

(2017) 01 GAU CK 0001

In the Gauhati High Court

Case No : Case No. WP(C) 3901 of 2008

Om Prakash TC-68946 RECT/GD

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLT 289

Hon'ble Judges : Mr. Suman Shyam, J.

Bench : Single Bench

Advocate : Ms. S.K. Nargis, Advocate, for the Petitioner; Mr. K.K. Parasar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Suman Shyam, J. (Oral)—Heard Ms. S.K. Nargis, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC appearing on behalf of respondent Nos. 1 to 3.

2. The petitioner herein was earlier appointed as a RCT/GD, i.e. Riflemen under the Director General of Assam Rifles, Shillong vide order dated 04-11-2003 pursuant where to he had also reported at the Assam Rifles Training Centre, Dimapur on 20-12-2003. While undergoing training, the petitioner had unfortunately met with an accident on 27-02-2004 resulting into fracture in his left leg. Accordingly, the petitioner was admitted in the Military Hospital at Shillong and thereafter referred to 151 Base Hospital, Guwahati where he was required to undergo treatment for 03 months. Even thereafter the petitioner had to remain on sick leave for at least 01 month. The petitioner's case was referred to the Medical Board of the respondents wherein it was detected that he had suffered non-uniting fracture in the tibia and fibula (left) resulting into 60% disability. On the basis of such finding of the Medical Board, the petitioner was discharged from service on medical ground vide discharge order dated 10-03-2005. By order dated 26-07-2006, the petitioner was also permitted to

draw disability pension for the period from 01-04-2005 to 31-03-2008 as per his entitlement under the rules. The case of the petitioner is that in the meanwhile he has sufficiently recovered from the injury suffered in the aforementioned accident and was capable to resume duty as Riflemen under the respondent. On such ground the petitioner has approached this Court by filing the instant writ petitioner seeking a mandamus directing the authorities to reinstate the petitioner back in service.

3. It appears that the petitioner had also submitted a representation (Exhibit-4) addressed to the respondent No. 3 making a prayer for his reinstatement in service on the ground that as per the certificate issued by the orthopedic surgeon, he is now medically fit. However, such representation of the petitioner was rejected by the order dated 10-01-2008 whereby it was mentioned that there is no provision in the rules to take back a person in service once he has been discharged on medical ground. The respondents have also filed counter affidavit bringing their stand on record. For the purpose of appreciating the stand of the respondents, it would be useful to reproduce the averments made in paragraph 04 of the counter affidavit.

"4. That before answering the allegation levelled by the writ petitioner, the deponent begs to submit that Assam Rifles is a Central Para-Military Force of the Union of India and completely combatized by the Government of India with effect from 19-09-1989. As such, the petitioner cannot be given any appointment in Civil Post in the Force since none exists. Moreover, at the time of enrolment, the petitioner had given an undertaking that on being found unfit to become an efficient soldier during the course of training he will be liable to be discharged from the service. He will also not enjoy any privilege of Government servant till attested as Riflemen. The deponent further begs to state that the force being continuously engaged in counter insurgency operations in hostile and stressful environment his retention, being a combatant, was neither safe for him nor for his colleagues/organization. There is also no provision for an individual who has been invalided out of service being in non acceptable medical category or for reappointment in Civil Post being implementation of the combatisation scheme as Assam Rifles has been exempted from the application of Section 33 and 47 of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

4. From a perusal of the record, it is apparent that the petitioner has neither challenged the order of discharge nor has he assailed the legality of the order dated 10-01-2008 by means of which his representation was rejected by the respondents. Learned counsel for the petitioner also could not draw the attention of this court to any provision which permits taking back a service man who had been discharged on medical ground.

5. Mr. Parasar submits that the force has consistently maintained the policy where-under no person who has been discharged on medical ground has ever been taken back in service on account of the simple fact that the Assam Rifles

being a combatant force, unless the members of the force are totally physically fit they will not be able to operate in hostile and stressful environment associated with the counter insurgency operations.

6. Considering the submission made by Mr. Parasar as well as the fact that there is no challenge made to the order dated 10-01-2008, I am of the view that the prayer of the petitioner for reinstatement in service cannot be entertained by this Court at this distant point of time. As such, the said prayer stands rejected.

7. Coming to the question of payment of pension, Ms. Nargis fairly admits that disability pension, though offered to her client, was declined by him. In view of the above and considering the fact that no prayer for payment of pension has been made in the writ petition, I am not inclined to go into that aspect of the matter. If the petitioner is aggrieved in the matter of non-payment of pension or the quantum thereof, he would be at liberty to approach this Court by filing appropriate petition in respect thereof.

8. With the above observation this writ petition stands disposed of.