

Sandeep Kumar and Others Vs. the Union of India, Represented by the Secretary, Ministry of Home Affairs and Others

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Court : Guwahati

Decided On : Dec-03-2013

Judge : B.K. Sharma

Appeal No. : WP(C) Nos. 735, 765, 771 & 782 of 2013

Appellant : Sandeep Kumar and Others

Respondent : The Union of India, Represented by the Secretary, Ministry of Home Affairs and Others

Advocate for Pet/Ap. : Mr. R. Mazumdar, Mr. Mazumdar

Judgement :

Judgment and Order, (Oral)

1. All the writ petitions raising the same issue have been heard analogously and are being disposed of by this common judgment and order.

2. The challenge in all the writ petitions are the orders by which the Assam Rifle authority has rejected the claim of the petitioners for re-engagement in service as Constables on the ground of being opposed to the enrolment policy. While according to the petitioners, having regard to the facts and circumstances involved in the case, they are entitled to get enrolment in the Assam Rifles, but according to

the respondents, considering the nature of the duties involved of a constable, the authority rightly passed the impugned orders and this Court exercising writ jurisdiction cannot sit on appeal over such decision of the competent authority.

3. The petitioners were selected for appointment as Constables in the Assam Rifles. However, while undergoing training for such appointment, they were found to be medically unfit in various categories and accordingly discharged from training in the year 2001. While some of the petitioners and other similarly situated candidates, approached the Delhi High Court challenging such orders of discharge, the rest of the petitioners including some others did not make any challenge to the said orders. As submitted by the learned counsel for the petitioners, the Delhi High Court had dismissed the writ petitions in the year 2004 itself on the ground of lack of territorial jurisdiction. Thereafter, the petitioners approached this Court by filing writ petitions some time in 2009 and 2011, details of which are being discussed hereunder.

4. The earlier writ petitions were disposed of by order dated 10/08/2012 with the following order:-

This batch of writ petitions is also disposed of in terms of the above order.

In W.P.(C) No. 1806/2022 (No. TC-M/61620 Rect/NA Shri Sajjan Kumar), it has been stated in the counter affidavit that the petitioner has made misleading statements and that there is suppression of material facts. Since the respondents are now entitled to verify the authenticity or otherwise of the certificates annexed to the writ petition, it will be open for the respondents to deal with the case of the said petitioner appropriately and in accordance with law.

In view of the submissions made by the learned counsel for the respondents that irrespective of the earlier medical incapacity, during this long period of time since discharge of the petitioner way back in 1991 the petitioners might have become unfit for engagement in Assam Rifles, it is provided that while considering the case of the petitioners in respect of the medical incapacity in reference to the earlier finding of the medical Board, it will also be open for the respondents to consider that aspect of the matter while taking a decision in this regard.

Let the above exercise be carried out as expeditiously as possible preferably within 30.10.2012.

With the above direction, the writ petitions are disposed of without, however, any order as to costs. (Emphasis supplied)

5. After the aforesaid order of this Court, the authority in the Assam Rifles having passed the impugned orders dated 27/12/2012, declining to enroll the petitioners into Assam Rifles on the ground of being opposed to the enrolment policy, they are once again before this Court with the instant writ petitions. For a ready reference, one of the impugned orders is quoted below:-

Mahanideshalaya Assam Rifles
Directorate General Assam Rifles,
Shillong-11.

1.12016/Rect Branch/2012/468 27 Dec2012

Sri Sandeep Kumar

S/o. Shri Krishan,

Vill- Phideri,

PO- Majrasheoraj,

PS- Rewari,

Dist- Rewari,

State- Haryana.

APPEAL MEDICAL BOARD EXAMINATION

1. You were enrolled into Assam Rifles on 23 May 2001 and during final medical exam you were found UNFIT due to LMC EEE VARICOSE VEIN LT LEG AND DEFORMITY RT LITTLE TOE and subsequently were discharged from the Assam

Rifles with effect from 31 Oct 2001, before completion of necessary basic training for a soldier due to medical incapacity.

2. In compliance with Honble Guwahati High Court Order dated 10 August 2012 passed in Writ Petition (C) 1763/2009 Appeal Medical Board was conducted on 02 October 2012. Your present medical status as per medical board conducted on 03 October 2012 has been found as FIT in relation to the above mentioned incapacity.

3. Assam Rifles is an Armed Force and is guided by enrolment policy for recruitment of a combatant soldier issued vide Ministry of Home Affairs letter No. 1-45023/6/2008-Pers-II dated 25 June 2009. As per existing policy, prescribed age for recruitment into the Assam Rifles is 18 to 28 years for SC Category. As per records, your date of birth is 05 Oct 1979 and presently you are approximately 33 years old. In the interest of the organisation as well as Union of India, persons who are overage cannot be enrolled in the Force as combatant Soldier and this is in accordance with the existing policy. The rationale behind the policy is that overage person cannot be allowed to undergo strenuous nature of basic training of the Force.

4. Considering the above facts, it has been decided by the appropriate authority that your case for enrolment into Assam Rifles against the existing enrolment policy cannot be considered due to your being overage and thus your case is rejected.

5. You are requested to acknowledge receipt of this letter.

Sd/-

(S. Rajendran)

Deputy Commandant

Staff Officer-1 (Recruitment)

For Brigadier (Personnel).

6. I have heard Mr. R. Mazumdar, learned counsel for the petitioners. I have also heard Mr. H. Sarma, Mr. J. Deka, Mrs. R. Bora and Mr. D. Saikia, learned CGCs, representing the respondents. I have also considered the entire materials on record.

7. Mr. Mazumdar, learned counsel for the petitioners submits that this Court in the earlier round of litigation having directed the Assam Rifles authorities to re-examine the medical incapacity of the petitioners and upon re-medical examination, all of them having been found fit in the particular category in which they were earlier declared to be unfit, the petitioners are required to be re-engaged /enrolled in the Assam Rifles as Constables. According to him, the ground assigned in the impugned order is not germane to the issue involved. He submits that the petitioners having been found medically fit by the appellate medical board pursuant to the orders of this Court, the respondents could not have declined enrollment / re-engagement on the ground assigned in the impugned orders, inasmuch as, the eligibility of the petitioners for such appointment will have to be considered in reference to the particular employment notice that was issued in 2001 in response to which they had offered their candidatures. In this connection, he has placed reliance on 4 (four) decisions of the Apex Court as reported in (2000) 5 SCC 262 (Bhupinderpal Singh Vs. State Punjab) ; (1990) 2 SCC 669 (A.P. Public Service Commission Vs. B. Sarat Chandra) ; 1993 supp (3) SCC 168 (Rakha Chaturvedi (Smt) Vs. University of Rajasthan and others and AIR 1952 SC 16 (Commissioner of Police, Bombay Vs. Gordhandas Bhanji).

8. Opposing the arguments of the learned counsel for the petitioners, the learned CGCs, representing the respondents have justified the impugned orders. Referring to the nature of the duties involved and to be performed by the Constables in the Assam Rifles and the purpose of prescription of age limit for appointment, they submit that irrespective of medical fitness of the petitioners in the particular category of unfitness earlier detected, the Assam Rifles cannot be oblivious of other factors towards re-engagement/re-enrollment. As regards the plea of the petitioners that one Shri Prabhu Dayal who is also similarly situated has been re-enrolled / re-engaged pursuant to the order of this Court, they submit that the same was done under a misconception and that the particular illegality in

appointing him, cannot perpetuate such illegality. They submit that the petitioners will have to establish their rights on their own merit and not on the illegality that has been committed in another case.

9. Considering the submissions made by the learned counsel for the parties and the entire materials on record, my findings and conclusions are as follows :-

10. WP(C) 735/2013: As noted above, the petitioner was selected for undergoing training. He was detected to be medically unfit and accordingly was discharged from training. He was found unfit due to LMC EEE VARICOSE VEIN LT LEG AND DEFORMITY RT LITTLE TOE and was discharged w.e.f. 31/10/2001 before completion of the basic training for a soldier. He had filed WP(C) No. 1736/2009 challenging the discharge order. Prior to that as submitted by Mr. R. Mazumdar, learned counsel for the petitioner that he had approached the Delhi High Court by filing a writ petition in the year 2004, in which the order of discharge was put to challenge. However, the writ petition was disposed of due to lack of territorial jurisdiction. As submitted, the writ petition was disposed of in 2004 itself. Nearly 5 (five) years thereafter, he approached this Court by filing the aforesaid writ petition in 2009. It was in such circumstances and considering the fact that 11 years had gone by since the petitioner was discharged from Assam Rifles. While disposing of the writ petition providing for re-medical examination of the petitioner, the above quoted order providing for consideration of the other aspects regarding unfitness for re-engagement in Assam Rifles was passed.

11. Pursuant to the said order passed in the writ petition, the petitioner was invited to attend the Appellate Medical Board examination with the clear stipulation that in case he was found medically fit, his enrollment in Assam Rifles would be subject to meeting the other criteria as per the Recruitment Policy and decision of the Directorate. Accepting the said condition, the petitioner appeared before the Appellate Medical Board in which he was found medically fit in respect of the category in which he was earlier found to be not fit.

12. As to what is the findings recorded in the impugned order dated 27/12/2012 has been quoted above. As per the Recruitment Policy of the Assam Rifles, the prescribed age limit is 18-23 years for General category candidates, relaxable up

to 28 years for SC category candidates. By the time the petitioner was found medically fit in the particular category, he had attained the age of 33 years. It was in such circumstances, the competent authority of the Assam Rifles found that the petitioner cannot be enrolled in the force as combatant soldier. While holding so, it has referred to the policy of the rationale behind the same which is not to engage/enroll over-aged person as the job involves strenuous nature of work including the basic training of the force.

13. While this Court made the aforesaid observation in the order dated 10/08/2012 passed in the batch of writ petitions including the writ petition filed by the petitioner, it was held that the petitioner was discharged on medical ground about 11 years back and in the mean time, irrespective of the findings to be recorded in respect of the medical unfitness earlier recorded, the petitioner could be unfit for engagement in Assam Rifles. The authority in the Assam Rifles having recorded the particular finding regarding impermissibility of the petitioner to be re-engaged as combatant soldier to undergo strenuous nature of job when he has already crossed by far the age limit fixed for appointment in the Assam Rifles, I am of the considered opinion that the said findings of the authority cannot be set at naught sitting on appeal over the judgement and policy decision of the said authority.

14. WP(C) 765/2013: As in WP(C) No. 735/2013, in this case also the petitioner had approached the Delhi High Court by challenging the order of discharge in the year 2004 which was disposed of on 8/11/2004 on the ground of lack of territorial jurisdiction. Five years thereafter, the petitioner has approached this Court. In this case, the petitioner was held to be medically unfit due to HALLUX VALGUS WITH B UNION RT. He was also discharged w.e.f. 31.10.2001 before completion of necessary basic training. Because of the findings recorded in WP(C) No. 735/2013, in this writ petition also, I do not find any infirmity in the impugned order dated 27.12.2012.

15. WP(C) No. 771/2013: As in the earlier two writ petitions, in this writ petition also, the petitioner was found medically unfit due to FINE DIGITAL TDEMORS and was discharged from Assam Rifles w.e.f. 31.10.2001 before completion of necessary basic training for a soldier. Unlike the earlier two petitioners, he

accepted the order of discharge and did not challenge the same. However, after 10(ten) years of such discharge from service, he filed the writ petition being WP(C) No. 1806/2011, which was disposed of by order dated 10/09/2012 along with the other writ petitions, operative part of which has been quoted above. For the reasons stated above, same finding is also accorded in this writ petition also.

16. WP(C) No. 782/2013: In this writ petition also the petitioner was found medically unfit due to COARSE TUMORS BOTH HANDS and was discharged from Assam Rifles w.e.f. 31/10/2001 before completion of necessary basic training for a soldier. In this case also the petitioner approached this Court by filing the earlier writ petition being WP(C) No. 1767/2009, which was nearly 8 (eight) years after the order of discharge. Because of the findings recorded in the earlier writ petitions, in this writ petition also I do not find any infirmity in the impugned order dated 27/12/2012.

17. The 3 (three) decisions on which Mr. Mazumdar, learned counsel for the petitioner has placed reliance are on the principle relating to cut of date of eligibility for selection. In all the 3 decisions it has been held by the Apex Court that before appointment is claimed, the candidate must satisfy the eligibility required on the appointed date. It has been emphasized that the particular eligibility prescribed in the employment notice must be satisfied on the last date of submission of application. In *Rekha Chaturvedi (Supra)* dealing with the judicial review in respect of a selection at a belated stage, it was held that the case having been taken up for decision after about 8(eight) years of the appointment of the selected candidates, the case of the petitioner was required to be considered in reference to the said date. None of the decisions is of any help to the case of the petitioners.

18. In the instant case, apart from the fact that the petitioners had approached this Court belatedly. In the earlier round of litigation, irrespective of the re-medical test that was provided in the order, it was also provided that the authority would also consider medical fitness of the petitioner for re-appointment / re-engagement. In the process, the authority found that the petitioners do not conform to the requirement of appointment /re-engagement. Considering the fact that arduous nature of job involved in the Assam Rifles, a particular age limit has been

prescribed. This Court exercising its power of judicial review under Article 226 of the Constitution of India, cannot sit on appeal over such policy decision, so as to issue a direction for re-engagement /re-appointment of the petitioners upon finding them medically fit in the particular medical category.

19. In Gordhandas Bhanji (Supra) has been referred to so as to emphasis that the action of the respondents will have to be judged on the basis of the reason available on the date of taking the decision and cannot be allowed to be supplemented by further reasons assigned in the counter affidavit. There is no quarrel with this proposition of law. Although, there was a direction for re-medical examination of the petitioners but at the same time, the Assam Rifles authority was also invested with the power and jurisdiction which otherwise also it possesses to take into account the other relevant factors regarding unfitness of the petitioners to be re-engaged/reappointed in the Assam Rifles. The authority having considered the relevant aspects of the matter towards passing the impugned orders, it is not a case of projecting other grounds/ reasons other than the reason which was assigned at the time of passing the impugned orders.

20. Much have been emphasized alleging discriminatory treatment on the part of the Assam Rifles in denying appointment to the petitioners but providing appointment to Prabhu Dayal. The matter has been clarified by the respondents in their counter affidavit by stating that he was appointed under a misconception. Moreover, in the case of Prabhu Dayal, the above quoted liberty was not granted to the respondents. He had filed an independent writ petition being WP(C) No. 4608/2008. The writ petition was disposed of providing re-medical examination of the petitioner and as stated in one of the counter affidavits filed by the Assam Rifles, although the authority wanted to get the order reviewed but there was delay in doing so and eventually he was appointed. In paragraph 15 of the counter affidavit filed in WP(C) No. 782/2013, it has been stated thus :-

15. It is humbly submitted here that due to non filing of Review Petition on time against the judgement and order dated 10-6-2010 passed in WP(C) No. 4608/2008 filed by TC-61593 Recruit (General Duty) Prabhu Dayal and the case was being time barred, therefore, this department was compelled to implement the

judgement and the individual was appointed vide HQ DGAR letter dt. 22 Dec 2010 and ARTCandS, Dimapur letter dated 06 Jan 2011 even though the individual was overage at the time of appointment. It is also submitted that if, these petitioners are also appointed in the Force, it will set a wrong trend for future also. Such trend if implemented will be prejudicial on the entire recruitment process and uniformed Forces as any individual will file a petition without any time limit after being declared medically unfit. It is also intimated that this practice will be against the ethos of a uniformed Force wherein your and junior soldiers are required to be physically fit and tough to successfully undergo strenuous training and working conditions. Any overage candidate, if enrolled as in these cases will be prejudicial to life and property not only to themselves but to other combatants when involved in active operations. Also overage candidates cannot be recruited as per the Recruitment Rules promulgated by the Government

21. If as per the Recruitment policy candidates beyond the prescribed age limit cannot be appointed, the petitioners referring to the case of Prabhu Dayal cannot urge for perpetuating an illegality. If this is allowed, same would be opposed to the concept of positive equality and would lead to negative equality.

22. For all the aforesaid reasons, I do not find any infirmity in the impugned orders and accordingly the writ petitions are dismissed, without however, any order as to costs.

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