
(2015) 11 TP CK 0028
In the Tripura High Court
Case No : W.P.(C) No. 361 of 2012

Dharambir Payaing

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 TP CK 0028

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : K. Nath, Advocate, for the Appellant; A. Roy Barman, CGC, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioner, who was enrolled in the Assam Rifles through the rally held on 10.12.2008 at Dimapur and had undergone training at the JAKRIF Regiment Centre, Jabalpur from 09.02.2009 to 10.10.2009, has challenged the Discharge Order under No. 1.12011/08/Rec/IMB/2010/626 dated 10.04.2010. The petitioner has also prayed for writ directing the respondents to reinstate him w.e.f. 30.04.2010 with all pecuniary and other consequential benefits. The decision as communicated by the letter under No. 1.12011/67/Rec/2012/3829 dated 09.06.2012, disposing the representation filed by the petitioner has also been challenged in this writ petition.

2. The facts are mostly admitted.

The petitioner was enrolled and sent for training at Jabalpur, Madhya Pradesh and his status was that of a trainee. During the training, in the month of December, 2009, the petitioner fell ill and he was admitted in the Jabalpur Army Hospital. Thereafter, he was sent to the Assam Rifles Training Centre Hospital at Dimapur. On reference, he was thereafter sent to 165 Military Hospital at

Dimapur. The petitioner was referred to Command Hospital (EC) at Kolkata, West Bengal and he was treated there from 21.12.2009 and discharged on 02.01.2010. He was diagnosed for polycystic kidney disease. It is also not in dispute that the Senior Advisor, Medicine and Nephrology of the said Command Hospital (Eastern Command), Kolkata gave his opinion on 31.12.2009. According to his opinion available at Annexure-B to the writ petition, the petitioner needed to be invalided out of service inasmuch as he was suffering from polycystic kidney disease with compromised function of left kidney and he was placed in the medical category P-5 with advice of periodic review by a Nephrologist.

3. The petitioner was issued the Discharge Certificate, Annexure-D to the writ petition, w.e.f. 30.04.2010 afternoon on medical ground (IMB). The said discharge certificate was issued by the Commandant, Assam Rifles Training Centre and School at Dimapur. The petitioner filed two representations on 18.01.2012 and 10.05.2012 to the Commandant, Assam Rifles Training Centre and School, contending that he was not suffering from any permanent disability or from any sort of physical and mental incapacity for the said illness. According to him, the medical ground as assigned was not sufficient to invalidate him out of the service. On 10.05.2012, the petitioner filed another representation to the Director General, Assam Rifles, reiterating the same ground and urging him to revoke the discharge certificate take him back in the service and also to allow him complete the training. The said representations were not acceded to and the decision thereon was communicated by the letter dated 09.06.2012, Annexure-G to the writ petition, which is extracted hereunder :

"REPRESENTATION AGAINST THE "DISCHARGE CERTIFICATE" ISSUED BY THE DEPUTY COMMANDANT, ARTC & S, DIMAPUR, NAGALAND

1. Ref. Your application on the subject.

2. It is to inform you that you were invalidated out medically based on the opinion of the Specialist of Command Hospital (Kolkata) after a thorough investigation of your ailment of POLYCYSTIC KIDNEY DISEASE wef 01 Nov 2009 to 31 Dec 2009 and accordingly you were issued with a "Discharge Certificate" by the Competent authority.

3. The existing rules do not have any provision for reinstatement of personnel who have been discharged from service in accordance with the established procedures.

Sd/- illegible (S. Banerjee) Major Adjutant for Commandant"

4. The respondents by filing the counter affidavit, have seriously resisted the claim of the petitioner. In para 6 of the said counter affidavit, the respondents alleged certain unbecoming conducts of the petitioner. But they have laid the medical history as well as the treatment history as provided in the writ petition and it has been contended there that :

"The rect was suffering with Bilateral Polycystic Kidney Disease and the function

of his left kidney was compromised and the individual was deemed to be unfit for stressful military duties. The rect was also vaccinated with three does of Hepatitis B. After due examination the individual was categorized (P5) and was recommended to be invalidated out of service by Senior Advisor in Medicine & Nephrology CH(EC), Kolkata."

5. Since the petitioner's retention was not recommended and he was boarded out of service on the medical ground, the allegations made by the petitioner of acting arbitrarily or illegally, are entirely according to the respondents without any foundation. It has been further asserted that a Medical Board was constituted on 03.02.2010 (reflected in Annexure-R/1 to the counter affidavit) and on careful examination, the writ petitioner was found "to be completely & permanently incapacitated for further service of any kind in the department to which he belongs". The Medical Certificate dated 01.03.2010 issued by the said Medical Board is available at Annexure-R/2 to the counter affidavit. The discharge certificate was issued on 09.04.2010 indicating that the petitioner would be discharged w.e.f. 30.04.2010 afternoon. The respondents have categorically stated that the representations filed by the petitioner did not provide any compelling reason for reviewing the decision of invalidating him out of the service and accordingly those representations were rejected.

6. Mr. K. Nath, learned counsel appearing for the petitioner has contended that the petitioner was completely fit to discharge the general duty of the enrolled persons in the Assam Rifles. Apart that, he has questioned the competence of the officer i.e. the Commandant, Assam Rifles Training Centre and School, Dimapur, the respondent No. 3, in issuing the discharge certificate. In support of that contention, Mr. Nath, learned counsel has referred a decision of the High Court of Meghalaya in Rajesh Kumar Vs. The Union of India--> . He has referred the following passage in support of his contention :

"11. This Court (Division Bench Hon"ble Mr. justice T.N.K. Singh and Hon"ble Mr. Justice S.R. Sen) vide the judgment and order dated 30.07.2014 passed in WA No. 45/2014 and another Division Bench (Hon"ble Mr. Justice Uma Nath Singh, Chief Justice (Acting) and Hon"ble Mr. Justice T.N.K. Singh) vide order dated 03.09.2014 passed in WA No. 27/2013 are of the same view that the Commanding Officer of the Assam Rifles is not the competent authority for dismissing the service of the Rifleman and Havildar under Section 11(2) of the Assam Rifles Act, 2006 (47 of 2006). The Judgment and order of the Division Bench of this Court dated 03.09.2014 passed in WA No. 27/2014 reads as follows:--

"(U.N. Singh, CJ (Acting))

03.09.2014

Heard learned counsel appearing for parties and perused the record of writ appeals.

2. This order shall also dispose of similar Writ Appeal No. 51/2013 listed today. One and only question that needs to be addressed has already been concluded vide a Judgment dated 29.08.2011 passed by Division Bench headed by one of us (T.N.K. Singh, J.) in WA No. (SH)33/2011, wherein it has been held that the discharge order in terms of Section 11(2) of the Assam Rifles Act, 2006 (for short "the Act of 2006") has to be passed by a Deputy Inspector General of Assam Rifles and not by a Commandant. For easy reference, Section 11 of the said Act of 2006 is reproduced herein below:--

"11. Dismissal, removal or reduction by Director-General and by other officers.--

(1) The Director-General, Additional Director-General or any Inspector-General may dismiss or remove from service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector-General may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or the ranks as may be prescribed.

(3) Any such officer as is mentioned in subsection (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules and regulations."

7. Mr. Nath, learned counsel appearing for the petitioner, has therefore contended that only the Deputy Inspector General of Assam Rifles not the Commandant, the respondent No. 3, was competent to issue such discharge order in terms of Section 11(2) of the Assam Rifles Act, 2006.

8. From the other side, Mr. A. Roy Barman, learned Central Govt. Counsel, has submitted that in view of the recommendations of the medical expert and the Medical Board, the petitioner has been discharged from the service without any stigma. The petitioner was placed in the medical category P-5 and for that reason alone he has been invalidated out of the service. There is no arbitrary action and clearly on the basis of the recommendations of the Medical Board and the medical expert, the petitioner has been discharged. The writ petition, according to Mr. Roy Barman, learned CGC, is devoid of any substance.

9. For purpose of appreciating the rival contentions as projected by the learned counsel for the parties, this court has scrutinised the records made available with the writ petition and the counter affidavit and finds that the discharge is based solely on the recommendations of the medical expert and the duly constituted Medical Board. Both the Medical Board and the medical expert have opined that the petitioner is not fit to be retained in the service.

10. The courts cannot review the merit of the decision in exercise of their jurisdiction under Article 226 of the Constitution of India and as such with such incapacity whether the petitioner would be able to discharge the duties of the

enrolled persons in the Assam Rifles cannot be assessed or determined by this court. The competent authority in the Assam Rifles can only determine whether such person can be retained in the force or not. The question that has been raised as to the competence of the respondent No. 3, the Commandant, Assam Rifles, this court on the face of the said judgment find that in *Rajesh Kumar v. The Union of India*, the High Court of Meghalaya was dealing with a case of dismissal. Section 11 of the Assam Rifles Act, 2006 provides as under :

"11. Dismissal, removal or reduction by Director-General and by other officers.--

(1) The Director- General, Additional Director- General or any Inspector- General may dismiss or remove from service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector-General may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or the ranks as may be prescribed.

(3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules and regulations."

The said provision is not at all applicable in the case in hand, rather the provisions of Section 12 is relevant. Section 12 of the Assam Rifles Act, 2006 provides as follows :

"12. Certificate of termination of service.--A subordinate officer or an under-officer or other enrolled person who is retired, discharged, released, removed or dismissed from service shall be furnished by the officer, to whose command he is subject, with a certificate in the language which is the mother-tongue of such person and also in Hindi and English language setting forth- (a) the authority terminating his service; (b) the cause for such termination; and (c) the full period of his service in the Force."

11. Section 12 of the Assam Rifles Act, 2006 clearly provides that the Certificate of termination of service of the enrolled person who is retired, discharged, released, removed or dismissed from service shall be furnished by the Officer, to whose command he is subject, with a certificate in the language which is the mother-tongue of that person and as such there is no infirmity as the respondent No. 3 has issued the certificate of discharge, which according to this court in consonance of the provisions of Section 12 of the Assam Rifles Act, 2006.

12. Having held so, this court does not find any merit in this writ petition and accordingly the same is dismissed. There shall be no order as to costs.