
(2010) 12 DEL CK 0323

In the Delhi High Court

Case No : Writ Petition (C) No. 7569 of 2010

Suresh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0323

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : D.S. Kauntae, for the Appellant; Raman Oberoi, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The instant case is a worst example of judicial adventurism. The Petitioner had joined service as a recruit/General in Assam Rifles Regiments. While undergoing training, he was diagnosed as suffering from Tuberculosis and an order dated 31st August, 2003 discharging the Petitioner from service was passed. This order had resulted from his invalidation by the Medical Board on 23rd July, 2003 which found him unfit for retention in service.

2. The Petitioner filed W.P.(C) No. 577/2006 in Gauhati High Court assailing his discharge and seeking the following prayers:

In the premises aforesaid, it is respectfully prayed that your Lordship may be pleased to admit this petition, call for the records of the case and issue a Rule calling upon the Respondents to show cause as to why a writ in the nature of Certiorari be not issued.

i) To set aside and quash the impugned order of discharge dated 31.07.2003; And/or

ii) issue a writ in the nature of Mandamus directing the Respondents to reinstate the Petitioner in service with immediate effect;

iii) issue a writ in the nature of mandamus directing the Respondents to forthwith release the 50% disability pension to the Petitioner as admissible under the Rules;

3. This writ petition came to be dismissed by a judgment dated 28th April, 2009 rejecting all the prayers of the Petitioner. The present writ petition has been filed on 10th November, 2010 more than seven years after the discharge of the Petitioner and after dismissal of his writ petition seeking reinstatement.

4. The petition is premised on a contention that the Petitioner's medical condition is required to be reviewed by a fresh medical board in terms of circular dated 7th February, 2010. Interestingly, the first request for any such medical board has also been advanced by the Petitioner after the dismissal of the writ petition by the Gauhati High Court in 2001. It is apparent that such request has been mooted only with the intention of creating a cause of action for seeking reinstatement.

5. It is trite that merely because more than one ground of challenge or basis for seeking relief may be available, the litigating party is required to premise the prayers in a case on all such grounds which would be available to him. Nothing precluded the Petitioner from urging the grounds or seeking the prayer which he is making in this writ petition when he had filed the writ petition before the Gauhati High Court while the same remained pending.

6. So far as the present writ petition is concerned, it has been pointed out on behalf of the Respondents that the Circular relied upon by the Petitioner pertains to requests for review of medical boards by serving defence personnel to the Director General Military Services. The Petitioner who was admittedly employed with the Assam Rifle, was not governed by the Army Act and, therefore, was never a defence personnel under the Army Act. The request being made is not tenable for this reason as well.

7. Learned Counsel for the Respondents has also contended that no part of the cause of action is arisen in Delhi. Mere issuance of circular in 2001 under which the Petitioner is wrongly claiming entitlement would not certainly confer jurisdiction on this Court.

8. The above narration would show that this writ petition is merely abuse of the process of law.

We find no merit in the writ petition, which is hereby dismissed with costs which are quantified at `10,000/-. The costs shall be deposited with the Delhi Legal Services Authority.

9. At this stage Mr. D.S. Kauntae, learned Counsel for the Petitioner submits that the litigant is very poor and therefore, he would pay costs which have been imposed by this Court. A further prayer is made that the same may be reduced. Having regard to the fair stand taken by Mr. Kauntae, learned Counsel for the Petitioner in this matter, we direct that in case a sum of `500/- is paid towards

cost to Delhi Legal Services Authority by learned Counsel appearing for the Petitioner within a period of two weeks, the rest of the costs would stand waived. Dasti.