

**(2013) 09 GAU CK 0022**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 5973 of 2011**

Bir Bahadur Chand

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 16-09-2013

**Acts Referred:**

**Citation :** (2013) 5 GLT 261

**Hon'ble Judges :** Biplab Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** K. Akhtar, for the Appellant; J. Deka, CGC, for the Respondent

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## Judgement

Biplab Kumar Sharma, J.—Heard Ms. K. Akhtar, learned counsel for the petitioner. Also heard Mr. J. Deka, learned CGC appearing for the respondents. While challenging the Annexure-2 Discharge Certificate and for that matter discharge from service on medical ground w.e.f. 31.3.2001, the petitioner has also prayed for a direction to the respondents to reinstate him in service pursuant to particular recommendation of the Medical Board that was constituted as per the direction of this Court vide order dated 7.12.2010 passed in WP(C) No. 5314/09.

2. The petitioner while in service as Rifleman in the Assam Rifles, was discharged from service on medical ground w.e.f. 31.3.2001. Since then he is in receipt of invalid pension. After 6 years of such discharge from service on medical ground with invalid pension the petitioner filed a writ petition being WP(C) No. 2959/2007 before the High Court of Delhi, which was disposed of by order dated 11.4.2007 granting liberty to the petitioner to approach the Court of competent territorial jurisdiction in the matter. As recorded in the said order the reason for non-grant of disability pension to the petitioner was due to the finding of the Medical Board that the disease which the petitioner was suffering from was neither attributable to nor aggravated by military service. As recorded in the said order if the petitioner was really aggrieved by the conclusion reached by the Medical Board, it is the said opinion formed by the Medical Board, was to be

challenged. Simultaneously it was also held that the Medical proceeding was not within the jurisdiction of Delhi.

3. From the above what is seen is that in the said writ petition the grievance agitated by the petitioner was in respect of non-granting of disability pension which according to the respondents the petitioner was not entitled to as the disease from which he suffered was neither attributable to nor aggravated by military service.

4. After the aforesaid development the petitioner filed the writ petition being WP(C) No. 5314/2009 before this Court, which was disposed of by order dated 7.12.2010 with the following direction:-

9. Considering the above, I am of the view that ends of justice would be served if the respondents are directed to subject the petitioner to a fresh medical assessment to consider whether the petitioner is suitable and fit for re-enlistment in service, since it was declared so in the Discharge Certificate issued to him. Accordingly the commandant of the 15 Assam Rifles is directed to take necessary steps to have the petitioner examined by a competent Medical Board, to decide as to whether he can be re-enlisted in the organization in the Civil Police, as was specified in the Discharge Certificate dated 31.3.2001.

10. The petitioner is accordingly permitted to report before the Commandant of the 15 Assam Rifles on or before 21.2.2011. On such reporting the Commandant would ensure a Review of the medical condition and fitness of the petitioner to assess his suitability for re-enlistment.

5. After the aforesaid order a Medical Board was constituted which examined the petitioner and upon such examination it was certified that the petitioner could be enlisted into service for doing light duty only. However, it was observed that he would need to follow up with the concerned medical unit once a year, considering the medical history. The said certificate is dated 3.2.2011. Thereafter by the impugned order dated 21.7.2011 (Annexure-10) the authority in the Assam Rifles having rejected the claim of the petitioner for re-enlistment, the petitioner once again approached this Court by filing the instant writ petition. The grounds for rejection of the claim of the petitioner for re-enlistment as enumerated in the impugned order are as follows:-

4. Now therefore the matter was placed before the Director General Assam Rifles, being the competent authority who has holistically considered the recommendations of the Review Medical Board in the Light of Hon"ble Court judgment existing rule position and the overall interest of the organization and security of the state and reached a conclusion that Ex. No. 153627W Rifleman (General Duty) Bir Bahadur Chand is not fit for re-enlistment into Assam Rifles Service due to the following reasons.

a) Assam Rifles is an Armed Force of the Union deployed in the North Eastern Frontier infested with insurgency where a high degree of physical fitness of

troops to operate in the counter insurgency areas is of paramount importance. The petitioner belonged to General Duty category but does not have the full physical competence to perform combat duties as per the opinion of Review Medical Board and when faced with a combat situation, he may not be able to do self defence besides endangering own life and security of fellow soldiers.

b) The re-enlistment of petitioner into service will directly impinge on the administrative and fighting potential of the sub-unit of which he will form part, and thereby affect operational cohesiveness of his unit.

c) The petitioner is enjoying the pensionary benefits for the last 10 years at his home. His reinstatement into service on light duties will be against the established policy instructions regulating discharge of Armed Forces personnel on medical grounds. Further re-enlistment of petitioner into Assam Rifles service will set a wrong precedent in like cases in future and would thus be detrimental to organizational interests and service ethos.

6. Ms Akhtar, learned counsel for the petitioner submits that having regard to the fact that in spite of the discharge of the petitioner from service on medical ground, as recorded in the Discharge Certificate, the petitioner being suitable for service in civil police the authority in the Assam Rifles ought to have considered that aspect of the matter instead of discharging the petitioner on medical ground. Referring to the documents produced in course of hearing she submits that there are available civil posts not involving in heavy duty in which the petitioner can very well be accommodated.

7. Countering to the above argument, Mr. J. Deka, learned CGC, on the other hand, submits that the petitioner having been discharged from service on medical ground way back in 2001 (31.3.2001) and the petitioner having accepted the same only with the reservation of claim for disability pension, he cannot claim for re-enlistment.

8. Supporting the impugned order and the grounds assigned therein, he also submits that all the posts in the Assam Rifles have been combatised, the petitioner in the background of his medical incapacity will not be fit for re-enlistment, more particularly when the Assam Rifles is engaged in various defence duties including countermanding the insurgency activities.

9. Referring to the decision reported in Union of India (UOI) and Others Vs. Binod Bihari Behera, Mr. Deka, learned CGC further submits that the grounds on which re-enlistment of the petitioner has been denied is not required to be interfered with exercising jurisdiction under Article 226 of the Constitution of India.

10. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also perused the entire materials on record. My finding and conclusions are as follows:-

11. Long 12 years have gone by since the petitioner was discharged from service

on medical ground. There is nothing on record to show that the petitioner had raised any grievance in respect of the order of discharge dated 31.3.2001. He sent a legal notice to the Union of India on 5.9.2005 only demanding rejoining of duty. Thereafter he approached the Delhi High Court by filing WP(C) No. 2959/2007. As it appears from the order passed in the writ petition, the argument advanced was for grant of disability pension. It was in such circumstances the Delhi High Court opined that if the petitioner was really aggrieved by the conclusion reached by the Medical Board that his disability is neither attributable to nor aggravated by military service, it was open for him to challenge the said conclusion and the writ petition was dismissed on the ground of lack of territorial jurisdiction.

12. After the aforesaid dismissal of the writ petition the petitioner approached this Court by filing the writ petition being WP(C) No. 5314/2009 which was disposed of by the above quoted order dated 7.11.2010. In the typed copy of the Discharge Certificate under the column "Is he recommended as suitable for re-enlistment in Assam Rifles of Police?" the remark furnished was "Yes in Civil Police". It is in reference to the said column and the remark thereof, it was submitted by the learned counsel for the petitioner that the petitioner could have been engaged in any civil job in the Assam Rifles. But on perusal of the original copy of the Discharge Certificate what is found is that the petitioner was suitable for civil police and the remarks under the Head "Is he recommended as suitable for re-enlistment in Assam Rifles or police?". This variation of "of" and "or" made the projection that the petitioner was entitled to get re-enlistment in Assam Rifles as Civil police. However, the remark was that the petitioner could be re-enlisted in Civil Police and not in Assam Rifles.

13. Admittedly, the posts involving the Assam Rifles are all combatised. In this connection, Mr. J. Deka, learned CGC has produced a letter dated 19.9.1989 on the subject of combatisation of ministerial and other civilian posts in the Assam Rifles Hqrs. By the said letter it was conveyed that all civil posts in Assam Rifles would stand combatised. It is in reference to combatisation of civil posts the authority in the Assam Rifles passed the impugned order dated 21.7.2011 holding that the petitioner cannot be enlisted in Assam Rifles posts. As recorded in the said order the Assam Rifles being an Armed Force of the Union deployed in the North Eastern Frontier infested with insurgency where a high degree of physical fitness is required it will not even be suitable to re-enlist the petitioner to perform combat duties.

14. As recorded in the impugned order, re-enlistment of the petitioner in the services of the Assam Rifles will not be conducive having regard to the nature of the job and more particularly when the petitioner has been enjoying the pensionary benefit for the last more than 10 years. The Assam Rifles being an armed force physical fitness for combatised service is a must. The petitioner was discharged from service on medical ground and if it is not the case of the petitioner that the said medical ground has ceased to exist. What has been

submitted is that the petitioner is now fit to undertake light duty of civil nature. As per the opinion of the Medical Board and as reflected in the Discharge Certificate, at the time of discharge from service the petitioner was suitable for civil police and not for Assam Rifles. The said situation is not changed merely because some vacancies are available. The petitioner cannot claim that he should be enlisted against once such vacancy with light duties. Having regard to the fact that the posts in Assam Rifles are combatised and high degree for physical fitness is required, the grounds on which the respondents have rejected the case of the petitioner for re-enlistment cannot be said to be arbitrary, unreasonable and legally not sustainable.

15. In *Binod Behera (supra)*, the Apex Court dealing with the particular situation in which the judicial scrutiny was required held that it was not for the High Court to sit on appeal over the findings recorded by the authority of the CISF. As in the instant case, in the said case also, re-enlistment was sought for but the same was refused. It was held that refusal is not being arbitrary the Writ Court was not competent to sit on appeal over the findings of the authority. For all the aforesaid reasons the relief prayed for by the petitioner cannot be granted and that too after long 13 years of discharge from service on medical ground. As noted above the petitioner is in receipt of invalid pension.

The writ petition is dismissed. There shall be no order as to costs.