
(2002) 01 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5005 of 1996

Recruit Satish Kumar

APPELLANT

Vs

Union of India (UOI) and others

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Citation : (2002) 4 MPLJ 389

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : K.C. Ghildiyal, for the Appellant; Sandip Aole, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The petitioner assails the validity of the order of his discharge passed on medical ground as contained in Annexure-P/1.

Petitioner was enrolled in the army as a recruit on 3-5-1996. While he was undergoing training in last few weeks of the training he noticed few veins of his right leg could be seen prominently from outside and they had emerged clearly on the surface. Petitioner submits that he was able to perform his duty in normal course. Respondent No. 3 on 9-10-1996 noticed these veins and referred the petitioner to the surgical Specialist at Military Hospital, Jabalpur on 14-10-1996. Petitioner was admitted in the Hospital. He was transferred on 23-10-1996 to base hospital, Lucknow, from there he was transferred to the Command Hospital. Specialist of the Command Hospital examined the petitioner and the petitioner came back to Military Hospital, Jabalpur on 12-11-1996. He was admitted to Hospital again 13-11-1996, while was still admitted in the Hospital. He came to know that he was being discharged on medical ground. He was not allowed to join the training even after he returned from the Command Hospital, at Lucknow. The petitioner was discharged from service on 21-1-1997. his name was struck off from the strength of the army. The petitioner has challenged the order of his

discharge by amending the writ petition.

Petitioner submits that he could not be discharged from service for a disease which is curable. He could not be termed to be as permanently unfit, hence, the order of discharge under the army Rule 13(3) IV is bad in law.

Respondents in their return contends that the order of discharge is proper and reason behind it is that a medically unfit person, when placed in an operational area, he may not be able to withstand physically and would not be able to perform the required duties expected from him satisfactorily, which can cause adverse health to the individual himself and simultaneously it will be detrimental to the national interest. Hence, only a physically fit person is retained in the Army to cope up with the service requirements at any stage in the field, terrain and high altitude areas.

After obtaining specialist advice from the respective superior medical authority, it was decided that the petitioner could not be retained in the army. He was suffering. He was suffering with Arterio Venous Malformation Rt. Leg. A classified specialist of surgery has opined that this lesion has increased in size due to stress of training. It is not possible to do curative resection of this lesion and to make him a fit soldier. In view of above, he is recommended to be placed in Cat "EEE". Petitioner was then examined by the Board and was also referred to Command Hospital, Lucknow.

Learned counsel appearing for the petitioner Shri K.C. Ghildiyal submits that arterio venous malformation is treatable. He places reliance on "A Short Practice of Surgery" by Love and Belly. It is mentioned by the learned writer's that all arteriovenous communications have a structural and a physiological effect. The structural effect of the arterial blood flow on the veins is characteristic, as they become dilated, tortuous, and thick walled (arterialised), and they also make the lesions diffuse and so render surgical procedures difficult.

Learned counsel further submits that the petitioner should have been detained and continued after allowing the surgery to be performed. It is treatable disease and no show-cause or opportunity of hearing was given. Thus, the order is bad in law.

Learned counsel for the respondents Shri Sandip Aole submits that the order is proper and the petitioner was referred upto the Command Hospital at Lucknow. The medical opinions were obtained and surgical specialist has opined that it was not possible to do curative resection of this lesion and to make him a fit soldier. Order of discharge is proper and does not call for any interference.

It is not disputed that the petitioner suffers with arterio venous malformation in the right leg. "A Short Practice of Surgery" by Love and Belly makes it clear that such malformation have a structural and a physiological effect. Physiological effects are also specified as the combination of a leak from the high pressure arterial system and an enhanced venous return and venous pressure result in an

increase in pulse rate and cardiac output. The pulse pressure is high if there is a large and persistent shunt. Left ventricular enlargement and, later, cardiac failure will occur. A congenital fistula in the young may cause overgrowth of a limb. In the leg, indolent ulcers may result from relative ischameia below the short circuit. Under the treatment part also the learned author has referred the congenital lesion are usually stationary. Thus, medical opinion formed by the surgical specialist of army that it was not possible to do curative resection of this lesion and to make him a fit soldier, is supported by a "A Short Practice of Surgery" by Love and Belly. This Court cannot sit over the medical opinion. The scope of judicial review in such a matter is limited. Nothing is pointed out by the petitioner that order of discharge was based on infraction of any rules. The plea of want of notice is not taken in the petition itself. Moreover when the petitioner was under treatment, he knew it very well that he was referred before the medical Board. He was treated for long period and was found medically unfit. petitioner was aware of all these facts, as such cannot be said that the order of discharge suffers from violation of principles of natural justice.

The writ petition is without merit and is dismissed. Costs on parties.