

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

SHILLONG BENCH
W.P.(C) No. 243(SH) of 2011

ID No. 3518, GD Trade,
Satyendra Kumar
s/o Shri Ramanand Singh
c/o Hemant Kumar Singh
Assam Rifles Public School,
Laitkor, Shillong-10

::: Petitioner

-vs-

1. The Union of India
represented by the Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Director General Assam Rifles,
Laitkor,
Shillong, Meghalaya.

3. The Deputy Director
(Records) HQ Directorate
General Assam Rifles,
Shillong.

4. The Commandant
Assam Rifles Training Centre &
School, Dimapur, Nagaland.

5. The Medical Officer,
Assam Rifles Training Centre and
School, Dimapur, Nagaland.

::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

Advocate for the Petitioner : Mr R Jha, Adv.

Advocate for the Respondents : Mr SC Shyam, CGC.

Date of hearing : 27.07.2012

Date of judgment and order : 10-09-2012

JUDGMENT AND ORDER

After hearing Mr. R. Jha, the learned counsel for the petitioner, and Mr. S.C. Shyam, the learned CGC appearing for the Union of India and others, the moot point in this writ petition is, whether the opinion of the Medical Board of the Assam Rifles will prevail over the opinions of the civilian hospitals such as Civil Hospital, Shillong of the Government of Meghalaya and North Eastern Indira Gandhi Regional Institute of Health & Medical Sciences (NEIGRIHMS) for disqualifying a candidate for the post of Recruit General in the Assam Rifles on the ground of medical unfitness?

2. The case of the petitioner in this writ petition is that he took part in the recruitment rally for Recruit General Duty organised by the Assam Rifles in the last week of April, 2010 at Danapur, Bihar, and handed over a provisional appointment letter along with a temporary unfit certificate of the concerned Medical Officer declaring him to be temporarily medically unfit due to an unhealthy tympanic membrane. He was accordingly advised to undergo medical treatment from a recognized Specialist of a Government Hospital/Medical College at his own cost. As per the standard norm followed in the Assam Rifles, a person who is declared to be temporarily unfit is given a chance to cure his illness by taking appropriate treatment within 42 days and obtain a fitness certificate. He accordingly got himself treated at the hands of the Specialist of the Civil Hospital, Shillong who, after examining him, found no sign of 'TYMPANOSCLEROSIS'. He had also undergone physical and audiogram examinations whereafter he was

declared as medically fit vide the Medical Report dated 2-6-2010 issued by the Specialist of Civil Hospital, Shillong.

3. It is the further case of the petitioner that on 19-6-2010, he received a call letter from the respondent authorities to report to the Assam Rifles Training Centre and School ("ARTC & S") along with all his Medical Certificates which declared him to be medically fit. He duly reported to the ARTCS, Danapur on 12-7-2010 and submitted the said medical report. On 19-7-2010, a final medical examination was held by the respondents at the ATCS, Dimapur in which the Medical Certificate of fitness produced by him was brushed aside, and he was issued Permanent Unfit Certificate and was asked to leave the ARTCS immediately. Disbelieving the Certificate, he got himself re-checked at NEIGRIHMS, Shillong, where the concerned ENT Specialist gave him a fitness certificate declaring him as medically fit and normal vide the medical report dated 2-8-2011. Based on this fitness certificate, he, therefore, submitted a representation to the respondent authorities on 11-8-2010 for re-considering his case, but this came a cropper. This is how this writ petition had been filed by the petitioner for redressal of his grievance.

4. The writ petition is opposed by the respondent authorities, who also filed their affidavit-in-opposition. It is emphasized by them the paramount importance given by them to the physical fitness of Assam Rifle personnel, and any shortcoming on the medical fitness of the Force personnel will entail discharge from the service and that too when such unfitness was detected soon after the recruitment in the force personnel. According to the answering respondents, the

petitioner attended the recruitment rally where he was found to be temporarily unfit on medical ground due to "B/L Tympanosclerosis Centrally place retraction pocket, erosion of TM with impending perforation". He was, however, selected as an additional candidate and was accordingly issued a provisional appointment letter subject to his being found fit in the final medical examination to be held at the ARTCS. As per the Compendium on Conduct of Recruitment Rallies issued by the Directorate-General of Assam Rifles on 15-4-2010, those with temporary disability will be given 42 days for remedy/correction of their ailment/disability and will obtain a certificate from the treating physician about their fitness status. It was stipulated that only a certificate from a Civil Hospital doctor will be accepted in the case of temporary unfit candidate as a proof of rectification. However, temporary unfit candidates will have to be examined by a final medical board at ARTCS. According to the answering respondents, the medical standard of the combatant personnel vis-à-vis a civilian employee is different. The certificate from the Civil Hospital may be accepted in case of temporary unfit candidates as proof of rectification, but they are required to be examined by the final Medical Board at ARTCS, whose decision is final.

5. It is also the case of the answering respondents that the final medical examination was conducted on the petitioner on 23-7-2010 at ARTCS, Dimapur where he was again found to be unfit due to "B/L Tympanosclerosis centrally placed retraction pocket, erosion of TM with impending perforation". According to the answering respondents, the certificate of the NEIGRIHMS or the Civil Hospital

grading him medically fit may be relevant for performance of routine official works but that cannot be acted upon for determination of the medical fitness of the petitioner for combatant duties as they are called upon to discharge the onerous task of combating insurgents. His representation was placed before the Appellate Medical Board at the headquarters of the DGAR where he was re-examined on 10-11-2010, but was found to be unfit due to B/L Tympanosclerosis. It is contended by the answering respondents that the Board of officers which constitutes the Medical Board are well-versed with the requirements and the medical standard for combatised person, and there are no vested interests as the Board of Officers is a neutral body, who were randomly selected by the DGAR to conduct the final examination of the recruits. They, therefore, vehemently deny that the disqualification of the petitioner on medical ground is mala fides and accordingly submit that the writ petition is devoid of merit and is liable to be dismissed with costs.

6. It is contended by Mr. R. Jha, the learned counsel for the petitioner that the respondents have acted illegally and arbitrarily in rejecting the candidature of the petitioner by taking recourse to false grounds. He further submits that there are many officers who have vested interests in the matter of appointment of applicants: competent candidates are eliminated while incompetent and undeserving candidates taken in by employing ignoble methods by some unscrupulous officers. According to the learned counsel, the petitioner is one such victim otherwise there is absolutely no reason for holding him ineligible on such flimsy ground, more so, when two

civilian hospitals of repute have certified that he is medically fit: he is thus subjected to hostile discrimination and arbitrary action. He, therefore, strenuously urges this Court to quash the impugned permanent unfit certificate dated 23-7-2010 and direct the respondent authorities to appoint the petitioner as recruit general duty forthwith.

7. The submissions of the learned counsel for the petitioner are strongly opposed by Mr. SC Shyam, the learned CGC appearing for the respondent authorities. It is his submission that the opinion of civilian hospital such as NEIGRIHMS or Civil Hospital is not binding upon the respondents as their opinions are subject to final examination by the Final Medical Board at ARTC & S and by the appellate Board if the petitioner is not satisfied with the findings of the Final Medical Board in accordance with the procedure laid down by the Compendium on Conduct of Recruitment Rallies as amended in 2010. The learned CGC also points out that as per the direction of this Court, a Review Medical Board was constituted by the respondent authorities to review the case of the petitioner and that the Review Medical Board vide its report dated 10-5-2012 was of the opinion that the petitioner is unfit. The learned CGC reminds this Court about the limited scope of interference by this Writ Court in the decision-making process of the para-military authorities. Moreover, argues the learned CGC, it is a settled law that the opinion of an expert body like the Review Medical Board must be given weight, value and credence by this Court, and should not be interfered with by this Court as this Court has no expertise to sit over the findings of the Medical Board. He further

contends that no material is furnished by the petitioner to substantiate the charge that his disqualification is tainted by mala fide: it is very easy to allege mala fide, but it is very difficult to prove. He, therefore, submits that no case is made out by the petitioner calling for the interference of this Court. To fortify his submissions, the learned CGC draws my attention to the decision of the Apex Court in ***Union of India v. Talwinder Singh, (2012) 5 SCC 480.***

8. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for the rival parties. At this stage, it should be noted that this court by the order dated 19-4-2012 observed that the petitioner needed to be examined by a Medical Board consisting of at least three doctors including qualified ENT Specialists who would submit their report to this Court on 8-5-2012. The Review Medical Board was accordingly constituted by the respondent authorities, who submitted the report of the Review Medical Board to this court on 18-6-2012 by additional affidavit. The report, which is at Annexure-A, shows that the Review Medical Board comprising of three members still found the petitioner to be "UNFIT". The constitution of the Review Medical Board does not appear to be in conformity with the procedure laid down in the Compendium on Conduct of Recruitment Rallies as amended in 2010. However, the composition of this Medical Board was not challenged by the petitioner, who only challenges their findings by filing a reply affidavit. It is now a settled proposition of law that ordinarily, the court should not interfere with the order based on the opinion of experts on the subject: it would rather be safe for the courts to leave it to the decision

of experts who are more familiar with the problems they face than the courts generally can be.— See **Talwinder Singh case** (*supra*). This is what the Apex Court said: (SCC p. 483-484, para 9, 10 and 11)

*"9. The issue involved herein is no more res integra. It is not in dispute that in case the injury suffered by a military personnel is attributable to or aggravated by military service after discharge, he becomes entitled for disability pension. It is also a settled proposition that the opinion of the Medical Board should be given primacy in deciding case of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Board. (See **Union of India v. Baljit Singh, Union of India v. Dhir Singh Chana, Controller of Defence Accounts (Pension) v. S. Balachandran Nair, Union of India v. Keshar Singh and Union of India v. Surinder Singh Rathore.**)*

*10. In **Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity**, this Court while placing reliance upon a large number of earlier judgments including the Constitution Bench judgment in **University of Mysore v. C.D. Govinda Rao** held that ordinarily, the court should not interfere with the order based on opinion of experts on the subject. It would be safe for the courts to leave the decision to experts who are more familiar with the problems they face than the courts generally can do."*

9. As warned by the Apex Court in **Tata Cellular v. Union of India, (1994) 6 SCC 651**, judicial power of review is exercised to rein in any unbridled executive functioning. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decisions. Apart from the fact that the Court is hardly equipped to do so, it would neither be desirable either. When the selection or rejection is arbitrary, certainly the Court would interfere. It is not, however, the function of a judge to

act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

10. In the instant case, the petitioner was yet again admittedly found to be unfit by an expert body like the Review Medical Board constituted by the respondent authorities, that too, in compliance with the direction of this Court; no further scrutiny of their findings is called for by this Court, more so, when the very composition of the Board is not under challenge. After all, I cannot sit in appeal over the opinion of an expert body, whose opinion, in the absence of evidence of demonstrated perversity, must be given due weight, value and credence by me. Resultantly, no case is made out by the petitioner for this Court to interfere with the impugned action of the respondent authorities.

11. For what has been stated in the foregoing, there is no merit in this writ petition, which is, accordingly, dismissed. However, on the facts and in the circumstances of the case, I pass no order as to costs.

JUDGE

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