

# THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C)No.(SH)221/2012

Mr.Somarajan M.K.  
S/o (L) M.K. Krishna Pillai,  
Seconds-in-Command (2IC),  
20<sup>th</sup> Battalion, the Assam Rifles,  
C/o-99 APO, PIN-932020.

:::: Petitioner

- Vrs -

1. The Union of India,  
Represented by the Secretary to the Govt. of India,  
Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Director General Assam Rifles,  
Mahanideshalaya (The Directorate General Assam Rifles),  
Shillong, Meghalaya, PIN-793011.
3. The Inspector General Assam Rifles, (South),  
[H.Q. I.G.A.R. (S)], C/o 99 APO, PIN-932555.
4. Mr.Diwan Singh,  
Commandant H.Q. 22 Sector,  
The Assam Rifles, C/o 99 APO,  
PIN- 932422.
5. Mr.C.K. Gurung, Commandant,  
The Assam Rifles Adm. Support Unit,  
Happy Valley, Shillong,  
C/o 99 APO, PIN-793007.
6. Mr.A.K. Rana, Commandant,  
Transit Camp, Imphal, IGAR (South),  
C/o 99 APO, PIN-934825.
7. Mr. N.K. Gurung,  
Commandant, 5 Sector,  
The Assam Rifles, Kohima,  
C/o 99 APO, PIN-934825.
8. Mr. Om Prakash,  
Commandant, 6 Sector,  
The Assam Rifles,  
Dimapur, C/o 99 APO, PIN

:::: Respondents

BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. HG Baruah, Adv  
For the Respondents : Mr. R Deb Nath, CGC  
Date of hearing : **30.07.2013**  
Date of Judgment & Order : **30.07.2013**

JUDGMENT AND ORDER(ORAL)

By this writ petition, the writ petitioner who is now Seconds-in-Command is assailing the order dated 21-4-2011 for canceling the promotion of the petitioner to the rank of Commandant w.e.f. 1-5-2011 on medical ground and sought for 4(four) reliefs:-

- i. For quashing the impugned Message No. A. 1450, dated 4<sup>th</sup> day of July 2012 issued by the Directorate General, Assam Rifles;
- ii. Direction to amend/modify the relevant portion of the impugned message No. A. 1439 dated the 21<sup>st</sup> day of April, 2011 and also quashing the impugned message No.A.1736 dated the 30<sup>th</sup> day of April 2012 issued by the Directorate General Assam Rifles.
- iii. to convene a review DPC mentioned in paragraph iii of the Govt. of India, Ministry of Home Affairs UO No. I/45024/1/2008-Pers-II dated 29-10-2008; and
- iv. to consider his promotion to the rank of Commandant w.e.f. 1-4-2012.

2. Heard Mr. G Baruah, learned counsel appearing for the petitioner and also Mr. Deb Nath, learned CGC appearing for the respondent No. 1, 2 and 3. None appears for respondent No. 4 to 8 inspite of proper service of notice to the present writ petition to them.

3. The petitioner was enrolled in the Assam Rifles on 30-5-1974 and he was commissioned as Assistant Commandant w.e.f. 8-2-1995 and promoted to the rank of Deputy Commandant w.e.f 1-4-2002 and thereafter he was further promoted to the rank of Seconds-in-Command w.e.f. 9-10-2006. He also completed 16 (sixteen) years 11(eleven) months in Group ‘A’ service as on 01-01-2012 and completed 5 (five) years 3 (three) months of service in the rank of Seconds-in-Command as on 01-01-2012. It is also stated that the petitioner had undergone many Army Courses including QMN-50 Course in the year 1989 and obtained ‘A’ grade and QM(O)-223 Course in the year 1996. Petitioner also further obtained ‘C’ grade from CMM Jabalpur and OTMC-01 Course in the year 2008 and obtained ‘CZ’ Grade from ASC School and College, Bangalore. The petitioner was also awarded many Decoration, Campaign Stars and Medals in consideration for his service. Some of the documents of Decoration, Campaign Stars awarded to the petitioner are:-

<i>Sl. No.</i>	<i>Decoration/Stars/Medals</i>	<i>Unit with which served at the time of award</i>
<i>1.</i>	<i>DGAR Commendation Card</i>	<i>26 AR</i>
<i>2.</i>	<i>GS Medal with Clasp Mizoram</i>	<i>18 AR</i>
<i>3.</i>	<i>GS Medal with Clasp NFFA</i>	<i>6 AR</i>
<i>4.</i>	<i>Police Special Duty Medal</i>	<i>6 AR</i>
<i>5.</i>	<i>Samanya Seva Medal with Clasp Manipur</i>	<i>24 AR</i>
<i>6.</i>	<i>50<sup>th</sup> Independence Anniversary Medal</i>	<i>24 AR</i>

The petitioner also served in the following units and formations as an AR Cadre Officer. The units and formations are quoted hereunder:-

<i>Unit</i>	<i>Fmn</i>	<i>Appt</i>	<i>Stn/Theatre</i>	<i>From</i>	<i>To</i>	<i>Total Period</i>
24 AR		Int Offr	Manipur	14 Feb 95	13Dec 95	10 M
-do-		LRO	-do-	14 Feb 95	26 Apr 96	04 M
12 AR		QM	Wokha Nagaland	27 Apr 96	29Nov 96	07 M
-do-		Coy Crd	-do-	30 Nov 96	31 Oct 97	11 M
24 AR		-do-	-do-	01 Nov 97	08Aug 98	10 M
3 AR		-do-	Manipur	12 Aug 98	27 Jan 01	02Y & 05 M
-do-		Adj/ QM	-do-	28 Jan 01	02Feb 02	01Y, 02M & 3 D

4. It is also stated that many juniors i.e. respondent No. 6 to 9 in the Grade of Seconds-in-Command of Assam Rifles had already been promoted to the rank of Commandant. By Message No. A 1405 dated 15-4-2011, the Directorate General Assam Rifles promoted the petitioner to the rank of Commandant w.e.f 1.5.2011, but surprisingly after some days, the Directorate General Assam Rifles issued the impugned Message No. 1493 dated 21-4-2011 for canceling the promotion of the petitioner to the rank of Commandant showing him as low medical category and allowed him to continue or accommodate as Seconds-in-Command. Being aggrieved by this Order, the petitioner approached this Court by filing the present writ petition.

5. While the petitioner was posted at Manipur, he had executed many hard duties and as a result, the petitioner had a minor stroke. For the medical treatment, the petitioner was hospitalized in the Command Hospital (EC) Kolkata, Kolkatta-27. The Medical Board issued a medical category of the petitioner as S1H1A1P4 (T-06) E1 for 6(six) weeks on 19-2-2011. It is the case of the petitioner that the petitioner's medical category of sick leave was only for 6(six) weeks. After the petitioner was fully treated by the Command Hospital, he

**"HOSPITAL (EC) KOLKATA, KOLKATA -27  
HOSPITAL DISCHARGE SLIP**

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6. Mr. HG Baruah, learned counsel appearing for the petitioner by referring to the certificate strenuously contended that the medical category of the petitioner at the time of discharging him from the Command Hospital was medical category SHAPE – (I)A and is fit for promotion to the higher post. The petitioner was subjected to the Medical Board on 26-12-2011. The Medical Board issued the re-categorization certificate of the petitioner dated 26-12-2011. The said re-categorization certificate of the petitioner by the Medical Board dated 26-12-2011 reads as follows:-

*“AUTN : ARCH SIG NO. A 8046 dated 17 Dec 2011*

*APPA III 10 ARO (Sic)  
In lieu of AMSF-15 A (See Para 9)*

*Ht : 174 Cm  
Wt : 72 Kgs.*

**MEDICAL BOARD PROCEEDINGS**  
**(RE-CATEGORIZATION OF ALL AR CADRE OFFICER/PERSONNEL)**

1. Name : **Somarajan MK** Place : **Unit Hospital, 20 Assam Rifles**

2. Service : No: **AR-199M** Date of Board : **26 Dec 2011**

3. Rank : **Comdt** 4. Trade : **Offr** Age: **53 Yrs.**

5. Unit : **20 Assam Rifles**

6. (a) Principal Disability : **1. POSTER CIRCULATION STROKE (LT) ATCA TERRITORY & PONTINE PARAMEDIAN BRANCHES**

(b) Other Disability : **2. HTN 3. Type-II DM**

(c) Previous medical category with date : **P3 (T-24) No.1 disability wef 30 May 2011**  
**P2(T-24) No-2 & 3 disability wef 28 May 2011**

7. Place and date of last board : **Unit Hosp 20 AR 25 DEC 2009**

8. Present condition : **Spl opinion attached**
9. (a) Category now recommended : **P2(T-24) disability No-1, 2 & 3.**
- (b) What is the category likely to be finally : **To be decided later on.**
- (c) Place and date of next board : **Unit Hosp on 30 May 2012 for disability 1, 2 & 3.**
- (d) Any recommendation as to Employment: **As per opinion attached & ARO 2/90**
- (e) Percentage of disability: **Not yet decided**
10. Order given to the indl by the President of the medical board: You are ugraded in Medical category P2(T-24) for six months for disability No-1 wef 04 Dec 2011 & P2 (T-24) for six months disability No-2 & 3 wef 30 Nov 2011 subject to the approval of the higher authority. Intervening period up to date of board **26 Dec 2011** to be considered as CAT P2(T-24) for disability **1,2& 3.**

Sd/- Illegible  
Signature of individual\_\_\_\_\_.

Presiding Offr : Sd/- Illegible

\_\_\_\_\_  
(MS-16260 Capt Ranganath Reddy PR, RMO 20 AR)  
20 Assam Rifles hospital  
Date : 26/12/1 APPROVING AUTHORITY  
MI ROOM Approved/Not Approved  
(Approval not required as per ARO 2/90 Para 16(a).”

7. In paragraph No.10 of the re-categorization certificate of the petitioner, it is clearly mentioned that the petitioner should be considered as Cat P2 (T-24) w.e.f 26-12-2011. From the said re-categorization certificate, it is clear that the petitioner’s medical category was Cat P2 (T-24). Ministry of Home Affairs issued a Memorandum being MIA/UO No.1-45020/32/01-Pers-II dated 8-8-2002 for instruction of medical category SHAPE (I)A for the purpose of promotion for CPMFs in medical examination of the individual personnel of the force. Under para No.18 of the said OM, there shall be relaxation on P-I SHAPE

(I) A Medical Category. Relaxation will be admissible to the 2(two) categories of CMPF. Para 18 of the memorandum read as follows:-

*“18. The relaxation in SHAPE-I Medical Category will be admissible to the following two categories of CPMFs personnel to the extent detailed below:-*

*(a) officials/personnel wounded/injured during war or while fighting against the enemy/militants/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classifications:*

*(i) Individual Low Medical Factors*

*(aa) H2 or E2 or P2 (Dental) which will be considered at par with SHAPE – I: and*

*(ii) Combined Low Medical Factors*

*(bb) H2 and E2 combined, and*

*(ab) H2 or E2 combined with A2, A3 or P2.*

*(b) Officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosives devices and due to accidents while on active govt. duty in India or abroad will be eligible for promotion in the following SHAPE categories:-*

- (i) S1H1A2P1E1*
- (ii) S1H1A1P2E1*
- (iii) S1H2A1P1E1*
- (iv) S1H1A1P1E2*
- (v) S1H2A1P1E2.”*

8. It is the case of the petitioner that under the said memorandum of instruction of the Home Minister, the petitioner is medically fit for consideration for promotion to the rank of Commandant after his medical category had been upgraded to P II SHAPE w.e.f. 26-12-2011. The Ministry of Home Affairs (PERs-II) issued the memorandum No. MSA UO. No. I-45024/1/2008-Pers/II dated 29-10-2008. The notification of the Ministry's UO No. I-145024/1/2004-Pers/II dated 31-7-2007 notified the revised instruction for medical examination and the qualification of personnel serving in the CPFs. III of the said UO dated



29-10-2008 clearly provides that Officers who had been put in lower medical classification by the Medical Board/ Review Medical Board of S1 H1 A1 P1 E1 S1 H1 A1 P2 E1, who are otherwise fit for promotion their suitability for promotion will be reassessed by a Board consisting of the Home Secretary as the Chairman, D.G. of the concerned Force, ADG (Med), MHA and a Specialist nominated by the DGHS, as Members. The relevant portion of the said UO dated 29-10-2008 is quoted hereunder:-

“Ministry of Home Affairs  
(Pers-II)

**Subject:- Health Care System in Central Para Military Forces  
– Instructions for medical examination and  
classification of personnel in CPMFs.**

*In partial modification of this Ministry's UO No. I-45024/3/2004-Pers-II dated 31.07.2007 regarding revised instructions issued for medical examination and classification of personnel serving in the CPMFs, it has been decided as follows:-*

- (i) *DG of the Force may consider an appeal against low medical categorization received from a member of the Force and order the Director (Medical) to constitute a Review Medical Board. The appeal must be accompanied with necessary documents and certificate from Government hospital stating that he/she is not suffering from the disease/conditions for which he/she has been categorized low. Specialists from relevant fields must be associated in the Review Medical Board, who may be from within the organization or outside the organization.*
- (ii) *The Force personnel above the age of fifty five year placed in the lower medical category of S1 H2 A1 P1 E1 (without hearing aid), S1 H1 A1 P1 E2 (dominant eye should not be worse than 6/9 with correction) and S1 H1 A1 P2 E1 (for dental reasons only) will be treated at par with medical category SHAPE-I and will be eligible for promotion to the higher ranks in a normal manner.*
- (iii) *As regards officers, who have been put in lower medical classification by the medical board/review medical board of S1 H1 A2 P1 E1 and S1 H1 A1 P2 E1, who are otherwise fit for promotion, their suitability for promotion will be re-assessed by a Board, consisting of the Home Secretary as the Chairman, DG of the concerned Force, ADG (Med), MHA and a Specialist nominated by DGHS, as*

Members. The Board will assess the suitability of the officer, who is otherwise fit for promotion, but is in the above mentioned medical categories, in consideration of the following parameters.

a) The officer is capable of performing the normal duties of the rank to which he is being promoted.

b) Any defect, disability or discomfort which the officer is suffering from is not likely to be aggravated by the service conditions.

c) The officers, assessed fit for promotion by the Board will be promoted to the next higher rank as per the recommendations of the DPC.

d) The Board's assessment will be final."

9. In the above factual backdrop, it is the case of the petitioner that since the petitioner is otherwise fit for promotion to the post of rank of Commandant as provided in para No. (iii) of the said UO dated 29-10-2008, the Board mentioned in the said para (iii) shall re-assess or shall re-consider the case of the petitioner for promotion to the rank of Commandant w.e.f. 26-12-2011, i.e. date from which the medical category of the petitioner is Cat P2 (T-24).

10. Mr. Deb Nath, learned CGC appearing for the respondent No. 1, 2 and 3 contended that the petitioner was temporarily unfit for duty because of his illness and his medical category was down-graded to CSI-SIAI P4 (T-06) EI only for a period of 6(six) weeks. From the submission of the learned CGC appearing for the respondent, there is no dispute regarding the certificate or re-categorization of the medical category of the petitioner issued by the Board dated 26-12-2011 wherein, it is stated that the medical category of the petitioner is Cat P2 (T-24) w.e.f. 26-12-2011.

**11.** From the foregoing discussions, it is clear that the petitioner is medically fit for promotion to the rank of Commandant w.e.f. 26-12-2011. Accordingly, the Board mentioned in para (iii) of the said UO i.e. MHA. UO.No. 1-45024/1/2008-Pers/II dated 29-10-2008 is directed to re-assess the case of the petitioner for promotion to the rank of Commandant within the period of 3(three) months from the date of receipt of a certified copy of this judgment and order and in case the petitioner is found fit for promotion to the rank of Commandant by the said Board, his promotion to the rank of Commandant shall be w.e.f 26-12-2011.

**12.** With the above directions, this writ petition is allowed.

**JUDGE**

S.Rynjah