

THE HIGH COURT OF MEGHALAYA

WA No. 17 of 2013

AR 234 Deputy Commandant,
SHRI S C DWIVEDI,
Son of (L) P.S. DWIVEDI,
Resident of 40th Assam Rifles,
C/o 99 APO.

..... Writ Appellant

-Versus-

1. The Union of India represented by the Secretary, Ministry of Home Affairs, Government of India, New Delhi.
2. The Directorate General of Assam Rifles, Laitkor, Shillong, Meghalaya-793010.
3. The Brigadier, (Pers.)
H.Q : Directorate General Assam Rifles, Laitkor, Shillong, Meghalaya.
4. The Inspector General Assam Rifles, Training Centre and School, ARTC & S. Shukhovi, C/O 99 APO.
5. The Colonel (Medical)
Medical Branch,
H.Q : DGAR, Laitkor, Shillong.

.....Respondents

Mr. R Jha, Advocate for the Writ Appellant.

Mr. SC Shyam, Sr. Advocate for Respondents.

Date of Hearing : 31.03.2014

Date of Judgment & Order : 31.03.2014

**HON'BLE THE CHIEF JUSTICE,
and HON'BLE MR. JUSTICE S.R. SEN**

(Oral : Hon'ble Prafulla C Pant, Chief Justice)

This writ appeal is directed against the order dated 25.04.13 passed by the learned Single Judge in WP(C) No. 68 of 2013 whereby the writ petition has been disposed of as infructuous.

2. Heard the learned counsel for the parties and perused the papers on records.

3. Briefly stated, the writ appellant is the Deputy Commandant, Assam Rifles who filed the Writ Petition No. 68 of 2013 for up-gradation of Low Medical Category to SHAPE-1 with a plea that he was being deprived to be part of the UN Mission Team. He relied on the Medical Board's Report in which he was found to be not suffering from any kind of illness. In Para-2 of the Writ Petition, he plainly stated that, he was illegally and arbitrarily being deprived to go for training to be part of the 4th U.N. Mission Contingent in Haiti.

4. It appears that vide letter dated 8.04.13, the learned Single Judge accepting prima facie version of the Writ Petitioner passed the following order which is reproduced as under :

“ WP(C) No. (SH) 68/2013

**BEFORE
THE HON'BLE JUSTICE T NANDAKUMAR SINGH**

08.04.2013

Heard Mr. R Jha , learned counsel appearing for the petitioner and Mr. SC Shyam, learned CGC appearing for the respondents.

By an order of this court dated 04.04.2013 , the respondents have been permitted to obtain instruction. The instruction so far received by Mr. SC Shyam, learned CGC appearing for the respondents is not clear and accordingly, Mr. SC Shyam learned CGC is directed to file a short affidavit especially to the allegation made by the petitioner in Annexure – VIII dated 23.02.2013. Wherein, it has been stated that as per convening order issued by the DGAR being No. VIII. 14039/Med – 5/UN Mission/2013/dt.13 Feb. 2013, the petitioner was subject to re – medical examination by a Board consisting of :-

*Presiding offr :- Dy. Comdt. Dr. Sughandh, SMO,
AR Hospital, Happy valley, Shillong*

*Member :- 1. Maj Rakhi, SO (2) Med, HQ DGAR
2. Capt. Dipankar, RMO 28 AR
(Att with 1 maint/constr coy), Shillong*

It has also been categorically stated that as per the findings of the said Board, the petitioner is not suffering from hypertension. This assertion of the petitioner is seriously controverted by Mr. SC Shyam, learned CGC. As stated above,

the learned CGC is directed to file a short affidavit in this regard within seven days from today.

As ad-interim measures, subject to this writ petition, the respondents are directed to allow the petitioner to be a part of the UN Mission Team for further training at New Delhi commencing from the second week of April, 2013.

The Respondents are further directed to issue Movement Order to the petitioner forthwith.

The Registry is directed to furnish a copy of this order to the learned counsel for the parties in the course of the day.

List this case again on 16.04.2013.”

5. Papers on records show that, in compliance with the above order, the respondent issued order dated 11.04.13 directing the writ petitioner to join for the training at Delhi in connection with the 4th U.N. Mission Contingent in Haiti but the writ petitioner on 15.04.13 gave his unwillingness certificate to the authorities concerned. A copy of the said document annexed with the Writ Petition is reproduced as under :

“UNWILLINGNESS CERTIFICATE

1. *Pl ref Sig No. A 1408 dt. 11 Apr 2013 and Hon’ble High Court of Meghalaya Interim order dt. 08 Apr 2013 on WP(C) 68/2013.*
2. *It is intimated that I hereby submit my unwillingness to join the 4th contingent for UN Mission in Haiti which has currently assembled at New Delhi for trg.*
3. *I have taken this step in view of the obvious unjust Medical Board which was held at Assam Rifles Composite Hospital at Sukhovi and continuous harassment thereafter caused by the said Medical Board to me. After this bitter experience at the hands held of Medical staff at Sukhovi, I cannot be the part of UN Contingent even though I have already proven of my med fitness at MH at Shillong under the second re-Medical Board convened vide your convening order letter No. VIII. 14039/Med-05/UN Mission/2013 dt. 13 Feb 2013.*
4. *Therefore, in view of the above, you are requested to take off my name from the list of pers provisionally selected for the above mention UN Msn.*

*Station : C/O 99 AP0
Dated : 15 Apr 2013*

*Sd/-
(S C Dwivedi)
Dy Commandant
21C for Comdt.”*

6. In view of the above un-willingness certificate given during pendency of this writ petition, by the impugned order dated 25.04.13, the learned Single Judge disposed of the Writ Petition with the following observations:

*“Mr. SC Shyam, learned CGC appearing on behalf of all the respondents produced the letter dated 17.04.2013 informing him that the writ petitioner vide his unwillingness certificate dated 15.04.2013 had expressed his unwillingness to join the 4th contingent for UN Mission in Haiti. He also produced a copy of the unwillingness certificate dated 15.04.2013 issued by the present petitioner. The copies of the said letter dated 17.04.2013 and unwillingness certificate dated 15.04.2013 are placed in the file of the writ petition and marked as **X/1** and **X/2** respectively for identification.*

In such circumstance, this Court is of the considered view that the cause basing on which the present writ petition is filed does not survive for consideration.

Accordingly, this writ petition is disposed of as infructuous.”

7. The learned counsel for the writ petitioner argued that the learned Single Judge has erred in law in treating the writ petition as infructuous for the reason that the writ petitioner had made only the following prayer in the writ petition.

“In the premises aforesaid, it is prayed that Your Lordship may be pleased to admit this petition, call for the records and issue a Rule calling upon the respondent to show cause as to why :

- i) A writ in the nature of certiorari and mandamus shall not be issued for passing necessary direction to the respondent authority in accepting the Medical Opinion of the Military Hospital dated 15th February 2013, which was given at the request of the respondent authorities whereby the petitioner was found fit and the report given by the Doctor of North Eastern Indira Gandhi Regional Hospital and Medical Sciences, Shillong was also authenticated and approved by the said Specialist;*
- ii) A writ in the nature of the Mandamus shall not be issued directing the respondent authorities to upgrade the Medical Category of the petitioner from Law Medical Category to SHAPE-1 as he is and pursuant to the report of the Medical Specialist and Medical Board dated 13th February 2013 for all purposes ;*
- iii) A writ in the nature of mandamus shall not be issued for setting aside Opinion of the Doctor S K Rama of Assam Rifles Composite Hospital, Sukhovi, dated 21st January 2013, being arbitrary, illegal and contrary to the records and findings of the Specialist of various Hospitals;*

Upon cause or causes shown by the respondents, and after hearing the parties, Your Lordship would be pleased to make the Rule absolute.

And

Such further and other order/orders, direction/directions shall not be passed as Your Lordship may deem fit and proper under the facts and circumstances of the case in the interest of justice.”

8. No doubt, the writ petitioner has made the prayer as above but from perusal of the contents of the writ petition, it is clear that the writ petitioner projected that he wanted to be part of the 4th U.N. Mission Contingent of the Assam Rifles and he was being deprived as he was shown Low Medical Category. In the report dated 21.01.13, a copy of which is annexed with the petition, it is reported that, due to high blood pressure detected during medical examination, for UN Mission, he was categorized and recommended to be placed in P2 (T-24).

9. Para-5 of the affidavit-in-opposition filed on behalf of the respondent before the learned Single Judge shows that, the writ petitioner earlier also was not inclined to perform hard duty as part of UN Mission Contingent. The said affidavit-in-opposition is reproduced below :

“5.That the petitioner has alleged malafide, arbitrary etc against the respondents with total disregard to the fact that in response to the signal dated 26.09.2012 seeking his consent for inclusion in the UN contingent, the petitioner vide his letter dated 28.09.2012 has expressed his unwillingness to avail the said opportunity. But the respondent considering that such opportunity comes very few and far between persuaded the petitioner to join the contingent which besides giving him financial benefits will facilitate further promotion in the force.”

10. In view of the above fact stated in Para-5 of the affidavit-in-opposition read with fresh un-willingness certificate after this Court has allowed the writ petitioner to be part of 4th UN Mission Contingent reflects that the writ petitioner wants to remain in SHAPE-1 Medical category for the purposes of his service benefits but whenever he is

required to perform duty as a part of UN Mission Contingent, he submits his un-willingness certificate.

11. In the above circumstances, we do not find any illegality in the impugned order passed by the learned Single Judge in disposing of the Writ Petition No. 68 of 2013 as infructuous on the basis of the unwillingness certificate dated 15.04.13 given by the writ petitioner/appellant to the respondent authorities even after learned Single Judge accepted plea of the petitioner to consider Medical Board's Report relied by him. Therefore, this Writ Appeal is dismissed.

(Hon'ble Mr. Justice S.R. Sen)
JUDGE
31st March 2014

(Prafulla C Pant)
CHIEF JUSTICE
31st March 2014

V. Lyndem