

(2024) 05 GAU CK 0101
In the Gauhati High Court
Case No : Writ Petition (C) No. 7201 Of 2018

Prabhu Dayal

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Citation : (2024) 05 GAU CK 0101

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : K Yadav, RI Yadav, Sk Medhi

Final Decision : Allowed

Judgement

1. Heard Ms. K. Yadav, learned counsel for the petitioner. Also heard MR. S K Medhi, learned Asstt. S.G.I, appearing for the respondents.

2. The claim raised in this writ petition which is filed by the petitioner is with regard to treating the appointment of the petitioner as Rifleman (GD) from the date of the initial appointment in the year 2001 and not the subsequent date which was pursuant to certain directions of this Court along with claim for arrear salary.

3. There is a chequered history of this case and a brief narration would be necessary.

4. In the year 2001, a recruitment process was initiated, amongst others, for the post of Rifleman (GD) under the Assam Rifles.

5. In the said recruitment, the petitioner who had offered his candidature was held to be qualified in the written, physical and medical tests and upon his selection, he was appointed on 23.05.2001. After such appointment, he was sent for basic training. However, in the midst of such training, vide an order dated 31.10.2001, the petitioner along with few others was discharged from service on the ground that they were medically unfit. Thereafter, by letter dated

17.08.2002, he was asked to submit disabled pension papers and later on by letter dated 17.09.2003, he was informed that he was not entitled to disability pension since he has not completed 10 years of qualifying service. The Petitioner made several representations for reinstatement but to no effect. Since the aforesaid action was not preceded by any notice or opportunity, several writ petitions by different petitioners including the instant petitioner were filed in this Court which were clubbed and heard together.

6. The said writ petitions were disposed of by this Court vide a common judgment and order dated 10.06.2010 by directing the respondent authorities to conduct a Review Medical Board in which the petitioners were to be examined. Incompliance with the said direction, a Review Medical Board was constituted in which the petitioner was re-examined. After such re-examination, the Petitioner was found medically fit and thereafter he received an appointment letter dated 06.01.2011, appointing him as Recruit General Duty (GD) and he was directed to report to Assam Rifles Training Centre and School, Dimapur, on 15.02.2011. After training of one year, he was posted at Manipur.

7. While in service, in the year 2017, the Petitioner came to know that his joining date was recorded as 08.01.2011 to which he objected.

8. It is the claim of the petitioner that the appointment should be given effect from the original date, i.e., 23.05.2001 with a further claim for payment of arrear salaries.

9. Ms. K. Yadav, the learned counsel for the petitioner has submitted that due to no fault of the petitioner, he had to face all the harassment and only upon intervention by this Court, the matter was sorted out. It is also submitted that the initial appointment made on 23.05.2001, having being preceded by the necessary tests including written, physical and medical and the discharge of the petitioner on medical ground dated 31.10.2001 being interfered with by this Court, the claim of the petitioner is reasonable, justified and bona fide.

10. The learned counsel for the petitioner has also submitted that similarly situated person have been given the benefits. In this connection, reference has been made to an order dated 07.06.2019 passed by this Court in Review Petition No.111/2018 filed by one Shri Sant Lal. The learned counsel accordingly submits that there should not be any impediment in granting the relief as prayed for.

11. Per contra, Mr. S K Medhi, the learned Asstt. S.G.I has submitted that the petitioner was re-appointed only in the year 2011, pursuant to the order dated 10.06.2010 passed by this Court in a number of similar cases including WP(C) No.4608/2008, directing the authorities of Assam Rifles to constitute a fresh Appellate Medical Board which was to examine the Petitioners on their medical incapacity so as to find out whether they were fit medically for appointment as GD Rifleman and upon such examination as the Petitioner was found medically fit, so he was re-instated on 06.01.2011. It is submitted that as the re-instatement of the petitioner was done in the year 2011 and therefore, giving

benefit to the petitioner of such appointment from the year 2001 would not be justified.

12. Rival contentions advanced have been duly considered and the materials placed before this Court have been examined.

13. It is not in dispute that the petitioner had undergone the recruitment process in its full rigor and was accordingly appointed on 23.05.2001. The requirement of basic training was also being undertaken by the petitioner and in the mid way, on 31.10.2001, he was discharged from service on medical grounds. The aforesaid discharge was interfered with by this Court by directing that a Review Medical Board be constituted and it is also not in dispute that in the said Review Medical Board, the petitioner has been found to be medically fit. Subsequent thereto, the petitioner was re-inducted in service in the year 2011.

14. The discharge of the petitioner from his service after his due appointment in the year 2001 on medical grounds was interfered with by this Court. The same would amply demonstrate that the petitioner cannot be put on fault for the gap in the service from 2001 to 2011. The reliance of the petitioner in the case of Sant Lal (supra) has also not been able to be refuted by the learned Asst. SGI. This Court has noticed that the benefits given to the said incumbent Sant Lal pursuant to the order dated 07.06.2019 passed in Review Petition 111/2018 clearly refers to the order dated 26.10.2014 of the Division Bench passed in WA No. 153/2014, WA/119/2014, etc.

15. On the aforesaid facts and circumstances, this Court is of the considered opinion that the claim of the petitioner to hold his appointment from the year 2001 appears to be justified as the so called break in his service is not attributable to any fault of the petitioner and in fact the impugned decision of the authorities to discharge him on the ground of being medically unfit and has been interfered with by this Court. Further, granting the benefit to a similarly situated incumbent (Sant Lal) for which no explanation has been put forward that the said case is distinguishable would be an additional ground in favour of the petitioner. This Court is of the opinion that the claim of the petitioner is liable to be allowed.

16. This Court is however of the opinion that such claim would only be confined to the notional benefits including fitment and also to treat the petitioner to be in appointment from the year 2001 in the context of his pensionary benefits. The claim for back wages from the year 2001, however cannot be considered in terms of the principle of "no work no pay".

17. With the aforesaid directions, the present writ petition stands allowed.

18. No order as to cost.