
(2014) 03 MEG CK 0023
In the Meghalaya High Court
Case No : WP(C) No. 308/2012

Santosh Singh

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19

Citation : (2015) 1 GLT 300

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—By this writ petition, the petitioner is praying for quashing the discharge order dated 25.02.2005 passed by the respondent No. 5 i.e. the Commandant, H.Q. 34th Assam Rifles, C/o 99 A.P.O. on medical ground "Med. Cat-CEE (P) S-3 Medical Board out discharge from service" and also the order dated 31.01.2011 that "as per the medical board proceedings, the petitioner's disease is not attributable/aggravated to service, hence, the petitioner is not entitled to get any invalid pension" and also for a direction to the respondents to grant disability pension/invalid pension to the petitioner. 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.

2. Factual Matrix:

The petitioner was enrolled as a recruit in Assam Rifles on 10.12.1995 as a Rifleman General Duty after proper verification of his medical and physical fitness and upon completion of the training, he was posted to 2nd Assam Rifles as his parent unit. Upon raising of the new unit i.e. 34th Assam Rifles, the petitioner was posted to 34th Assam Rifles as a parent unit. In recognition of his service based on performances and dedications, the petitioner had been awarded with

medals such as Samaya Seva Medal & Swatantrata Ki Swarn Jayanti Padak and other citations. To the utter shock and dismay to the petitioner, he was discharged from service on 01.03.2005 by the respondent No. 5 on medical ground by the impugned order dated 25.02.2005. The reason for discharging the petitioner from service is for medical category i.e. Med. Cat-CEE (P) S-3 Medical Board out discharge from service.

3. The respondents did not furnish the order of invalidating medical board basing on which, the petitioner had been discharged from service and also a copy of the opinion of Specialist to the petitioner and as such, the petitioner could not file the appeal to the higher authority as provided under Rule 13 of "the Assam Rifles Medical Examination (Categorization & Invalidation) Rules, 1988". Therefore, it is the case of the petitioner that his right to file an appeal had been denied. It is an admitted case of both the parties that the Assam Rifles Medical Examination (Categorization & Invalidation) Rules, 1988 (for short "the Rules of 1988") had been followed by the Assam Rifles authorities in discharging Rifleman General Duty or personnel from service on medical ground. It will be profitable to quote the relevant portion of the said Rules i.e. 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-Eye sight

Functional capacity of an officer under each factor shall be denoted by numerals 1 to 4 against each letter, indication 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 are severe stress or demand 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 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 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:-

(a) Convening authority

(b) Composition of review medical board

(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/attribution 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/attribution to service conditions.

Diseases affected by climatic conditions

- (i) Pulmonary Tuberculosis
- (ii) Pulmonary Edema
- (iii) Pulmonary Tuberculosis with pleural effusion
- (iv) Tuberculosis-Non-Pulmonary
- (v) Bronchitis
- (vi) Pleurisy, empyema, 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 endocarditis, including infective endocarditis
- (xi) Myocarditis-acute or chronic

(xii) Valvular disease.

4. The inter-alia grounds for challenging discharge order dated 25.02.2005 are that:-

(i) Neither the petitioner had been given any opportunity of being heard nor served 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 the duly constituted Medical Board, Secondly thereafter Review Medical Board is to be constituted with specialist opinion to decide as to whether 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. Neither the copy of the said Board has been given to the petitioner nor the specialist opinion, if any. The Release Medical Board which was constituted on the opinion of the Specialist gave an opinion contrary to the opinion of the Specialist who had the expertise in the field.

(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 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 and set aside;

(v) When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts to ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in low medical category and whether temporarily or permanently. They shall 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 consisting of three doctors, keeping

in view the clinical profile, the date of onset of invalidating disease/disability and service conditions shall 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.

(vi) The findings of the Release Medical Board dated 12.07.2004 is not sustainable inasmuch as, the findings are contrary to the opinion of the Specialist.

5. The respondents filed joint affidavit-in-opposition dated 16.07.2013 wherein, it is stated that discharge order had been issued on the basis of the release/discharge medical report of low category. A copy of the medical report was also annexed to the affidavit-in-opposition filed by the respondents. Under the said medical report, type of disease suffered by the petitioner is Psychosis Syndrome and the medical category or grade of the petitioner was S-3. In the joint affidavit, it is also stated that the petitioner was not suffering from disability at the time of joining the Arm Forces and also the type of disease suffered by the petitioner was not attributable to service.

6. Admittedly, the petitioner was medically examined by the Specialist of the LGB Regional Institute of Mental Health, Tezpur on 18.05.2004 and opined that all mental health of the petitioner are found to be within the normal limit and no sign of active psychotic syndrome thereof. The certificate is available at page 20 of the affidavit-in-opposition filed by the respondents, which reads as follows:-

L.G.B. Regional Institute of Mental Health, Tezpur

No complaint on MSE-all mental psychotic are found to be within normal limit. No active psychotic syndrome.

Review after 4 months.

Impt: There is no evidence of any active psychopathology at present. But considering nature of his illness, he is advised long term medication and follow up.

Sd/- 18.05.2004 Assistant Professor Deptt. of Psychiatry, LGB, Institute of Mental Health, Tezpur.

7. On bare perusal of the medical certificate/opinion of the Specialist of the Regional Institute of Mental Health, Tezpur dated 18.05.2004, it appears that there is no active psychotic syndrome and all mental health are found to be within normal limit and review shall be within four months. As per the opinion of the Specialist dated 18.05.2004, the petitioner was to be subjected to review i.e. review medical examination after four months, but against the advice or opinion of the Specialist, the petitioner was subjected to Release Medical Board on 12.07.2004. The Release Medical Board gave a clear finding that "lastly, as soon as the individual complete 10 years of service and if in that time his medical condition is unchanged or not improved he will be released in Low Medical

Category". In spite of all the observations and findings, some of which are quoted above, the Release Medical Board perfunctorily opined that "individual unfit" to be released in Low Medical Category S-3 (Perm) w.e.f. 12.07.2004.

8. It is an admitted case of both the parties that Release Medical Board had to follow the said Rules of 1988. Appendix 1 to ARO 2/90 to Rules of 1988, elaborately discussed with the Factors and Grading under shape classification, which reads as follows:-

Elaboration of Factor/Grading under SHAPE Classification.

Definitions of the different factors under SHAPE classification and the various grades under each factor to be awarded to officers depending upon their physical capacity are given below:-

(a) "S" Factor (psychological)-This factor denotes psychological aspect and covers personality, mental acuity, emotional stability and psychiatric diseases.

9. The personnel under medical S-3 is fit for only sedentary duties carrying restricted responsibilities under strict supervision in a field or peace area. The personnel under medical S-3 is not totally unfit for service. Even if the report of the Release Medical Board which is contrary to the opinion of the Specialist is accepted for the time being, the medical category of the petitioner is S-3 and the petitioner is not totally unfit for service. Finding of the Release Medical Board or materials placed before this Court including the joint affidavit filed by the respondents did not mention that the petitioner whose medical category is S-3 is totally unfit for service.

10. It is the case of the respondents that the petitioner suffered from psychosis i.e. "paranoid schizophrenia" and also the opinion of the Release Medical Board as well as the Specialist was that the petitioner should be subjected to review after four months from 18.05.2004 or after completion of 10 years of service and if in that time his medical condition is unchanged or not improved he will be released in Low Medical Category. Even before the expiry of four months and also without even subjecting to medical review, the petitioner had been discharged from service on medical ground on the basis of the Release Medical Board dated 12.07.2004.

11. It is clear in the given case, that the finding of the Release Medical Board dated 12.07.2004 are self contradictory inasmuch as (i) The Medical Board opined that the case of the petitioner should be considered after completion of 10 years and if in that time his medical condition is unchanged or not improved he will be released in Low Medical Category and; (ii) the finding of the Medical Board that the petitioner is unfit and to be released in low medical category S-3 w.e.f. 12.07.2004 is contradictory to the opinion of the Specialist dated 18.05.2004, that the petitioner shall be subjected to review after four months and the mental condition of the petitioner are found to be within the normal limit and no sign of active psychotic syndrome and also Rules of 1988 provides that

personnel with medical category S-3 is not unfit for service. Because of the illegal discharge of the petitioner from service, the petitioner completed only 9 years 2 months and 21 days and short of only few months for completion of the qualifying service of 10 years for pension. Under CCS (Pension) Rules 49(2)(b), minimum 10 years of qualifying service is mandatory for invalid pension.

12. For the foregoing reasons, the order dated 25.02.2005 and also the order dated 31.01.2011 are hereby set aside and the respondents are directed to extent or grant only the pension under the invalid pension Rules or Scheme considering that the petitioner had rendered qualifying service of 10 years within a period of six months from the date of receipt of a certified copy of this judgment and order. With the above observations and directions, this writ petition is allowed.