

Serial No. 14
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 53 of 2015

Date of Decision: 30.07.2019

57581 RFN/GD Ramesh Vs. Union of India & 2 Ors.

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)/Appellant(s) : Mr. S.D. Upadhaya, Adv.

For the Respondent(s) : Mr. K. Paul, CGC.

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| i) | Whether approved for reporting in Law journals etc.: | No |
| ii) | Whether approved for publication in press: | No |

ORAL

1. The brief facts of the case is that the petitioner participated in the recruitment rally of the Assam Rifles and after passing the physical efficiency test and written examination, had appeared in the medical examination, and was found fit for enrollment as Rfn/GD in the Assam Rifles. Thereafter, the petitioner was posted at Assam Rifles Training Centre and School, Dimapur, Nagaland. While undergoing training, the petitioner sustained injury on his right leg below the ankle and was admitted in the Unit Hospital of Assam Rifles Training Centre and School, Dimapur, Nagaland for treatment. After treatment, the petitioner was discharged from 151 Base Hospital on 30.05.2000 and was also granted 90(ninety) days' sick leave with effect from 30.05.2000. Thereafter, it transpires that on account of the petitioner having not completed the mandatory period of 179 days training, he was issued with a certificate of discharge dated 29.05.2001 which is impugned herein. As such, the petitioner has approached this Court by way of this instant writ petition

seeking mandamus for quashing of the impugned discharge order and for further directing the respondent authorities to convene the Release Medical Board to re-examine the percentage of disability caused by the injury to enable the petitioner to avail disability pension and retirement gratuity with effect from the date of discharge as per Assam Rifles Rules.

2. I have heard learned counsels for the parties.

3. Mr. S.D. Upadhaya, learned counsel for the petitioner submits that the petitioner had sustained a fracture on his right leg below the ankle which had disabled him from completing the training that he was undergoing. He submits that there is no question of unauthorized absence but it was due to his disability that he could not complete the prescribed 179 days of training. Learned counsel draws the attention of this Court to the relevant portion of the Discharge Policy and submits that even if the recruit is missing beyond 179 days, it is not necessary that the petitioner be discharged from service, but can be relegated to the lowest available platoon in that block subject to the sanction of the DIG. He further submits that the leave granted for 90 days with effect from 30.05.2000 was not on his application, but was accorded unilaterally by the medical authorities at 151 Base Hospital and as such, he prays that there being no lapse on the part of the petitioner, the impugned order of discharge be quashed and in the alternative that the release medical board be directed to be convened to decide the petitioners' percentage of disability.

4. Mr. K. Paul learned CGC, in reply to the submissions advanced by the learned counsel for the petitioner has submitted that it is not a fact that the petitioner was not absent unauthorisedly and the non completion of the training can be entirely attributed to the petitioner himself. He submits that the petitioners' medical condition was reviewed on 31.08.2000, after treatment and after discharge from the Base hospital and on completion of 90 days' sick leave as granted by the medical authorities of the hospital. On review the medical category of the petitioner was upgraded to SHAPE-I,

meaning that he was fit to resume duty. However, the petitioner did not resume duty which resulted in his failing to complete the training period and miss more than 179 days of training. As such, he submits that as per Para 11 (b) of the Discharge Policy letter No. I.36011/40/92-Trg/1821 dated 14.11.1992 and Rule 14 of Chapter VII of Assam Rifles Manual, a recruit who has missed training for more than 179 days for any reasons including sickness or injury was liable to be discharged from service. Thus the petitioner was discharged from service on 31.10.2000 on the grounds of “unlikely to become a good soldier of the Assam Rifles”. Learned counsel also contends that his medical condition being no longer an issue, the discharge was as per the Discharge policy for failing to complete the training as stipulated.

5. I have considered the submissions of the learned counsels for the parties and examined the materials on record.

6. The only question that is to be decided in this instant writ petition is whether the discharge of the petitioner can be attributed to his disability as contended, and the respondents accountable for the same, or whether it is on the conduct of the petitioner himself that led to his discharge. The fact that is undisputed, is that the petitioner had sustained an injury while undergoing training at the Assam Rifles Training Centre and School, Dimapur, Nagaland, wherein the petitioner suffered a fracture on his right leg below the ankle. On account of this, he was admitted to the 151 Base Hospital on 30.05.2000, where he was administered treatment and was discharged on 31.05.2000 and was also accorded 90 days’ sick leave from the date of discharge by the hospital authorities, to enable him to recover to join his duties.

7. Thereafter, on 31.08.2000 in the medical review, the petitioner was declared to be fit as per the affidavit filed by the respondents, wherein the petitioner was upgraded to SHAPE-I, which means he was fit to resume duty. Thereafter, however, there is no explanation as to why the petitioner

had not resumed his duty or training even when he was declared fit by the respondent authorities. As such, in view of the failure to complete the training, as he had missed over 179 days thereof, the petitioner was discharged as per Para 11 (b) of the Discharge Policy. In these facts and circumstances as discussed, the disability of the petitioner therefore was no longer a question germane to the issue, but the only fact that is apparent is that the petitioner was voluntarily absent without explanation and did not complete his training which resulted in his discharge from service.

The facts being situated thus, there is no infirmity or illegality in the application of the Discharge Policy under the Assam Rifles Rules upon the petitioner by the respondents.

The instant writ petition therefore being devoid of merit is dismissed and accordingly disposed of.

No order as to costs.



Judge

Meghalaya
30.07.2019
"D. Nary, PS"