

THE HIGH COURT OF MEGHALAYA

WP (C)No.74/2014

AR-282 K Ram Bahadur Sunar,
Assistant Commandant,
Assam Rifles Training Centre and School,
Shokhuvi, Dimapur, Nagaland, Pin-797115 :::: Petitioner

- Vs-

- 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)
Meghalaya, Shillong, Pin – 793010.
3. The Director (Medical),
Mahanideshalaya
The Directorate General Assam Rifles
Meghalaya, Shillong, Pin – 793010.
4. The Staff Officer-2 (Medical),
Mahanideshalaya
The Directorate General Assam Rifles
Meghalaya, Shillong, Pin – 793010. :::: 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 : **19.02.2015**
Date of Judgment : **10.03.2015**

JUDGMENT AND ORDER

Heard Mr. HG Baruah, learned counsel for the petitioner and
Mr. R Deb Nath, learned CGC appearing for the respondents.

2. By this writ petition, the petitioner is approaching this Court for
a judicious decision of his case. The matter in disputes between the parties is

as to the procedure of regaining medical category of the petitioner as Shape-1 w.e.f. 24.10.2013. The parties stated that “Health Care System in Central Para-Military Forces” containing the instructions for medical examination and classification of personnel serving in the CPMF was issued vide MHA U.O. No. I.45024/3/2004-Pers-II dated 31.07.2007. The matter in issue in the present writ petition is to be decided on the basis of the said MHA U.O.; it will be more profitable to quote the relevant portions of the said MHA U.O. hereunder:-

“HEALTH CARE SYSTEM IN CENTRAL PARA-MILITARY FORCES
INSTRUCTIONS FOR MEDICAL EXAMINATION AND CLASSIFICATION
OF PERSONNEL SERVING IN THE CPMF

(Issued vide this Ministry’s U.O. No. I.45024/3/2004-Pers-II dated 31/07/07)

APPENDICES

- A. Declaration to be obtained from individuals before medical examination.*
- B. Health card format.*
- C. Proforma of medical examination report.*
- D. Proforma for certificate to be produced by an appellant challenging the findings for the AMA/Medical board for review.*
- E & F. Age and Height wise standard weight nomograms for male & female.*

AIM

This order lays down instructions/Procedures for carrying out annual medical examination and classification of combatised Officers and other Personnel serving in the Central Police Forces.

2. *This order supersedes all existing instructions on the subject and is laid out in following parts:*

- | | |
|-----------------|--|
| <i>Part-I</i> | <i>Policy of Medical Examination and classification</i> |
| <i>Part-II</i> | <i>Instructions and Procedure for Medical classification</i> |
| <i>Part-III</i> | <i>Disposal of various Medical Board Proceedings</i> |

PART-I

POLICY OF MEDICAL EXAMINATION

3. GENERAL

The object of Medical Examination is for timely detection of any disease or infirmity when it may still be in a latent (sub-clinical) stage for early intervention with preventive and curative measures to promote positive health. This will not only make the personnel health conscious but also enhance their physical ability, professionalism and alertness, so vital for Armed Forces, particularly engaged in internal security duties in the prevailing security scenario. Our Officers and men must be composed and healthy to face any challenge in order to preserve unity and integrity of the country, to protect life and property of citizens while simultaneously defending themselves with agility and valor. To expect troops to remain healthy and efficient, its leaders must be examples to lead the way while working shoulder to shoulder with their personnel.

Therefore, all the combatised personnel and officers of all cadres and ranks, will be subjected to medical examination periodically every year. If a CPF personnel is on deputation to an organization he should get his AME done at that organization only; however if infrastructure/MO is not available in that organization, he can get his SHAPE categorization done in his parent organization. It will be rather their own responsibility to get their own AME carried out in time. The annual medical examination (AME) up to NGO level will be carried out by their respective authorized medical attendant (AMA) of the unit or in his/her absence, by an MO/SMO/CMO, detailed by the concerned D.I.G. (Medical)/Frontier Medical Officer in case of BSF, CMO I/C of administrative CH/GC Hospital in case of CRPF/CISF/SSB and the Sector Medical Officer in case of ITBP. For routine investigation and treatment, the individual will depend on his/her AMA and the nearest unit/Composite/Frontier/Sector Hospital of the respective Forces or, in its absence, under the AMA's supervision, at the nearest CH of any CPF/Govt. hospital to which is AMA refers him officially.

For G.O.s, AME will be carried out by a Board of two doctors one of whom may be from outside unit of the same force. The Board will be detailed by IG (Medical)/DIG (Medical)

Annual Medical Examination (AME).

ANNUAL MEDICAL EXAMINATION

4.1 A declaration *from the individual in proforma as in appendix-'A' is to be obtained from Officers each time before AME. In case of others, such history will be obtained by the*

AMA himself and only a gist will be recorded in individual's health card/proforma. Thereafter, **a complete physical & clinical examination** will be done and **appropriate investigations** as indicated in proforma (appendix-'C') will be carried out.

4.2. The details of findings, including the medical advice if any, will be entered in the individual health card of officers and personnel along with proforma as in appendix-'C'.

4.3 In case the AMA/Board feels that some more investigation/treatment is required, reference may be made to the nearest CPF/Govt. hospital, where such facilities are available. Although the AMA/Board would take such reports/opinions into consideration, but **the Board's/AMA's independent opinion and decision on the matter will be final.** The AMA/Board will suitably advise the Officer/personnel if a very minor disability is noted while recording the same in the report as well as Health Card.

4.4 If the AMA of personnel (NGO) is of the view that the existing medical category of any one needs to be changed, he will refer the case with justification to the nearest CPF Composite hospital with prior approval from its DIG (Med) or hospital I/Cs. In case of non-availability of a Specialist in the concerned field in the said hospital, the MO I/C may detail any experienced Medical Officer not less than the rank of CMO (OG) to undertake an initial assessment of the Officer. Medical category of an individual can be down-graded 9 Temporary or permanent) by a duly constituted medical Board. The AMA alone of the unit is competent to downgrade the category to temporary LMC for a period of 3 months with adequate justification placed in record. Also up gradation of temporary LMC cases or further continuation in the existing LMC can be done by the AMA on the basis of specialist's opinion. However, all such cases shall be put up to the inspecting medical authority during annual inspection of unit/GC hospital for perusal. For officers board so detailed will be competent to down-grade the officer but this board should take specialists opinion into consideration while reaching to a conclusion.

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4.10 Procedure for AME:

a. The individual officer/personnel undergoing AME will ensure availability of his/her original Health card and previous year's AME in proforma 'B' duly certified, while reporting for AME. No fresh/new health card will be opened unless a COI has been conducted and responsibility fixed for loss of the previous health card to the satisfaction of the individual's Controlling Officer.

b. The examining Medical Officer/Board will endorse the medical categorization on completion of AME. The M.O./Board

will also enter the findings/remarks in a register to be maintained at the unit/hospital level for record.

c. When ever an individual is already in temporary low medical category (LMC) in any factor of SHAPE system at the time of AME and his re-categorization medical board is due within next 3 months, the AME will be suitably advanced so that both are carried out together. If the gap is 6 months or more, both will be held independent of each other.

d. The medical category in AME will remain valid for one year unless his/her medical category has been changed, consequent upon disease or injury subsequently. In that case, the changed grade will prevail till next AME or reclassification if recommended earlier for temporary LMC.

e. Officers on deputation with other Govt./PSUs at Delhi will have their AME got done at their respective Force CH/Station Hospitals at Delhi. Others, who are away from Delhi, will get the same done at the nearest respective CH of any CPF, applying in advance through their administrative authorities.

f. The previous year's AME report will be made available to the AMA/Medical board as the case may be, by the unit. It will insist this from the previous unit at the time the member of Force is received in the unit on transfer/attachment. In case the report is not received, the unit will demand the same in advance, much before AME.

g. The body weight will be checked as per the chart given in appendix-'E'/F'. Those found over weight, will be disposed of as per guidelines in Part-III 23.5 (e).

4.11 Authority

The concerned Unit/Office in which an individual is posted when due for AME will initiate it in a planned manner, taking up with the Medical authority of the concerned hospital as indicated in Para 4.15 below during January every year. The same will be done by the Force Directorate (Pers branch) for Officers/personnel on deputation to other organizations. All are required to be examined system wise with greater clinical details, including ECG, Chest X-Ray, GTT, lipid profile, RFT etc for all men; and USG abdomen, Gynecological check-up for ladies in addition, as per requirement. Services from other nearby Govt. hospital may be obtained in case facilities are not available at own Force hospital subject to the condition that these are carried out in presence of at least one of the board members. The findings will be recorded in proforma 'C'. It is the responsibility of the individual as well as the concerned unit Head to ensure that AME is held in time.

4.13 Mandatory for the purpose of promotion

Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those, whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature, after considering their cases for promotion alongwith others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However, they will retain their seniority.

5. PROCEDURE FOR MEDICAL CLASSIFICATION

5.1(a) General:

These instructions contains procedures for medical classification/re-classification of the combatised officers and other personnel of the C.P.F., including combatised deputationist, medical, signal and ministerial members of the Forces.

5.1(b) AIM:

The aim of such classification is basically to indicate the functional capacity of Force personnel for better cadre management; while encouraging them to maintain their general health at an higher attainable standard and adhere to regular treatment, follow up by the LMC personnel, due incentives are embedded in the system for those maintaining their health and disincentives for those who do not. A regular and compulsory health check-up is bound to result in early detection and timely treatment of diseases/disabilities drastically reducing morbidity and mortality in the Force while enhancing efficiency.

5.2 PROCEDURE FOR MEDICAL RE-CLASSIFICATION

(a) Personnel put on low-medical category are required to be reviewed/reclassified. The responsibility to bring such Officers/personnel before the AMA/reclassification board lies with the concerned unit/establishment. No prior approval is required for holding such reclassification as the concerned hospital/AMA is already in picture about the expected date of review while conducting the earlier classification. In case of delay for more than 60 days, prior approval of the Medical Officer in-charge/DIG (Medical) of the concerned administrative Frontier/GC/Sector in the case of Ors; and of I.G. (Medical) of

the nearest 100 bedded CH in case of GOs will be taken, forwarding him the details of the case with cause of delay.

(b) However the previous LMC category will continue to operate the individual during the entire period till the date of reclassification. In case of negligence on the part of the individual, the concerned DIG (Medical) or I.G. (Medical) as the case may be, will refer the matter to the unit commandant in case of UOs/Ors, to the range DIGP in case of SOs and to the Sector IGP in case of GOs to take adequate actions. On receipt of condonation, the concerned AMA/Medical board will cover up the delay period by the same medical category as it was operative prior to the due date and award fresh category for 24 weeks temporary/permanent or upgrade depending on the current status of the case.

14. Follow-up of personnel placed in low medical classification:

Personnel placed in LMC are required to be kept under constant medical supervision with a view to ensure that there is no deterioration during the period of LMC and that the treatment as well as other medical advice is regularly followed by the individual. The follow-up will be ensured as under:

a) The concerned Unit/GC hospital will maintain a register of all LMC personnel on posted strength of the unit and the unit Commandant will provide all the required informations to the AMA. Such information will be sent to the MO I/C of the concerned Adm-frontier/GC/Sector by the unit Commandant where no medical officer is posted.

b) The AMA will make schedule for medical examination of all such personnel, call or visit them from time to time, enter their personal particulars, nature of disability, medical category and the date of next review in a register which will have separate page for each individual. In case of new arrival of LMC cases in the unit, the information will be forwarded by the H.O.O. within one week to the AMA for entry into the register.

c) The register will be perused by the unit MO/AMA during first week of every month along with the individuals in LMC, to complete all entries. It will be ensured that reclassification medical board is held on due date. In the remark column, every entry will be made regarding the due date for review, any further investigation required, treatment advised and the follow up action required to be taken. Specialist's consultation will be taken from the nearest Force/Govt. hospital if required by AMA.

d) A separate case sheet will also be raised in r/o each individual placed in LMC for monthly follow up. Entries will be made in separate columns such as – physical condition, clinical findings, response to treatment, modification of treatment if done, investigation results, Specialist's opinion if taken and progress of the case.

e) Required investigations will be carried out and expert opinion required if any will be obtained well in advance before the date of next review.

f) When an individual in LMC posted out from the unit, all medical documents will be forwarded by the Commandant to the next unit with a request that these documents be handed over to the AMA of new unit.

g) Inspecting/visiting Medical Officers during their visits will check that such registers and case sheets are properly maintained.”

3. Under Para 4.13 of the said MHA U.O., the medical category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. As and when they regain their SHAPE-I medical category, they shall be promoted as per the recommendation of the DPC. But they will not be entitled to back wages. However, they will regain their seniority. The petitioner was commissioned as Assistant Commandant w.e.f. 19.03.2007. The Govt. of India, Ministry of Defence vide letter No. A/45101/VCC/AD-10/MS(X) dated 14.01.2010 awarded “Chief of Army Staff Commendation Card” on the occasion of Army Day 2010. The petitioner passed the promotion examination Part ‘X’ in the month of February, 2010. The petitioner also had successfully attended “Junior Command Course” held at Army War College Mhow from 18.07.2011 to 24.09.2011 and also participated in the “Tractics-40 Courses” organized at Sardar Vallabhbhai Patel National Police Academy, Hyderabad from 03.06.2013 to 14.06.2013. The petitioner also passed promotion examination Part ‘Y’ and ‘Z’.

4. The Director General of Medical Services (Army) vide letter No. 76893/DGM-5B dated 03.11.1999 circulated to all Assam Rifles HQs, Units and Sub-Units signed by Col Anjani Kumar, Col Med HA DGAR, Shillong and vide their letter No. VIII.13084/Med-03/2013 dated 21.02.2013 clarified that Assam Rifles personnel can avail medical treatment both indoor as well as

outdoor from the Armed Forces Service Hospital wherever treatments from their own service hospital/State Govt. hospital are not available as per Paragraph 3 of the MHA U.O. No. I.45024/3/2004-Pers-II dated 31.07.2007 (Health Care System of Para-Military Forces) and also that for Gazetted Officers (G.O.s) AME will be carried out by a Board of two Doctors one of whom may be from outside the unit of the same force.

As per Paragraph 4.3 of the aforesaid Health Care System in case AMA/Board feels that some more investigation/treatment is required, reference may be made to the nearest CPF/Govt. hospital, where such facilities are available. Although, the AMA/Board may take such reports/opinions into consideration, but the Board/AMA's independent opinion and decision on the matter will be final.

As per Paragraph 5.2 of the aforesaid Health Care System, the personnel put on Low Medical Category are required to be reviewed/reclassified. The responsibility to bring such officers/personnel before AMA/reclassification board lies with the concerned unit/establishment. No prior approval is required for holding such reclassification as the concerned hospital/AMA is already in picture about the expected date of review while conducting the earlier classification.

As per Paragraph 5 and 10 of the Directorate General Assam Rifles (Medical Branch) letter No. VIII.19022/Med-6/Policy/2003 dated 17.02.2003, the board can refer the concerned Gazetted Officer (G.O.)/concerned person to the nearest Military/Civil hospital for opinion by a Specialist. Based on the medical category recommended by the Specialist, the person shall be brought before the medical board. Further, as per Paragraph 14 (c) of the aforesaid Health Care System, the Specialist's consultation will be taken from the nearest Force/Govt. hospital, if required, by the Authorized Medical Attendant (for short 'AMA').

5. The Assam Rifles personnel can avail medical treatment in any Army Service Hospital wherever treatments from the Assam Rifles Service Hospital/State Govt. Hospital is not available. In the North Eastern Region, there are well equipped Govt. Hospitals (premiere medical institutes) namely:

- (a) Gauhati Medical College (Hospital) Guwahati, Assam;
- (b) Assam Medical College, Dibrugarh, Assam;
- (c) Silchar Medical College Hospital, Silchar, Assam and;
- (d) Regional Institute of Medical Science (RIMS), Imphal, Manipur.

The Assam Rifles Composite Hospital is the biggest service hospital of Assam Rifles and Dr. K. Nikishe Sumi, MS, (Gen, Surgery) is the Specialist Medical Officer (SMO) of the said Assam Rifles Composite Hospital appointed by the Directorate General Assam Rifles for medical examination/evaluation/opinion. In the month of October, 2008, the petitioner was admitted in the Urovision Hospital, Dibrugarh for treatment of abdomen pain and URS with PNEUMATIC LITHOTRIPSY was done on 07.11.2008 followed by 2nd stage URS with Dj stenting done on 14.11.2008 and diagnosis: 'left sided lower ureteric calculus with (OPTD) with DJ stent in situ'. Thereafter, the petitioner was discharged from hospital and he joined his normal duty at 29 Assam Rifles at Tengnoupal, Manipur. After joining the unit, he reported the case to the Authorized Medical Attendant (AMA) i.e. Unit Hospital of 29 Assam Rifles. After open surgery on 26.12.2008, the First Medical Board dated 30.06.2009, recommended P3 (T24) and opined that the said disability contracted in service due to stress and strain directly attributable to condition of service. The relevant portion of the opinion of the Medical Board is reproduced for easy reference:

“OPINION OF THE BOARD

PART-II

1. Was the disability contracted in service? YES	2. Was it contracted in the circumstances over which he had no control? YES
3. Is it directly attributable to condition of service? YES	4. If so by what specific condition: DUE TO STRESS AND STRAIN”

6. The Medical Board dated 09.10.2009, declared the petitioner as medical category P2 (P) for two years w.e.f. 23.09.2009 and the Medical Board again held at 18 Assam Rifles on 18.12.2011 and the said Medical Board fixed the date for review Medical Board of the petitioner on 13.10.2013. The petitioner on 08.10.2013 for medical reclassification attended the Authorized Medical Attendant (AMA) of ARTC & S Hospital, Dimapur. The Specialist Medical Officer (SMO)/MO appointed by the Directorate General Assam Rifles, after examination of the entire medical documents of the petitioner prepared his Medical Case Sheet and referred him to Urologist, Command Hospital (Eastern Command) Kolkata/Surgical Specialist, Assam Rifles Composite Hospital, Shokhuvi, Dimapur for the purpose of review and medical reclassification of the petitioner vide Medical Case Sheet of ARTC & S Hospital, Dimapur dated 08.10.2013 prepared by the said SMO/MO. The relevant extract of the Medical Case Sheet of the petitioner dated 08.10.2013 is quoted hereunder:

“TYPED COPY

AFMSF-7A CONFIDENTIAL IN LIEU OF
ARTC & S, HOSPITAL, DIMAPUR A & D NO. _____
MEDICAL CASE SHEET DOD _____
AGE: 44 YRS SERVICE: 28 YRS/MONTH:

1. NAME: R B SUNAR 2. SERVICE NUMBER: AR-282K 3.RANK/RATE: ASST COMDT		
4. UNIT: ARTC & S 5.TRADE _____ 6.ASSAM RIFLES		
DIAGNOSIS: LT OBSTRUCTIVE MEGA URETER (LT) LOWER URETERIC CALCULUS (OPTD) FOR REVIEW & RECAT		

THIS SERVING OFFICER IS A KNOWN CASE OF LT OBSTRUCTIVE MEGA URTER C LMC P2 (P) WEF 13-10-11.

AT PRESENT PT HAS INFRESH COMPLAINTS

PT WAS EARLIER OPINED BY UROLOGIST, CHECK KOLKATTA

O/E:- A 44 YRS OLD MALE OFFICE MODERATELY BUILT NOURISHED PICKLE

P/A: SOFT NONTENDER BP – 110/80

NO ORGANOMEGALY PULSE – 80/MIN

CUS S.S2 (+) NO MURMUR

PS-NVBS (+) NO ADDED SOUND

CNS – NAD

A: LT OBSTRUCTIVE MEGA URETER C (LT) LOWER URETERIC CALCULUS (OPTD) FOR REVIEW & RECAT.

REFER TO: UROLOGIST, CHEC, KOLKATTA/SURGICAL SPL, ARCH, DIMAPUR

FOR THE PURPOSE OF:- REVIEW & RECAT

Sd/-XXX
RMO/SMO/MO
ARTC & SCHOOL (HOSP)”

7. On the very day i.e. 08.10.2013, the petitioner attended the Assam Rifles Composite Hospital, Shokhuvi for the purpose of review and medical re-categorization/reclassification. After examining the entire medical documents of the petitioner, the Specialist Medical Officer of the Assam Rifles Composite Hospital, Shokhuvi referred the petitioner to Urologist, Gauhati Medical College Hospital, Guwahati/Regional Institute of Medical

Science (RIMS), Imphal/Assam Medical College, Dibrugarh for further evaluation and needful opinion vide opinion dated 08.10.2013, which reads as follows:-

“TYPED COPY

COMPOSITE HOSP, SHUKHUVI
AGE 44 REGD NO. 9422-A
NO. AR 282K RANK ASST COMDT NAME R B SUNAR
UNIT _____ DATE 08/10/2013

SOPD

DIAGNOSIS – (LT) OBSTRUCTIVE MEGA-METER
(LT) LOWER METERIC COLUMN
(OPTD) & MED CAT – P2 (P)

PRESENTLY ASYMPTOMATIC

**OPINION:- REF TO UROLOGIST GMC, GUWAHATI/RIMS/
IMPHAL/AMC DIBRUGARH FOR FURTHER EVALUATION
AND NEEDFUL OPINION PLEASE.**

(CONTRACTUAL)

SD/- XXX DATED 08/10/13
DR. K. NIKISHE SUMI
M.S. (GEN, SURGERY)
SPECIALIST MEDICAL OFFICER
ARCH, SUKHOVI”

8. It is also pertinent to mention that Dr. K. Nikishe Sumi, M.S. (Gen., Surgery) Specialist Medical Officer was appointed by the Directorate General Assam Rifles for medical examination/evaluation/opinion, however, on contract basis. Though, Dr. K. Nikishi Sumi, M.S. (Gen., Surgery) was appointed on contract basis, he functioned as Specialist Medical Officer. It is the case of the petitioner in the present writ petition that the said MHA U.O. referred to by both the parties, does not speak that the “AMA” and the “Specialist Medical Officer (SMO)” should be the regular employees only. The respondents also not denying that the AMA/SMO is the competent authority under the said MHA U.O. to refer the concerned officer/person to

the Specialist for the purpose of review and medical reclassification. The petitioner on 22.10.2013 attended the Gauhati Medical College Hospital vide O.P.D./Indoor Regd. No.9348/13 and after examining the petitioner, the Specialist of Gauhati Medical College Hospital opined that the petitioner can be upgraded to medical category P1 (one). The Specialist Medical Officer, Assam Rifles Composite Hospital, Shokhuvi on 24.10.2013 opined to upgrade the medical category of the petitioner to Shape-I w.e.f. 13.10.2011. The said opinion dated 24.10.2013 reads as follows:-

“TYPED COPY

CONFIDENTIAL
AR COMPOSITE HOSPITAL, SHOKHUVI

*REGTL NO: AR-282K RANK: ASST COMDT NAME: R B SUNAR AGE 44
OPD NO _____ A & D NO _____ SERVICE 28 YRS UNIT & COY ARTC & S
DOA _____ DOD _____ DIAG _____*

*OPINION OF DR. K. NIKISHE SUMI (GEN. SURGEON) ARCH.
SUKHOVI, DIMAPUR*

*DISABILITY – (LT) OBSTRUCTIVE MEGAURETER WITH LEFT LOWER
URETERIC CALCULUS (OPTD).*

DATE OF OPERATION – 26TH DEC 2008

PRESENT MEDICAL CATEGORY – P2 (P) WEF 13-10-2011

PRESENTLY FOR – REVIEW AND RECAT

*THE OFFICER WAS REPORTED FOR REVIEW/RECAT OF HIS
MEDICAL CATEGORY P2 (P) ON 08TH OCT 2013 AND HE WAS FURTHER
REFERRED TO UROLOGIST GMHC, GUWAHATI FOR FURTHER
EVALUATION AND NEEDFUL OPINION.*

*THE UROLOGIST (PROF S.J. BARUAH, PROF AND HOD, GMCH,
GUWAHATI, DATED 22ND OCT 2013) OPINED THAT THE SAID OFFICER
IS FIT TO RESUME ALL HIS MILITARY DUTIES. (MEDICAL CERTIFICATE
ENCLOSED).*

AS PER THE UROLOGIST OPINION. THE SAID OFFICER MEDICAL CATEGORY MAY BE UPGRADED TO SHAPE-1.

*SD/- XXX DATED 24/10/13
DR. K. NIKISHE SUMI
M.S. (GEN, SURGERY)
SPECIALIST MEDICAL OFFICER
ARCH, SUKHOVI"*

(CONTRACTUAL)

9. Under Paragraph 4.3 of the said MHA U.O., the opinion of the AMA/Medical board is final. The petitioner also stated that as per the advice of the AMA/Specialist Medical Officer, the petitioner had attended one of the hospitals mentioned in the said opinion i.e. (i) Command Hospital (Eastern Command) Kolkatta; (ii) Specialist, Assam Rifles Composite Hospital, Shokhuvi; (iii) RIMS, Imphal; (iv) AMC, Dibrugarh and; (v) GMC, Guwahati. The petitioner did not avoid attending the Command Hospital (Eastern Command) Kolkatta for medical re-categorization, but the authority had not issued any movement order to attend the aforesaid hospital. The Urologist/Nephrologists of the said hospital cannot sit as a Presiding Officer/Member of the Review Medical Board as per Paragraph 3 and 5.2 (a) of the said MHA U.O. i.e. MHA U.O. No.I.45024/3/2004-Pers-II dated 31.07.2007. Finally, the Medical board dated 25.10.2013 upgraded the petitioner to medical category Shape-I. The Commandant Assam Rifles Training Centre & School (Hospital) by a letter No. II.36011/Med-16/2013/2771 dated 26.10.2013 forwarded the Medical board proceedings in respect of the petitioner to the Directorate General Assam Rifles clarifying it that the Medical board proceeding of the petitioner had been thoroughly checked and found correct in all respect and requested the Directorate General Assam Rifles to take necessary action. Thereafter, the petitioner attended annual medical board for medical examination on 08.11.2013 and the medical board categorized him as Shape-I. The proceedings of the said

Appendix IV to ARO 2/90
AFMSF – 15A

(Auth: ARCH convening order No.I.1099/Convening/LMC/A-2013/3540 dated 26 Sep 13 and convening order No.I.1099/Convening/LMC/A-2013/3582 dated 03 Oct 13.

Place of Board: **ARTC&S HOSP** Date of Board **25 Oct 2013** Height: **169.5**
Wt **60 Kg.**

1. Name: **R B Sunar** 2. Service No. **AR-282K** 3. Rank: **Asst Comdt.**
4. Trade **AR Cadre** 5. Age **44 Yrs** 6. Unit: **No.1 Trg Bn ARTC & S**
7. Service **28 Yrs**
8 (a) Principle Disability : **(LT) OBSTRUCTIVE MEGA
URETER WITH (LT)
(LOWER URETERIC
CULCULUS (OPTD)**
 (b) Other Disability : **NIL**
 (c) Previous Med Cat with date : **P-2(P) wef 13 Oct 2011**
9. Place and date of last med board : **25 Sect AR on 08 Dec 2011**
10. Present condition : **Specialist opinion att**
11. (a) Cat now recommended : **P-1 wef 24 Oct 13**
 (b) What is cat likely to be finally : **NA**
 (c) Place and date of next board : **NA**

12. *Instruction given to the individual by the president of the board. “You are upgraded to Medical Category P-1 SHAPE-I wef 24 Oct 2013.*

Sd/-
Signature of Individual

Presiding Officer *Sd/-*
Dy Comdt Dr. CH Saleo Mao, SMO 29 AR

Member 1 Sd/-
Dy Comdt Dr. GBV Ramesh, SMO of ARTC&S

Member 2
Dated: 25 Oct 13

10. By the impugned order dated 13.11.2013, the respondent No.4 returned the Medical board proceedings unactioned with the observation that the Officer has to be referred to Urologist/Nephrologist CH (EC) Kolkata to evaluate the present status of his disease condition and his recat bd must be done by Nephrologist of a service hospital only. By another impugned order dated 04.12.2013, the respondent No.4 informed the Commandant, Assam Rifles Training Centre & School (Hospital), Dimapur that the petitioner was supposed to be reviewed by Urologist/Nephrologist from CH (EC) Kolkata and the opinion of civil Doctor is not substantive, appropriate and acceptable as recat board must be done by the Nephrologist of a service hospital (Military Hospital) and further directed the Commandant to send the petitioner to Commandant Hospital (Eastern Command) Kolkata for review and recat board.

11. The respondents filed affidavit-in-opposition in the present writ petition. The respondents in their affidavit-in-opposition did not deny that as per the opinion of the AMA/SMO, the petitioner attended one of the hospitals referred by the AMA/SMO. The respondents further did not deny that the medical board (Board for Re-categorization of AR Pers/Cadre Officer) after thorough examination of the petitioner in its proceedings held on 25.10.2013 had upgraded the petitioner to medical category P-1 Shape-1 w.e.f. 24.10.2013 and also that the Annual Medical Board held on 08.11.2013 had upgraded the petitioner to medical category P-1 Shape-1. The stand taken by the respondents in support of the impugned orders are that the petitioner had been referred by an AMA/SMO, who was appointed on contract basis and the contractual AMA/SMO is not the competent authority for giving his opinion. But the respondents in their affidavit-in-opposition did not deny that the Specialist Medical Officer of the Assam Rifles Composite Hospital, Shokhuvi Dr. K. Nikishe Sumi was appointed by the Directorate General

Assam Rifles. It is also clear from the said MHA U.O., relevant portions of which had been quoted and discussed in the aforesaid paras that the opinion and decision of the Medical board will be final and the opinion and decision of the Medical board is not required to be approved by any authority. In the present case, the petitioner was not served with any notice or show cause notice before issuing the impugned orders. It is well settled law that even in an administrative proceedings which involves civil consequences, the doctrine of natural justice must be held to be applicable. For this well settled law, it would be suffice to refer to the decisions of the Constitution Bench of the Supreme Court in 3 (three) celebrated cases **(i) A.K. Kraipak & Ors v. Union of India & Ors: (1970) 1 SCR 457; (ii) E.P. Royappa v. State of Tamil Nadu: (1974) 2 SCR 348 and; (iii) Maneka Gandhi v. Union of India: (1978) 1 SCC 248.** Paras 8 & 12 of the SCC in **Maneka Gandhi's** case (*Supra*) read as follows:-

“8. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in Cooper v. Wandsworth Board of Works: (1863) 14 CBNS 180: (1861-73) All ER Rep Ext 1554.

A long course of decisions, beginning with Dr. Bentley's case and ending with some very recent cases, establish that, although there are no positive works in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.

The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, nemo iudex in causa sua and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport?”

12. This Court, speaking through Hedge, J., in A.K.Kraipak's case, quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add: (SCC p. 272, para 20)

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it....Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in **Suresh Koshy George v. The University of Kerala [(1969) 1 SCR 317]** the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case.

This view was reiterated and re-affirmed in a subsequent decision of this Court in **D.F.O., South Kheri v. Ram Sanehi Singh: (1971) 3 SCC 864**. The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

12. The respondent authorities had lost sight of the basic principle of construction of statute while reading the said MHA U.O. inasmuch as, the respondents, for no reason, read "AMA" and "SMO" mentioned in the said

MHA U.O. as “regular AMA and SMO” and not contractual “AMA”/”SMO” appointed by the Directorate General of Assam Rifles. On reading and re-reading of the said MHA U.O., it cannot be understood that “AMA” and the “SMO” will only be “regular AMA” and “regular SMO” and not the contractual “AMA”/”SMO” appointed by the Directorate General Assam Rifles and also the opinion of the AMA/SMO who are not regular AMA/SMO cannot be accepted. The said MHA U.O. only mentioned the powers and functions of the AMA/SMO, which are not denied by the respondents. It is, no doubt, well settled that it is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and word by word. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or in-consistency therein and not otherwise. An effort should be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered superfluous or redundant. True meaning of a provision of law is to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law (Reference may be made to ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors, reported in (2003) 2 SCC 111.*** It is cardinal rule of construction that no word should be construed redundant or surplus in interpreting the provision of a statute or rule (Ref: ***Dinesh Chandra Sangma Vs. State of Assam & Ors: AIR 1978 SC 17.*** The Apex Court in ***State of Maharashtra & Ors. Vs. Santosh Shanker Acharya: (2000) 7 SCC 463*** held that it is too well known principle of construction of statute that the legislature engrafted every part of the statute for a purpose. The legislative intention is that every part of the statute should be given effect. Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. The Apex Court in ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.:***

(2003) 2 SCC 111 held that it is the basic principle of construction of statute that statutory enactment must ordinarily be construed according to their plain meaning and no words should be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

13. The Apex Court in **State of Gujarat & Anr v. Justice R.A. Mehta (Retired) & Ors: (2013) 3 SCC 1** held that:

*“96. In the process of statutory construction, the court must construe the Act before it, bearing in mind the **legal maxim ut res magis valeat quam pereat** which means it is better for a thing to have effect than for it to be made void, i.e., a statute must be construed in such a manner, so as to make it workable. Viscount Simon, L.C. in **Nokes v. Doncaster Amalgamated Collieries Ltd.: 1940 AC 1014: (1940) 3 All ER 549 (HL)** stated as follows: (AC p.1022)*

“.....if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.”

97. Similarly in **Whitney v. IRC: 1926 AC 37 (HL)**, it was observed as under: (AC p.52)

“..... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.”

98. **The doctrine of purposive construction** may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction, which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred,

looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. “The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed so as to make it effective and operative.” The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted, as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus, legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter, and the obvious intention of the legislature does not stand defeated, unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and “to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico”. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide: **M. Pentiah v. Muddala Veeramallappa: AIR 1961 SC 1107, S.P. Jain v. Krishna Mohan Gupta: (1987) 1 SCC 191: AIR 1987 SC 222, RBI v. Peerless General Finance and Investment Co. Ltd.: (1987) 1 SCC 424: AIR 1987 SC 1023, Tinsukhia Electric Supply Co. Ltd. v. State of Assam: (1989) 3 SCC 709: AIR 1990 SC 123 SCC p.754 para 118, UCO Bank v. Rajinder Lal Capoor: (2008) 5 SCC 257: (2008) 2 SCC (L&S) 263 and Grid Corpn. of Orissa Ltd. v. Eastern Metals and Ferro Alloys: (2011) 11 SCC 334**).

14. The Apex Court in a catena of cases held that the maxim “***expressum facit cessare tacitum***” (“***when there is express mention of certain things, then anything not mentioned is excluded***”) will apply in the construction of statute. As such, when the words “AMA” and “SMO” are clearly mentioned in the said MHA U.O., it cannot be read as regular AMA and regular SMO or not the contractual AMA and SMO appointed by the Directorate General Assam Rifles. The Constitution Bench of the Apex Court through Justice D.P. Madon (as then he was) in ***Union of India & Ors v. Tulsiram Patel: (1985) 3 SCC 398*** observed that “the maxim **expressum**

facit cessare tacitum (when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. As pointed out by this Court in ***B. Shankara Rao Badami v. State of Mysore: (1969) 3 SCR 1, 12: (1969) 1 SCC 1***, this well known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso. In ***Atkinson v. United States of America Government: LR 1971 AC 197*** Lord Reid said at (page 232), it is now well recognized that the court has the power to expand procedure laid down by statute if that is necessary to prevent infringement of natural justice and is not plainly contrary to the intention of Parliament."

The Apex Court in ***Municipal Corporation of Delhi v. Qimat Rai Gupta & Ors: (2007) 7 SCC 309*** held that even if a statute requires strict interpretation, words thereto would not be added.

The Apex Court in ***Union of India v. Rajiv Kumar: (2003) 6 SCC 516*** had considered the two principles of construction i.e. maxims ***Quod enim semel aut bis existit practereunt legeslatores – Casus omissus et oblivion datus dispositioni juris communis relinquitur*** held that the statute is an edict of legislature and court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous.

Paras 18 and 23 of the SCC in ***Rajiv Kumar's*** case (*Supra*) read as follows:-

"18. It is a well-settled principle in law that the court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute or any statutory

provision is the determinative factor of legislative intent of policy-makers.

23. Two principles of construction – one relating to *casus omissus* and the other in regard to reading the statute/statutory provision as a whole – appear to be well settled. Under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J. in **Artemiou v. Procopiou** (1966) 1 QB 878: (1965) 3 All ER 539 (CA) (All ER p. 544 I), “is not to be imputed to a statute if there is some other construction available”.

15. **The doctrine of purposive construction** should be invoked in construction of a statute. Under the doctrine of purposive construction all the provisions of the statute should have full effect. Therefore in the present case, powers and functions of the “AMA”:“SMO” and Medical board under the said MHA U.O. should be given full effect. The Apex Court in **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. & Anr: (2007) 6 SCC 528** held that:

53. Doctrine of purposive interpretation in a situation of this nature, in our opinion, shall be applied.

54. In **R (Haw) v. Secy. Of State for the Home Deptt.: (2006) 3 All ER 428**. Lord Smith stated: (All ER pp. 438-39, paras 42 & 44-45)

“42. ... a passage from Bennion Statutory Interpretation (4th Edn., 2002, p.810, Section 304) entitled, ‘Nature of purposive construction’. That begins with the following words:

‘A purposive construction of an enactment is one which gives effect to the legislative purpose by – (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or (b) applying

a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).'

44. The passage from Bennion continues:

'... "... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remained one of construction, even where this involves reading into the Act words which are not expressly included in it. [Kammins Ballroom Co. Ltd. v. Zenith Investments (Torquay) Ltd.:1971 AC 850: (1970) 3 WLR 287: (1970) 2 All ER 871 (HL)] provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed.'

45. The passage from Bennion continues:

'Lord Diplock's third point is, with respect, erroneous. The argument that in Jones v. Wrotham Park Settled Estates:1980 AC 74: (1979) 2 WLR 132: (1979) 1 All ER 286 (HL) Lord Diplock was mistaken in saying that for a rectifying construction to be effected it must be possible to state with certainty what the missing words are, has been endorsed by the House of Lords. Lord Nicholls of Birkenhead said that the court must be sure of "the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used" [see Inco Europe Ltd. v. First Choice Distribution (a firm): (2000) 1 WLR 586: (2000) 2 All ER 109 (HL)].'

(See also *K.L. Gupte v. Municipal Corpn. Of Greater Bombay*: AIR 1968 SC 303: (1968) 1 SCR 274, *Maruti Udyog LTd. V. Ram Lal*: (2005) 2 SCC 638: 2005 SCC (L&S) 308; *Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd.*: (1987) 1 SCC 424; *Punjab Land Development and Reclamation Corpn. Ltd. V. Presiding Officer*: (1990) 3 SCC 682: 1991 SCC (L&S) 71; *Balram Kumawat v. Union of India*: (2003) 7 SCC 628 and *Pratap Singh v. State of Jharkhand*: (2005) 3 SCC 551: 2005 SCC (Cri) 742.)”

16. The Apex Court in *H.S. Vankani & Ors v. State of Gujarat & Ors*: (2010) 4 SCC 301 held that the legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). Para 43 of the SCC in *Dilip S. Dahanukar's* case (*Supra*) reads as follows:-

“43. It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.”

17. The Apex Court in *Secretary, Ministry of Defence & Ors v. A.V. Damodaran (DEAD) Through LRS & Ors*: (2009) 9 SCC 140 held that:

“17. I have heard the learned counsel for the parties. I am of the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the instant case, the Medical Board has clearly opined that the disability of late Shri. A.V. Damodaran was neither attributable nor aggravated by the military service. In my

considered view, both the learned Single Judge and the Division Bench of the High Court have not considered this case in proper prospective and in the light of the judgments of this Court. The legal representatives of A.V. Damodaran are not entitled to the disability pension.”

The Armed Forces Tribunal Principal Bench, New Delhi in ***Nakhat Bharti etc v. Union of India & Ors*** reported in ***Mil LJ 2010 AFT 84*** held that:-

“25. Therefore, the decisions of the Apex Court are to the effect that normally the opinion given by the medical board should be accepted. There is no dispute that the medical board is a competent body and the judgment of competent body has to be accepted unless it is proved contrary by any other cogent reason.”

18. The respondents in their affidavit-in-opposition had stated that the petitioner had completed six years of Group ‘A’ service on 19.03.2013. The Ministry of Home Affairs has waived for 12 days residential service, hence, his candidature was zone for consideration for the anticipated vacancy for the year 2013-2014, which was considered by the Departmental Promotion Committee (for short ‘DPC’). The DPC has approved his promotion to the rank of Deputy Commandant subject to upgradation of his medical category SHAPE-1 though he was in low medical category PS (P) w.e.f. 13.10.2011. Under the Message Un-class A 1712 dated 21.02.2014, the Directorate General Assam Rifles promoted 6 (six) Assistant Commandants junior to the petitioner to the rank of Deputy Commandant w.e.f. 01.04.2014. The copy of the said impugned Message is available at Annexure-XXXVIII to the additional affidavit filed by the petitioner and the names of the 6 (six) Assistant Commandants junior to the petitioner are:

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|------|--------|---------------|
| (i) | AR-288 | OM Dutt Sarma |
| (ii) | AS-289 | V.K. Chauhan |

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|-------|--------|----------------------|
| (iii) | AR-290 | Ganga Singh |
| (iv) | AR-291 | Rashan Cheri |
| (v) | AR-292 | M. Joy Chandra Singh |
| (vi) | AR-293 | Arjun Singh Patwal. |

Paragraph 4.13 of the said MHA U.O. clearly stated that Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those, whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature, after considering their cases for promotion alongwith others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However, they will retain their seniority.

19. For the foregoing discussions and reasons, this Court is of the considered view that the opinion of the Medical board (Re-categorization of AR Pers/Cadre Officers) held on 25.10.2013 and also the opinion of the Annual Medical Board held on 08.11.2013 for re-categorizing the medical category of the petitioner as Shape-1 w.e.f. 24.10.2013 are to be accepted and also the words "AMA" and "SMO" mentioned in the said MHA U.O. shall not be read as only "regular AMA" and "regular SMO" and not the contractual AMA/SMO appointed by the Directorate General Assam Rifles. Accordingly, the impugned orders dated 29.07.2013, 13.11.2013 and 04.12.2013 are hereby quashed.

20. In the result, promotion of the petitioner already recommended for promotion to the rank of Deputy Commandant shall be w.e.f. 01.04.2014 i.e. the date of promotion of his juniors. The respondents shall complete the whole exercise for the follow-up action of this judgment and order within 3 (three) months from the date of receipt of a certified copy of this judgment and order.

21. Writ petition is allowed.

22. Parties are to bear their own costs.

JUDGE

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