

(2014) 10 DEL CK 0169
In the Delhi High Court
Case No : Writ Petition (Civil) 3489/2014

Sanjay Singh Raghuvanshi	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 DEL CK 0169

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : R.K. Shukla, Advocate for the Appellant; Saqib and M.P. Singh, Advocate for the Respondent

Judgement

Kailash Gambhir, J.

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of mandamus to the respondents not to repatriate the petitioner from the National Security Guard (hereinafter referred to as "NSG"), 11 SRG, Manesar, Gurgaon (Haryana) to his parent organisation CRPF at J&K in 126th Bn.

2. Mr. Saqib, the learned counsel for the respondents has drawn the attention of this Court to sub clause (iii) of sub para (b) of Clause 1 of the Standing Order No. E303/11/2009/NSG/3643-98 in support of the decision taken by the respondents to prematurely repatriate the petitioner to his parent department, as under this clause a member of the NSG who is downgraded to permanent Low Medical Category (hereinafter referred to as "LMC") by the first Medical Review Board (in short "MRB") and continues to be placed in the same category even by the second MRB, then such a candidate shall be repatriated to his/her parent organisation/unit.

3. The learned counsel for the respondents thus submits that the petitioner who had joined the NSG on deputation as a Commando since 04.11.2012 was

detailed to undergo validation test training conducted by Force HQ NSG Manesar on 12.12.2012 and during the training the petitioner fell down on the ground while negotiating obstacle No. 13 of Battle Assault Obstacle Course (in short "BAOC") , and sustained right leg upper part injury and other minor injuries on other parts of the body. The learned counsel for the respondents also submits that the petitioner was admitted to Safdarjung Hospital, New Delhi and after his operation , he was once again detailed for his medical examination by the Medical Officer of Composite Hospital, NSG where yet again he was found under LMC w.e.f. 12.02.2013 categorised as S1H1A2(T-12) (L) P1E1.

4. It is also the case of the respondents that to further assess the physical fitness of the petitioner, a medical board from Composite Hospital, NSG was constituted on 14.05.2013 which again declared him under the LMC. The learned counsel for the respondents thus submits that, the petitioner was found under LMC even for the second time and therefore, in accordance with the said Standing Order the respondents had decided to repatriate the petitioner to his parent department. The learned counsel for the respondents also submits that since the NSG is a 100% deputation force and its basic idea is to admit "best talent" from other unit/organisation and the persons taken on deputation are expected to maintain high levels of professionalism, discipline, physical fitness and endurance levels and due to this reason a maximum of two chances are given to a candidate to accord him a chance to make himself fit as per the laid down criteria of medical fitness.

5. The learned counsel for the respondents submits that the present petitioner continues to serve in the NSG only pursuant to the interim protection given by this Court otherwise the petitioner is not in a fit condition to discharge the duties of the Commando in the NSG because of his being under LMC. The learned counsel for the respondents also submits that the premature repatriation of the petitioner attaches no kind of stigma to him and that he will be entitled to other all benefits as per his rank, that were available to him prior to his repatriation to his parent department.

6. Mr. R. K. Shukla, the learned counsel for the petitioner, on the other hand, submits that Safdarjung Hospital, New Delhi has already declared him fit to resume his duty and the fitness certificate dated 06.08.2014 has already been issued by the hospital in favour of the petitioner and in the light of this development, the respondent can again examine the case of the petitioner so as to permit him to undergo necessary training and to allow him to resume duty on the post of Commando in the NSG.

7. We have heard the learned counsel for the parties at considerable length and have given our thoughtful consideration to the arguments advanced by them.

8. The petitioner was initially appointed as a Constable (GD) in the CRPF on 15.06.2007. While working on this post in the CRPF he was selected on deputation to serve the NSG for a period of five years. The petitioner had

reported to join 11 SRG, NSG, Manesar on 04.11.2012 and an induction order was issued to him by the said group of the NSG Force vide order dated 22.11.2012. The said deputation for a period of five years was subject to premature repatriation on the grounds of unsuitability, indiscipline and exigency of services or if any other unforeseen factors so demand. The terms of the appointment further required all the individuals who had joined the NSG to be in medical category Shape-I and medically fit in all respects to serve in the NSG. This petitioner was detailed to undergo validation test training as was conducted by the Force HQ NSG, Manesar on 12.12.2012 but unfortunately during the training period he fell down on the ground while negotiating obstacle No. 13 of BAOC and sustained right leg upper part injury and some minor injuries on other parts of the body. He had undergone surgery at Safdarjung Hospital, New Delhi and after the surgery a medical examination was conducted by the medical officer of Composite Hospital, NSG, Manesar, and he was placed under LMC w.e.f. 12.02.2013. With a view to further assess the physical fitness of the petitioner, a medical board from Composite Hospital, NSG, Manesar was constituted on 14.05.2013 and this medical board declared the petitioner under LMC and in this manner on both the occasions, the petitioner was not found in Shape-I. This down grading of the petitioner to LMC by the two medical boards led to his repatriation to his parent department and we find no irrationality or illegality in the said decision taken by the respondents as such a decision of the respondents doesn't not stem from any vendetta, vengeance, malice or bias and is well supported by the Standing Order No. E303/11/2009/NSG/3643-98 and duly substantiated by the LMC reports. The said Standing Order dealing with premature repatriation was passed pursuant to a high level committee constituted by the Director General, NSG and after taking into consideration the recommendations made by the committee, fresh instructions were issued superseding all previous orders or guidelines on the subject. The instructions, which are relevant to the case of the petitioner, can be reproduced as under:-

"(a) INJURIES DURING OPERATIONS

- i) Any member of the NSG who is downgraded to Low Medical Category (LMC) of a temporary or permanent nature due to injuries sustained during operations shall be retained in the NSG till completion of his/her prescribed period of deputation.
- ii) Such member of the NSG shall be given a sedentary appointment or assigned duties in keeping with his/her disability or medical condition.

(b) INJURIES DURING TRAINING

- i) Any member of the NSG who is downgraded to LMC due to injury sustained during training or an exercise will be retained in the NSG till his/her examination by the first Medical Review Board which shall be convened not later than six months from the date of initial placement in LMC.
- ii) Any member of the NSG who continues to be placed in LMC by the First

Medical Review Board may, on the recommendation of the concerned Group Commander and the D. I. G. , be considered for retention in the NSG by the competent authority till his/ her examination by the second Medical Review Board which shall be convened not later than six months from the date of assembly of the first Review Medical Board.

iii) Any member of the NSG who is downgraded to permanent LMC by the first Medical Review Board or continues to be placed in LMC by the second Medical Review Board shall be repatriated to his/her parent organisation/unit. "

9. It is not a matter of dispute between the parties that the petitioner was placed under LMC by the first Medical Board and then also by the second Medical Board and therefore, in such like cases repatriation of such a candidate to his parent department is a mandate of the aforesaid sub clause (iii) and the said decision of the respondents to repatriate the petitioner squarely falls under the said sub clause.

10. The National Security Guard (NSG) was set up in 1984 as a "Federal Contingency Deployment Force" to tackle all facets of terrorism in the country and this force is specially equipped and trained to deal with specific situations of grave and emergent nature to deal with the menace of terrorism. It needs no emphasis to state that the NSG has been playing a very vital role in safeguarding the unity and integrity of the country and they have commendably foiled attempts made by anti-national elements who pose a threat to the peace, tranquility and integrity of the country.

11. Looking into the nature of the duties performed by the members of this force, they are required to undergo specialized and rigorous training and for that, members are expected to be exceptionally fit and there should not be any compromise in the same. This force is a 100% deputation force and the members of the force are taken on deputation from various Para Military Forces. Any person who at any stage finds himself under LMC in his medical examination, is provided another chance to bring him back to Shape-I and if he does not succeed in his endeavour then under the laid down rules repatriation to his parent department is the sole answer.

12. The repatriation of the petitioner to his parent department on account of his being found under LMC by the two Medical Boards cannot be held to be an illegal, unreasoned or arbitrary decision and therefore, we find no reason to interfere with such a decision taken by the respondents. The fitness certificate issued by Safdarjung Hospital, New Delhi on 06.08.2014, can hardly help the case of the petitioner as under the said Standing Order the opportunity was available to the petitioner only twice and on both the occasions, he was found under LMC and there is no provision for any third chance to reassess the medical category of the petitioner.

13. There is no merit in the present writ petition, the same is hereby dismissed. All the pending applications are also dismissed.