
(2016) 08 GAU CK 0014
In the Gauhati High Court
Case No : Writ Appeal(C) No.1991 of 2012

Sri Jagjit Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Citation : (2016) 151 FLR 151 : (2017) 1 GauLT 160 : (2016) 5 NEJ 353

Hon'ble Judges : Mr. Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Ms. D. Borgohain, Advocate, for the Petitioner; Mr. S.C. Keyal, Advocate, for the respondents

Final Decision : Dismissed

Judgement

Mr. Manojit Bhuyan, J. (Oral)—Heard Ms. D. Borgohain, learned counsel for the petitioner as well as Mr. S.C. Keyal, learned Assistant Solicitor General of India representing all the respondents.

2. At the relevant time, the petitioner was working as Rifleman Operator Radio and posted at 44, Assam Rifles, Guwahati. He is aggrieved of the order of discharge dated 30.06.2011, so issued on medical grounds. The gangplank of the petitioner's case is that the Discharge Order is not sustainable in law as the same had been rendered without following the procedure prescribed under Rule 26 of the Assam Rifles Rules, 2010. According to the petitioner, on 24.07.2010, a letter was issued on behalf of the Commandant, 44, Assam Rifles recommending the petitioner's invalidation from service for Alcoholic Dependence Syndrome and having been placed in Medical Category S-5, as per opinion of the Psychiatrist of the Composite Hospital, CRPF, Guwahati. About a year later, the impugned Discharge Order was issued. A representation came to be preferred by the petitioner on 26.09.2011 before the Director General, Assam Rifles with prayer for reinstatement in service. Ground urged in the said representation was that he had been discharged from service on medical ground without any opportunity of hearing being afforded. Along with the said representation, a

Medical Report issued from the Amritsar District Hospital certifying his fitness was also enclosed. The said representation was rejected by the authority concerned on 02.12.2011.

3. Ms. D. Borgohain, learned counsel for the petitioner submits that the entire procedure culminating in the discharge of the petitioner on medical grounds did not conform to the procedure laid down in Rule 26 of the Assam Rifles Rules, 2010. It is submitted that the petitioner was not made to appear before a Medical Board nor he was informed of a Medical Board being constituted nor any report thereof was communicated to the petitioner. For a better appreciation of the aforesaid Rule 26, the same is reproduced hereunder:

"26. Retirement or discharge of subordinate officers and enrolled persons on grounds of physical unfitness. ? (1) Where a Commandant is satisfied that a subordinate officer or an enrolled person is unable to perform his duties by reason of his physical disability, he may direct that the said subordinate officer or enrolled person, as the case may be, be brought before a medical board.

(2) The medical board shall consist of such officers and shall be constituted in such manner as may, from time to time, be laid down by the Director-General.

(3) Where the said subordinate officer or the enrolled person is found by the medical board to be unfit for further service in the Force, as the case may be, the authority as specified in rule 17 shall, if it agrees with the findings of the medical board, communicate to the said person the findings of the medical board and thereupon, within a period of thirty days of such communication, the person may make a representation against it to the competent authority supported by a prima-facie evidence of error of judgment in the opinion expressed by the medical board. Such an evidence should be from and Government doctor not below the status of civil surgeon and should contain specific mention that he has taken into consideration the findings of the medical board before giving his opinion.

(4) Where the person declared to be unfit for further service makes representation under sub-rule(3) the same shall be forwarded to the next superior officer, who shall have the case reviewed by a fresh medical board constituted for the purpose and order the retirement/discharge of the said person, if the decision of the fresh medical board is adverse to him.

(5) Where no representation is made against the decision of the medical board under sub-rule(3), the authority as ?specified in rule 17? as the case may be, may (if he agrees with the findings of the medical board) order the retirement or discharge of the person concerned."

4. According to Ms. Borgohain, the Commandant of the 44, Assam Rifles having reached an opinion that the petitioner was not able to perform his duties by reason of his dependence on alcohol, ought to have brought the matter to the notice of the Medical Board. It is stated that no such Medical Board was

constituted and even if it had been done, in the absence of non-communication of the findings of the Medical Board, he could not make effective representation before the competent authority to demonstrate error of judgment in the opinion expressed by the Medical Board. In respect of the pleadings so urged, Ms. Borgohain places reliance in the case of Sri Baldev Singh v. Union of India and Ors., rendered by the then Shillong Bench of this Court in WP(C) No.(SH) 32/2012. In the said case, the petitioner therein was directed to be reinstated to his post with full back wages upon setting aside of the Discharge Certificate. In the said case, the Court reached a definite finding that the mandatory provisions laid down in Rule 26 of the Assam Rifles Rules, 2010 had not been complied with by the respondent authorities.

5. Mr. S.C. Keyal, learned Assistant Solicitor General of India, representing the respondents submits that there was no procedural irregularity while discharging the petitioner from service on medical grounds. Mr. Keyal submits that relevant materials have not been placed in the writ petition and, therefore, the writ petition is liable to be dismissed with cost. In this respect, Mr. Keyal refers to paragraph 4 & 6 of the affidavit-in-opposition filed on behalf of the respondents, to say that on and from the year 2009, the petitioner started consuming alcohol and he was also warned and counseled by the superior authorities on many occasions. The petitioner was also treated for alcohol abuse in the Unit Hospital several times and ultimately, he was admitted to the Composite Hospital at CRPF, Guwahati. He was initially downgraded to Medical Category S-3, with effect from 19.02.2010 and after another round of de-addiction treatment at the Composite Hospital for the period from 06.05.2010 to 04.06.2010, he was held to be unfit for service as a Combatant in the Armed Forces and came to be categorized as S-5(P). It is also stated in the said affidavit that pursuant to the recommendation for invalidation from service, a Medical Board was duly constituted, wherein the petitioner had also appeared. Reference is made to the proceedings of the Medical Board at Annexure-R-2 of the affidavit-in-opposition to substantiate the presence of the petitioner before the Medical Board. Mr. Keyal also submits that nowhere in the writ petition nor in the affidavit-in-reply filed by the petitioner, any statement has been made that the findings of the Medical Board had not been communicated to the petitioner.

6. Facts above have been noticed. What stares in the face is that the fact the Medical Board had been constituted wherein the petitioner had also appeared, is nowhere pleaded in the writ petition nor in the affidavit-in-reply. The materials available on record clearly shows that pursuant to the letter dated 24.07.2010, whereby recommendation was made for invalidation of the petitioner from service, a Medical Board had sat on 20.11.2010. The petitioner was also full well aware of the proceedings before the Medical Board as his signature appears in the said proceedings. The case made out by the petitioner that the procedure envisaged under Rule 26 of the aforesaid Rules, appears to be an incorrect statement. The petitioner having participated in the proceedings of the Medical Board cannot now turn around to say that Rule 26 had been violated/not

complied with by the respondent authorities. The decision relied upon by the petitioner do not come to the aid of the petitioner, inasmuch as, in the said case there was apparent violation of Rule 26 of the aforesaid Rules at the hand of the respondent authorities. The petitioner has taken a clear stand that no Medical Board had been constituted. There are no pleadings with regard to non-communication of the findings of the Medical Board. To reiterate, the ground of challenge is made solely on the basis of the letter dated 24.07.2010, whereby his validation from service was recommended and that the same alone could not have formed the basis for issuance of the Discharge Certificate dated 30.06.2011. As discussed above, the Discharge Certificate was not issued on the basis of the said recommendation but on the basis of the findings of the Medical Board dated 20.11.2010. There is also gross suppression of material facts in the writ petition.

7. On the facts above, I find no merit in the present writ petition and the same stands accordingly dismissed. No cost.