of training cannot be construed as mandatory; rather, it must be read as directory.

In the present case, we are constrained to hold that such discretion was not exercised judiciously.

We are unable to comprehend how the said provision could be invoked against the petitioner when the delay was due to circumstances totally beyond his control and not at all attributable to him. The petitioner sustained an injury in the course of training and eventually recovered after nearly two years.

In such circumstances, it cannot be held that the petitioner was in any way responsible for the failure to complete training within the stipulated period of two years.

In view of the foregoing, we are of the considered opinion that the authority was wholly unjustified in invoking Rule 26 of the Sashastra Seema Bal Rules, 2009, to terminate the petitioner's service.

It is true that the order passed by the learned Single Judge does not specifically refer to the relevant rules. However, as an appellate court, we are not precluded from supplying appropriate legal reasoning to support the interference with the order of termination.

Accordingly, **MAT 51 of 2025**, along with **CAN 1 of 2025**, is dismissed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**(Partha Sarathi Chatterjee, J.)**

**(Kausik Chanda, J.)**

**LATER**

After the judgment was pronounced, Mr. Sudipto Kumar Mazumder, the learned Deputy

Solicitor General of India appearing for the petitioner, prayed for a stay of the operation of this order. Upon consideration, the said prayer is rejected.

**(Partha Sarathi Chatterjee, J.)**

**(Kausik Chanda, J.)**