

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) No. 331 of 2012

Sayeed Amitab Ahmed

S/o Sayeed Yaken

Village : Sahpur

Post Office : Ahmedabad,

Police Station: Baghwala

Tehsil : Sader Etah

District : Etah, Uttar Pradesh

..... Petitioner

-Vrs-

1. **The Union of India,**
Represented by the Secretary
To the Government 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

..... Respondents

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

For the Petitioner : Mr. B.K. Deb Roy, Advocate

For the Respondent : Mr. R. Debnath, Advocate

Date of hearing : **26.03.2014**

Date of Judgment & Order : **26.03.2014**

JUDGMENT AND ORDER (ORAL)

This instant writ petition is placed before this court challenging the medical unfit certificate issued by the Medical Officer, Capt. Narendro Yadav on 04.12.2011.

2.

The petitioner's case in a nutshell is that:

“By an advertisement dated the 27th day of June, 2011, published in the ‘Rozgar Career India’ [said advertisement is available in web: www.assamrifles.gov.in] the Directorate General Assam Rifles invited application from the citizen of India to fill up the 76 vacant posts of Havildar (Clerk) in Assam Rifles. The total vacancies notified for Uttar Pradesh is 16. On 12/07/2011, the petitioner duly applied to the respondent authorities in the prescribed format for the post of Havildar (Clerk). The Directorate General Assam Rifles by a letter No. Rec-SB/Adm-II/2011, dated the 23rd day of July, 2011, advised the petitioner to report to the Presiding Officer, Recruitment Selection Board at Veterinary Science Sports Ground, Guwahati on 15/09/2011 at 05.00 am. Accordingly, the petitioner deposited the required documents and appeared in the Physical Standard Test and Physical Efficiency Test in the schedule date and completed successfully the said test as stipulated in the advertisement. It is pertinent to mention herein that the petitioner belongs to OBC category. Having qualified in the Physical Efficiency Test and Physical Standard Test and as per directions of the respondent authorities, the petitioner appeared in the Written Examination held at Guwahati. The Directorate General Assam Rifles by a letter No. 1. 12016/Rect-SB/Adm-II/2011 dated the 9th day of November, 2011, informed the petitioner that he has been qualified in the Written Examination and further directed him to report Trade Test at the Assam Rifles Training Centre & School, Dimapur on 02/12/2011 at 0700 hrs. Accordingly, the petitioner appeared in the Trade Test and qualified himself in the Trade Test. After qualifying in the Trade Test as per directions of the respondent authorities, the petitioner appeared in the Medical Examination Test on 04/12/2011 to assess his suitability/fitness for appointment as Havildar (Clerk) and the Medical Officer declared him unfit showing Varicose Veins (which is ground of temporary rejection as per Appendix E of the Compendium on Conduct of Recruitment Rallies of Assam Rifles). The petitioner enclosing ‘Medical Fitness Certificate’ dated the 9th day of December, 2011,

issued by the Chief Medical Superintendent, District Malkhan Singh Hospital, Aligarh filed an appeal addressing the Directorate General Assam Rifles for his Appeal Medical Board Examination. By a letter No. 1. 12016/23/Tech/2012 Admn-II/51, dated the 10th day of February, 2012, the Directorate General Assam Rifles informed the petitioner that his request for Appeal Medical Board Examination has been accepted and advised him to report to the Medical Inspection Room, Assam Rifles Construction and Maintenance Company, Shillong on 12/03/2012 at 08.00 hrs. In the 'Medical Fitness Certificate' dated the 9th day of December, 2011, the Chief Medical Superintendent, District Malkhan Singh Hospital, Aligarh clarified it that declaration of the petitioner as medically unfit showing Varicose Veins by the Medical Officer of Assam Rifles in an Error of Judgment and further declared him as medically fit. The petitioner accordingly on 12/03/2012 at 08.00 hrs appeared in the Medical Inspection Room, Assam Rifles Construction and Maintenance Company, Shillong and produced the letter dated the 10th day of February, 2012 as per instruction contained in paragraph 3(three) of the said letter for his Review Medical Examination but the office of the Assam Rifles Construction and Maintenance Coy, Shillong issuing a slip send the petitioner to Wood Land Hospital, Dhankheti, Shillong which is a private Nursing Home to do Color Doppler of both of his knees instead of sending him to a Government Hospital where he was asked to deposit Rs. 5000.00 (Rupees five thousand) only, due to not having such an amount at that time with him, the petitioner came back to the Assam Rifles Construction and Maintenance Coy, and informed the Medical Officer about the situation he faced but the Medical Officer just express his inability. He is an unemployed youth and he belongs to Below Poverty Line Family, failed to deposit Rs. 5000.00 (Rupees five thousand) only in the Wood Land Hospital, Dhankheti and having no alternative he moved to his native village i.e. Sahpur, Ahmedabad. The respondent authorities instead of sending him to do Color Doppler in a Government Hospital (such facilities is available in a modern city like Shillong),

send him to a private Nursing Home viz, Wood Land Hospital, Dhankheti, Shillong immediately after reaching his native village, the petitioner on 22/03/2012 attended Aligarh Muslim University, Aligarh and deposited Rs. 1000.00 (Rupees One thousand) only and got done Color Doppler. The ultrasound/Color Doppler Section, Department of Radio Diagnosis of Aligarh Muslim University, Aligarh handed over the report dated the 23rd day of March, 2012 to the petitioner on that very same date. The petitioner on 26/03/2012, send the said report to the Directorate General Assam Rifles by post for the necessary action of the Directorate Assam Rifles. The finding of the said report is reproduced below as ready reference:

“IMPRESSION: Findings are suggestive of Normal B/L Lower Limb venous system.”

On 29/05/2012, the Counsel for the petitioner Mr. Munesh Kumar Sharma send a legal notice to the Directorate General Assam Rifles and asked him to appoint the petitioner but no reply has been received by the petitioner and or by his Counsel from the end of the Director General Assam Rifles. The Directorate General Assam Rifles cannot send the petitioner to do Color Doppler to Wood Land Hospital, Dhankheti, Shillong which is a private Nursing Home as the said facilities is available in every Government Hospital of Shillong, East Khasi Hills”.

3. The learned counsel, Mr. B.K. Deb Roy appearing for and on behalf of the petitioner submits that the petitioner was declared medically unfit not in accordance with the provision of the rules framed by the Government of India. The learned counsel also argued that the petitioner was qualified in the written examination, but found unfit during medical examination.

The learned counsel further contended that as per the fitness certificate issued by the Chief Medical Superintendent, District Malkhan Singh Hospital, Aligarh, the petitioner is found medically fit. So, necessary directions may be issued.

4. On the other hand, the learned CGC counsel, Mr. R. Debnath appearing for and on behalf of the respondent submits that the petitioner was

taken for further specialized check up, but he refused to go for further check up and brought the certificate before the court issued by the Chief Medical Superintendent, District Malkhan Singh Hospital, Aligarh.

5. After hearing the submissions advanced by the learned counsel at Bar, I am of the opinion that a person who intends or desire to join in the Army or Para military force, they need to be physically fit as they are required to do some specialized job for which a physical fitness is a must. It is immaterial that a person qualified in the written examination will entitle him to join the Army or Para military force. Physical fitness is a part of examination to qualify oneself to join the Para military force or Army. Since Annexure-IV at Page 17 unfit certificate clearly says that, the petitioner is unfit due to certain diseases. Accordingly, I find no scope to interfere with the certificate. Hence, this instant writ petition is dismissed and stands disposed of.

6. No order as to costs.

JUDGE

D. Nary