

(2008) 08 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 3921 of 1998

Bhimsen Dash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Army Act, 1950 — Section 39, 48
Army Rules, 1954 — Rule 13(3)

Citation : (2008) CLT 763 Supp

Hon'ble Judges : R.N. Biswal, J; B.P. Das, J

Bench : Division Bench

Advocate : G. Rath, S.N. Mishra, A.K. Panda, S. Mohanty, T.K. Praharaj and S.P. Satapathy, for the Appellant; Amiya Kumar Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—The Petitioner has filed this writ petition challenging the action of the O. Ps. in discharging him from army service on administrative ground, vide order dated 10.1.1989 (Annexure-2).

2. The brief facts leading to this writ petition are as follows:

The Petitioner after retirement from army service was enrolled and was posted in 265 DSC Platoon, 14-Field Ammunition Depot, O.P.2. The Petitioner discharged the service in the defence service code to the best satisfaction of the authorities. During continuance of service, the Petitioner underwent operation twice in his stomach in the army hospital and due to ill-health and consequent absence from his duties, he was awarded three red entries on different occasions. Ultimately, on 6.4.1988, the Petitioner was admitted to the Army Hospital, Kannur and a medical board was held on 15.4.1988 to examine him whether he was fit enough to continue in service. The medical board opined that the Petitioner to be released from service and thereafter, he was discharged from the hospital on 22.4.1988, vide Annexure-I. According to the Petitioner, the authorities overlooked the provisions of the Rules and forced him to continue in service. As

he was/in ill-health, he could not attend the duty, for which he was awarded with another red ink entry. After fourth red ink entry was awarded to the Petitioner, on 10.1.1989 he was asked to show cause as to why he would not be discharged from service on administrative ground under Army Rule 13(3) Item III(V), vide Annexure-2. On 20.1.1989 a clearance certificate was issued to the Petitioner asking him to return back to his native place assuring him to give all the benefits under medical category. The Petitioner after return from service made several correspondences to the authorities and prayed for release of his retirement/pensionary benefits taking into consideration the fact that he was discharged on medical grounds and not on administrative ground. The authorities after receipt of such representations realised their mistake of discharging him from service on administrative ground instead of on medical ground and tried to conduct fresh medical test, which shows that the retirement benefit can be given to him. The Petitioner relies upon the letters issued on 28.11.1990, vide Annexures-3 & 3/1. Further the authorities issued another letter dated 28.10.1991 assuring the Petitioner to extend the benefit (Annexure-4) but till date, no fruitful action was taken in this respect.

After five and half years of discharge from service, the O. Ps. on 14.10.1994 sent a letter to INHS, copy of which was forwarded to the Petitioner arranging the medical board and requested the functionaries to issue a railway warrant in his favour so that the Petitioner can appear before the medical board. However, no railway warrant was issued in favour of the Petitioner and finding no other alternative, the Petitioner went to INHS, Kalyani on his own expenditure for the test in the medical board. But the medical board did not receive the Petitioner, as there was no instruction to hold medical board in respect of the Petitioner. The Petitioner thereafter made several correspondences for release of his retirement benefit taking into account his discharge from service on medical ground and not on administrative ground. But till date the authorities have not taken any action, for which this writ petition.

3. A counter affidavit has been filed by the O. Ps. taking a stand that during the tenure of service, the Petitioner was tried for various offences under the Army Act and Rule and he was punished as many as five times. According to the O. Ps., since the Petitioner besides being a bad example was not amenable to discipline, his retention in service was found undesirable by his Officer Commanding Unit and had recommended him for discharge from service on administrative grounds. He was issued with a show cause notice and the same was also replied by the Petitioner. As the show cause reply did not merit consideration, he was discharged from service on administrative ground on 19th January, 1989. As per the case of the Petitioner, he should have been released from army service on medical ground. In the counter affidavit, it is also stated that the Petitioner was placed in medical category CEE (permanent) with effect from 17th January 1986 and further placed in the same medical category by a medical board on 15th April, 1988. Personnel placed in medical category CEE are eligible to continue in service. Personnel placed in medical category EEE are only

invalided out of service. Accordingly, the Petitioner was retained in service and as per the provisions contained in Army Order 3/89, personnel placed in low medical category are required to be brought before a Release Medical Board prior to their discharge from service. In the case of the Petitioner, it was intimated by his unit that since he was discharged on administrative grounds, he could not be retained for Release Medical Board up to finalisation of the case. However, Government sanction was accorded for holding Release Medical Board of the Petitioner vide government of India, Ministry of Defence Letter dated 4th July, 1994 for the purpose of assessing the nature/cause and percentage of his disability at the time of discharge from service and to complete his medical documents. Immediately, after receipt of Government sanction, his case was referred to INHS Kalyani, Visakhapatnam to hold a belated Release Medical Board with direction to the Petitioner to report to the hospital. However, INHS Kalyani had intimated that the Petitioner did not turn up for conducting the Release Medical Board, for which the Petitioner was again advised to report to the hospital for conducting the medical board, if not already held. This process of medical board is intended for the purpose of assessing the nature / cause and percentage of his disability at the time of his discharge as well as present degree of his disability and to complete his medical documents and not to grant disability pension, as personnel discharged from service on administrative ground.

4. Further it is contended that the Petitioner has been tried for the following offences, which read as follows:

- a) Tried for an offence under AA Section 39 (b) (Over Stayal of leave) and awarded 14 days pay fine on 07 September 1982,
- b) Tried for an offence under AA Section 48 (Intoxication) and awarded 14 days imprisonment in military custody on 24 December 1982,
- c) Tried for an offence under AA Section 39 (b) (Over stayal of leave) and awarded 7 days Confinement to lines on 17 May 1983,
- d) Tried for an offence under AA Section 39 (h) (Overstayal of leave) and awarded 28 days Rigorous imprisonment in military custody on 15 January 1985,
- e) Tried for an offence under AA SCC 48 (Intoxication) and awarded- 7 days Rigorous imprisonment in military custody on 08 June 1988,
- f) Tried for an offence under AA Section 39 (b) (Overstayal of leave) and awarded 14 days detention in military custody on 30 July 1988.

So the sum and substance of the pleadings of the O. Ps. was that the Petitioner was not discharged on medical ground but he was discharged on administrative ground, which requires medical assessment after he was discharged from service.

5. By order dated 27.3.2008, in course of hearing, in order to know the truth in the allegation of the Petitioner that he was discharged from army service due to the reason of his medical unfitness for further service, we directed the O. Ps. to

produce the relevant records pertaining to termination and discharge of the Petitioner from service on 22.4.2008. Accordingly, the O. Ps. filed an affidavit reiterating the same thing and annexing the rules in Annexure- F /2, which shows medical examination of all ranks prior to release, retirement, discharge, completion of tenure or service limit. That prior to release or retirement or discharge, medical examination is necessary. According to the O. Ps., the same procedure has been followed in case of the Petitioner.

6. After hearing learned Counsel for the Petitioner as well as the O. Ps. and after perusing the approval order of the Government of India, Ministry of Defence, in Annexure-F /2, we have no second opinion of the fact that the Petitioner after his retirement had proceeded in a wrong premises that he has been called for the medical examination for the purpose of getting pension. The service record of the Petitioner, as indicated above, shows that he had incurred more than four red marks and he was discharged from service on administrative ground. There is nothing to show that the Petitioner was discharged from service on medical ground.

This writ petition is accordingly dismissed being devoid of merit.

R.N. Biswal, J.

7. I agree.