

GAHC010003572018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/198/2018

SANDEEP KUMAR

2: DEVI SHANKER

3: HANS RAJ

4: NARESH KUMAR

5: SAJJAN KUMAR

6: ASHOK KUMAR

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-110001

2:THE DIRECTOR GENERAL
ASSAM RIFLES
H.Q. D.G.A.R.
SHILLONG

3:THE DEPUTY COMMANDANT
STAFF OFFICER-1 (RECRUITMENT)
DIRECTORATE GENERAL ASSAM RIFLES
SHILLONG-1

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioners : Ms. S. Bora, Advocate

Advocates for the respondents : Ms. A. Gayan, learned C.G.C.

Date of hearing : 05.04.2024

Date of judgment : 05.04.2024

Heard Ms. S. Bora, learned counsel for the petitioners. Also heard Ms. A. Gayan, learned C.G.C. appearing for the respondents.

2. The claim raised in this writ petition which is filed by 6 nos. of petitioners is with regard to treating the appointments of the petitioners as Rifleman (GD) from the date of the initial appointment in the year 2001 and not the subsequent date which was pursuant to certain directions of this Court.

3. There is a chequered history of this case and a brief narration would be necessary.

4. In the year 2001, a recruitment process was initiated, amongst others, for the post of Rifleman (GD) under the Assam Rifles.

5. In the said recruitment, the petitioners who had offered their candidatures were held to be qualified in the written, physical and medical tests and upon their selection, they were appointed on 23.05.2001. After such appointment, they were sent for basic training which is for a period of 9 months. However, in the midst of such training, vide an order dated 31.10.2001, the petitioners along with few others were discharged from service on the ground that they were medically unfit. Since the aforesaid action was not preceded by any notice or opportunity, separate writ petitions were filed in this Court.

6. The said writ petitions were disposed of by this Court vide a common judgment and order dated 10.08.2012 by directing the respondent authorities to conduct a Review Medical Board in which the petitioners were to be examined. In compliance with the said direction, a Review Medical Board was constituted in which the petitioners were re-examined. After such re-examination, an order was passed on 29.12.2012, whereby the petitioners were declared to be

medically fit. However, on the ground of being over aged, they were not inducted in the service. The aforesaid action led to further rounds of litigation. The aforesaid writ petitions including writ appeals were heard by a Division Bench of this Court and finally vide order dated 26.10.2014, the impugned action of the respondents was interfered with and consequential directions given. Subsequent thereto, the petitioners were re-appointed in the year 2015.

7. It is the claim of the petitioners that the appointment should be given effect from the original date, i.e., 23.05.2001 with a further claim for payment of arrear salaries.

8. Ms. S. Bora, the learned counsel for the petitioners has submitted that due to no fault of the petitioners, they had to face all the harassment and only upon intervention by this Court, the matter was sorted out. It is submitted that the initial appointment made on 23.05.2001, having being preceded by the necessary tests including written, physical and medical and the discharge of the petitioners on medical ground dated 31.10.2001 being interfered with by this Court, the claim of the petitioners is reasonable, justified and *bona fide*.

9. The learned counsel for the petitioners has also submitted that similarly situated person have been given the benefits. In this connection, reference has been made to an order dated 07.06.2019 passed by this Court in Review Petition No. 111/2018 filed by one Shri Sant Lal. The aforesaid order which has been brought on record by way of a reply affidavit would reveal that the said order was passed in consonance with the judgment dated 26.10.2014 (wrongly recorded as 26.09.2014) passed by the Division Bench in WA No. 153/2014, WA/119/2014 etc. The aforesaid fact has been verified with the order passed by the Hon'ble Division Bench which is also annexed at page 58 of the writ petition. The learned counsel accordingly submits that there should not be any

impediment in granting the relief as prayed for.

10. *Per contra*, Ms. Gayan, the learned C.G.C. has submitted that the petitioners were re-appointed only in the year 2015, pursuant to the direction of this Court. Specific reference has been made to the part of the order dated 26.10.2014 of the Division Bench which is found in paragraph 14. It is submitted that in the said paragraph, it is observed that the petitioners should be given opportunity to undergo and complete the necessary basic training and on such successful completion, they are to be appointed in the post. It is accordingly submitted that it is only after completion of the basic training that the appointment process was completed in the year 2015 and therefore, giving benefit to the petitioners of such appointment from the year 2001 would not be justified.

11. Rival contentions advanced have been duly considered and the materials placed before this Court have been examined.

12. It is not in dispute that the petitioners had undergone the recruitment process in its full rigour and was accordingly appointed on 23.05.2001. The requirement of basic training was also being undertaken by the petitioners and in the mid way, on 31.10.2001, they were discharged from service on medical grounds. The aforesaid discharge was interfered with by this Court by directing that a Review Medical Board be constituted and it is also not in dispute that in the said Review Medical Board, the petitioners have been found to be medically fit. The subsequent rejection on the ground of over age which was also a matter of challenge in the next round of litigation was also put to rest by the Division Bench in the common judgment and order dated 26.10.2014 passed in a bunch of writ petitions and writ appeals including WA 153/2014 and WA 119/2014. Subsequent thereto, the petitioners were re-inducted in service in the year

2015.

13. The discharge of the petitioners from their service after their due appointment in the year 2001 on medical grounds followed by subsequent action of the respondents to deny appointment on the ground of overage even after clearance by the Review Medical Board were interfered with by this Court in different round of litigation. The same would amply demonstrate that the petitioners cannot be put on fault for the gap in the service from 2001 to 2015. The reliance of the petitioners in the case of ***Sant Lal*** (supra) has also not been able to be refuted by the learned C.G.C. This Court has noticed that the benefits given to the said incumbent Sant Lal pursuant to the order dated 07.06.2019 passed in Review Petition 111/2018 clearly refers to the order of the Division Bench passed on 26.10.2014.

14. This Court has re-verified the date which appears to have been wrongly stated as 26.09.2014. However the writ appeal nos. have been correctly reflected.

15. On the aforesaid facts and circumstances, this Court is of the considered opinion that the claim of the petitioners to hold their appointment from the year 2001 appears to be justified as the so called break in their service is not attributable to any fault of the petitioners and in fact the impugned decisions of the authorities firstly to discharge them on the ground of being medically unfit and secondly to decline appointment on the ground of being over aged have been consistently interfered with by this Court. Further, granting the benefit to a similarly situated incumbent (Sant Lal) for which no explanation has been put forward that the said case is distinguishable would be an additional ground in favour of the petitioners. This Court is of the opinion that the claim of the petitioners are liable to be allowed.

16. This Court is however of the opinion that such claim would only be confined to the notional benefits including fitment and also to treat the petitioners to be in appointment from the year 2001 in the context of their pensionary benefits. The claim for back wages from the year 2001, however cannot be considered in terms of the principle of "no work no pay".

17. With the aforesaid directions, the present writ petition stands allowed.

18. No order as to cost.

JUDGE

Comparing Assistant