

# THE HIGH COURT OF MEGHALAYA AT SHILLONG.

**W.P.(C) No. 264 of 2010**  
**WITH MC(WP(C)) No. 401 of 2010**

Shri Radha Mohan Yadav,  
114404 H Havildar,  
11, Assam Rifles, F. Coy,  
C/o 99 APO, Manipur

..... Petitioner

-Vrs-

1. The Union of India  
Through the Secretary to the  
Government of India,  
Ministry of Home Affairs,  
South Block, New Delhi-110001

2 The Director General,  
Assam Rifles,  
Shillong-1

3. The Commandant,  
11, Assam Rifles,  
C/o 99 APO

..... Respondents

**BEFORE**  
**THE HON'BLE MR JUSTICE SR SEN**

For the Petitioner : Mr. M. Chanda, Advocate

For the Respondent s : Mr. S. C. Shyam, Sr. Advocate

Date of hearing : **27.02.2014**

Date of Judgment & Order : **27.02.2014**

JUDGMENT AND ORDER (ORAL)

This instant writ petition is directed against the re-commendation for medical examination of the petitioner and subsequent re-commendation of the medical board which is at Annexure-IV of the writ petition.

2. The petitioner's case in a nutshell is that:

***"The writ petitioner challenges the impugned order dated 28.04.2010 whereby Release Medical Board (RMB) recommended the name of the petitioner for release from service due to his placement in Low Medical Category i.e. P2 (Permanent), whereas in as much as 54 personnel of the same unit/battalion who were placed in low medical category P2 (Permanent) and suffering from more complicated diseases has not been referred before the release medical board, rather those 54 personnel of the unit have been allowed to continue in service by the Commandant of the unit, moreover large nos. of personnel of the same unit who are even placed in Low medical category i.e. P3 (Permanent) also allowed to continue in service without refereeing them to the release medical board, as such petitioner is meted out with hostile discrimination and such action of the respondents also in violation of Article 14 of the Constitution. Hence the writ petition".***

3. The learned counsel for the petitioner, Mr. M. Chanda submits that, in this case, though there are 72 Assam Rifle personnel in shelter employment, but, unfortunately for the reason best known to the respondent, the petitioner Radha Mohan Yadav was picked up and recommended for medical examination and during medical examination he has been placed to P-2 (Permanent). The petitioner is in apprehension that he may be discharged from the service as he was the only one who has been picked up from the medical board, so the instant writ petition has been moved.

The learned counsel further contended that there are 72 personnel who are suffering with a different disease and ailment, but still they are continuing in service and referred to the re-commendation of the medical board and the affidavit in reply and its Annexure-B at page 9, 10 and 11 wherein, it is shown that 72 personnel are suffering with different diseases. Therefore, the learned counsel argued that the re-commendation of the petitioner to the medical board is purely arbitrary and discriminatory.

In support to his submission, the learned counsel relied on ***(2008) 10 SCC page 139 Uttar Pradesh Power Corporation Limited versus Ayodhya Prasad Mishra & Another.***

4. In reply, the learned Sr. counsel, Mr. S.C. Shyam appearing for and on behalf of the respondent submitted that the Assam Rifle is a defence unit where a person needs to remain healthy and fit, which is called 'SHAPE-1' but since the petitioner is suffering from permanent hypertension, he has been re-commended for medical check up vide re-commendation letter dated 28.04.2010, as such, there is nothing wrong in it.

5. I have perused the re-commendation of the medical board dated 28.04.2010 and also perused carefully Annexure-B page 9, 10 and 11 annexed with the affidavit in reply where I have noticed that around 72 personnel are in shelter employment and suffering from different diseases including primary hypertension. In serial No. 35, I have noticed one Pradeep Kumar who is suffering from Gouty Arthritis, primary hypertension. Therefore, after scrutinizing the record and taking into consideration the submissions advanced by the learned counsel at Bar, I feel that the petitioner has been discriminated by re-recommending alone to the medical board. I could not understand for what reason the petitioner had to be picked up leaving behind all other 71 personnel who was also in shelter employment.

It is a settled principle of law that no discrimination should be made to any person which is a constitutional right of a person under Article 14 of the Indian Constitution.

6. In the case of ***Uttar Pradesh Power Corporation Limited versus Ayodhya Prasad Mishra & Another*** at para 36, the Hon'ble Apex Court has observed as follows:

***“36. It is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations”.***

7. After considering the record before me, as well as the submissions of the learned counsel, I find that in this instant case, the petitioner has been singled out which our constitutional provision does not allow. Therefore, I hereby set aside the impugned re-commendation dated 28.04.2010 at Annexure-IV of the writ petition.

8. With these observations and directions, this instant writ petition is allowed and the matter stands disposed of.

**JUDGE**

*D. Nary*