

(2013) 10 MEG CK 0003
In the Meghalaya High Court
Case No : Writ Petition (C) No. 140 of 2012

Narender Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 MEG CK 0003

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : R. Jha, for the Appellant; S.C. Shyam and B. Deb, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—Heard Mr. R. Jha, learned counsel appearing for the petitioner and Mr. S.C. Shyam, learned senior counsel assisted by Mr. B. Deb, learned counsel for the respondents. Only the fact sufficient for deciding the writ petition is briefly noted. The petitioner was enrolled as a recruit in Assam Rifles on 10.10.1994 as Rifleman General Duty. It is an admitted case of both the parties that the Rifleman General Duty means Rifleman who is discharging combative duties. In other words, the petitioner had been recruited as a Rifleman for discharging combative duties and also the petitioner is not a Rifleman discharging clerical job. By this writ petition, the petitioner is assailing the order of the Commanding Officer dated 28.04.2004 for discharging the petitioner from service on medical grounds. The grounds for discharging the petitioner from service read as "Discharge/release from service on medical grounds". It is the case of the petitioner that the procedure prescribed for discharging the Rifleman from service on medical grounds is not followed in issuing the discharge order dated 28.04.2004 by the Commanding Officer. It is admitted by both the parties that there is a Rule "Assam Rifles Medical Examination (Categorization and Invalidation) Rules, 1988 (for short "the Rules of 1988") which had been followed by the Assam Rifles authority in discharging the Rifleman (General Duty) from service on medical grounds. It will be profitable to quote the relevant Rules of

the said Rules i.e. the Rules of 1988.

Definitions

7. In this order unless otherwise specified:--

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(t) "SHAPE" means functional capacity and represents following factors for assessment of fitness of Cadre Officers:--

(i) S - Psychological

(ii) H - Hearing

(iii) A - Appendages

(iv) P - Physical Capacity

(v) E - Eyesight

Functional capacity of an officer under each factor shall be denoted by numerals 1 to 4 against each letter, indicating declining functional efficiency. The numerals shall be written next to the code letter, except that, where a Cadre Officer is Grade I in all the factors, his category shall be denoted by writing evaluation of these numerals are:--

1. Fit for all duties

2. Fit for all duties but may have limitation as to type of duties and areas of employability depending on whether the duties involve severe stress or demand (sic) acuity of hearing/vision of both ears/eyes.

12. Medical Board for Invalidation of Personnel

(1) A Medical Board for invalidation shall be convened when a person is considered medically unfit by a specialist in service hospital or other hospital for further service in the Force.

(2) The convening authority of Medical Board for invalidation, its composition and approving authority for the purpose of sub-para (1) above shall be as under:--

(c) The approving authority of the Board proceedings shall be the Deputy Director-General.

13. Appeal--(1) Any cadre officer or personnel aggrieved by an order of the Invalidating Medical Board may prefer an appeal against that order to the Central Government within a period of thirty days from the date of receipt of such orders.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified in sub-para (1) above:

Provided that the Central Government may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified

period, shall allow it to be filed within a further period not exceeding thirty days.

(3) Every appeal under this rule shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against.

14. Review--(1) On receipt of any appeal preferred by any Cadre Officer or personnel under rule 8, the appellate authority shall convene a Review Medical Board to review the order of the Invalidating Medical Board within a period of thirty days from the date of receipt of such appeal.

(2) The convening authority of the Review Medical Board its composition and approving authority for the purpose of sub-para (1) above shall be as under:--

(c) The approving authority of the review Medical Board proceedings in the cases for Cadre Officer and for personnel shall be the Administrative Ministry of the Central Government and the Director-General respectively.

(d) Basing on the findings of the Review Medical Board, the appellate authority shall pass an appropriate order on the appeal and shall communicate the order to the appellant.

(e) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

18. List of diseases which can be contracted during/attributed to/aggravated by service conditions is given as per Appendix VII to this order.

Appendix VII To ARO 2/90

A. List of diseases which can be contracted during service/attributed to service conditions.

Diseases affected by climatic conditions

(i) Pulmonary Tuberculosis

(ii) Pulmonary Dedema

(iii) Pulmonary Tuberculosis with pleural effusion

(iv) Tuberculosis-Non-Pulmonary

(v) Bronchitis

(vi) Pleurisy, emphysema, lung abscess and bronchiectasis,

(vii) Nephritis (acute and chronic)

(viii) Lobar pneumonia

(ix) Otitis Media

(x) Rheumatism-acute

- (xi) Rheumatism-chronic
- (xii) Arthritis
- (xiv) Lumbago
- (xv) Frost-bite leading to amputation of limb/limbs
- (xvi) Heat Stroke

B. Diseases affected by stress and strain

- (i) Psychosis and Psychoneurosis
- (ii) Hyperpiesia
- (iii) Hypertension (B.P.)
- (iv) Pulmonary Tuberculosis
- (v) Pulmonary Tuberculosis with pleural effusion
- (vi) Tuberculosis-non-pulmonary
- (vii) Mitral Stenosis
- (viii) Pericarditis and adherent pericardium
- (ix) Endo-carditis
- (x) Sub-acute bacterial and carditis, including infective endocarditis
- (xi) Myocarditis-acute or chronic
- (xii) Valvular disease.

2. The inter alia grounds for challenging discharge Order dated 28.04.2004 are that:--

(i) Neither the petitioner has been given any opportunity of being heard nor without serving any show-cause notice before discharging him from service by the Respondent No. 5 which is highly illegal and unwarranted in the eyes of law and therefore the action of the Respondent is illegal, unjust and arbitrary and also violative of fundamental rights and other legal rights of the petitioner guaranteed under Articles 14, 15, 16 and 19 of the Constitution of India;

(ii) As per the policy prevailing in the Assam Rifles, if the petitioner or personnel has to be discharged from service on medical ground he has to be firstly put under the Medical Category Temporary, by duly constituted Medical Board. Secondly thereafter Review Medical Board is to be constituted with specialist opinion, weather the disease is permanent or not and the Board shall recommend or put under Permanent Medical Category. Thirdly, the Respondent shall constitute Release Medical Board with specialist opinion thereof for releasing the personnel or the petitioner from service. In the instant case of the petitioner

the aforesaid procedure has not been followed by the Respondent, which is within the knowledge of the petitioner. Neither the copy of the said Board has been given to the petitioner nor the specialist opinion, if any.

(iii) The impugned order of discharge on medical ground has been passed without following the due process of law and without issuing the show-cause notice, which is arbitrary and illegal as well as in violation of principle of natural justice and fundamental rights of the petitioner and as such the same is also not tenable in the eyes of law and the same is liable to be set aside and quashed;

(iv) It is the Medical Board, which shall, as regards to the medical aspects, decide as to whether the disability is attributable to or aggravated by service and it has the obligation to specify reasons for their opinion. In the instant case of the petitioner, neither the Medical Board was constituted nor Review Medical Board as well as no Release Medical Board was constituted by the Respondent to discharge the petitioner from service, as such the discharge of the petitioner on medical ground without following the due process of law and procedure is liable to be dismissed and set aside;

(v) When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in medical category lower than "SHAPE 1" (FIT CATEGORY) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the Release/Invalidating Medical Board. Thereafter the said Release/Invalidating Medical Board generally consists of three doctors and they, keeping in view the clinical profile, the date of onset of invalidating disease/disability and service conditions, draw a conclusion as to whether the disease/injury has a casual connection with military service or not. On the basis of the same they recommend (a) attributability or (b) aggravation, or (c) whether connection with service.

3. The respondents filed joint affidavit-in-opposition dated 06.08.2012 wherein, it is stated that the discharge order had been issued on the basis of the release/discharge medical report of low medical category dated 31.08.2003. A copy of the medical report was also available at Annexure-R-III to the affidavit-in-opposition filed by the respondents. Under the said medical report, the type of disease suffered by the petitioner is "Psychosis Schizophrenia". Further, in the said report, it is stated that the petitioner was not suffering from any disability of that type at the time of joining of Arm Force.

4. Mr. R. Jha, learned counsel appearing for the petitioner by referring to Rule 12 of the said Rules of 1988, which was quoted above, strenuously contended that the Medical Board for invalidation of the personnel shall be convened when a person is considered medically unfit by specialist in service hospital or other hospital for further service in the Force. He also further contended that there was

no medical board for invalidation of the personnel for examining, if the petitioner, is medically unfit for service and there was no report of the specialist that the petitioner is suffering from the disease like Psychosis Schizophrenia. Be that as it may, on perusal of the said report annexed to the affidavit-in-opposition filed by the respondents in the present writ petition, it appears that there was a convening order dated 22.07.2003 for constituting a medical board and in pursuance of that convening order the medical board was constituted on 31.08.2003. That medical board gave a finding that the petitioner is suffering from Psychosis Schizophrenia.

5. Rule 13 of the said Rules of 1988 provides that any Cadre Officer or personnel aggrieved by an order of the invalidating medical board may prefer an appeal against that order to the concerned authority within a period of thirty days from the date of receipt of such order. In the present case, one of the grounds for challenging the impugned order is that the copy of report of the medical board for invalidation of the personnel was not furnished to the petitioner so as to enable him to file an appeal as provided under Rule 13 of the said Rules, 1988. The respondents in their affidavit-in-opposition did not deny that the petitioner was not furnished with a copy of the report of the medical board for invalidation of the personnel. Therefore, it is clear that the right of the petitioner to file an appeal as provided under Rule 13 of the said Rules, 1988 had been denied by the respondents and there is not even a whisper in the affidavit-in-opposition that in compliance with Rule 12, a Medical Board for invalidation of personnel had been constituted for considering the petitioner if he is medically unfit for service of the Rifleman General Duty. There is loophole in the procedure in discharging the petitioner from service under the impugned order dated 28.04.2004.

6. From perusal of the medical board as well as from the affidavit-in-opposition filed by the respondents, it appears that the petitioner is suffering from the type of disease called "Psychosis Schizophrenia". Rule 18 of the said Rules, 1988, clearly provides that list of the diseases which can be contracted during/ attributed to/aggravated by service conditions is given as per Appendix-VII to the said order. Under Appendix-VII of the said Rules of 1988, which had been quoted above, it is clear that the type of disease called "Psychosis Schizophrenia" is a type of disease attributable to service. This being the position, this Court is of the considered view that in the given case, the type of disease suffered by the petitioner is the one attributable to service. In the affidavit-in-opposition filed by the respondents vide para-15 stated that in term of Rule 38 read with Rule 49(2) (b) of CCS (Pension) Rule, 1972, the qualifying service for invalid pension is 10 years and the petitioner had only 9 years, 8 months and 19 days of qualifying service which is less than 10 years for invalid pension.

7. In the above paras, a clear finding has been made that there is a loophole in the procedure for discharging the petitioner from service which would make the impugned discharge order dated 28.04.2004 illegal, but because of the fact that the petitioner who is suffering from Psychosis Schizophrenia cannot be asked to

discharge the combative duties of the Rifleman General Duty, this Court is not interfering with the impugned discharge order dated 28.04.2004 for discharging the petitioner from service. However, taking into consideration that there was a loophole in discharging the petitioner from service which call for interference of the impugned discharge order dated 28.04.2004, and also the type of disease suffered by the petitioner is attributable to service, the respondents are directed to extend or grant only the pension under the Invalid pension Rule/Scheme considering that he had rendered his service till today in the given case to the petitioner within a period of six months from the date of receipt of a certified copy of the judgment and order. With the above observations and directions, this writ petition is allowed.