

(2000) 02 GAU CK 0013**Gauhati High Court****Case No:** Civil Rule No. 1134 of 1998

Ghana Kanta Boro

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Feb. 24, 2000**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 21, 226

Citation: (2000) 2 GLT 513**Hon'ble Judges:** A.K. Patnaik, J**Bench:** Single Bench**Advocate:** B.B. Banerjee and S.C. Biswas, for the Appellant; K.K. Mahanta, C.G.S.C., for the Respondent**Judgement**

A.K. Patnaik, J.

In this application under Article 226 of the Constitution, the Petitioner's case is that he was selected after interview by the selection board for the post of Messenger in the Army. Thereafter, by a letter dated 18.2.98, issued from 155 Base Hospital by the Company Commandant, the Petitioner was advised to report to the said Hospital on 26.2.98 with his educational certificate, birth certificate and SC/ST/OBC certificate. Pursuant to the said letter, i.e. Petitioner reported before the competent authority at the 155 Base Hospital with all testimonials on 26.2.98. The competent authority, however, directed the Petitioner to go through a medical check up on 28.2.98. The Petitioner went through the said medical check up on 28.2.98 and was waiting for his appointment letter. But he was informed by a letter dated 23.3.98 issued from the 155 Base Hospital by the Company Commandant that he had been found medically unfit for the post of Messenger in the medical examination held on 28.2.98. The Petitioner then got himself examined by the Joint Director of Health Services, Sonitpur, Tezpur on 4.3.98, who submitted a medical report that the Petitioner was fit for field service. The said medical report has been annexed to the writ petition as Annexure-3. Therefore, the Petitioner has prayed for quashing the

communication dated 23.3.98 of the company Commandant informing that he was found medically unfit for the post of Messenger and for a direction on the Respondents to accept the medical report issued by the Joint Director of Health Services, Sonitpur, Tezpur and to issue appointment letter in favour of the Petitioner.

2. Mr. B. Banerjee and Mr. S.C. Biswas, learned Counsel for the Petitioner, vehemently submitted that the aforesaid report of the Joint Director of Health Services, Sonitpur, Tezpur would show that the Petitioner was fit for the post of Messenger for which he was selected by the selection board. They further submitted that the Petitioner has been denied appointment to the said post of Messenger on the flimsy ground that he suffers from anxiety neurosis and, therefore, unfit for service. According to Mr. Banerjee and Mr. Biswas, the authorities have arbitrarily denied the appointment to the Petitioner with a view to favour the private Respondent Shri Krishna Kalita for the said appointment and, therefore, the action of the authorities is violative of the rights of the Petitioner to equality in matters of public employment under Articles 14 and 16 of the Constitution as well as his right to life under Article 21 of the Constitution.

3. In reply to the said submission, Mr. K.K. Mahanta, learned CGSC, contended that for recruitment to Army as Messenger, the authorities will go not by the medical report submitted by the Joint Director of Health Services, Govt. of Assam, but by the medical report submitted by the Doctors of the Base Hospital of the Army. Relying on the averments made in affidavit-in-opposition filed on behalf of the Respondents, Mr. Mahanta submitted that the medical examination of the Petitioner was conducted on 28.2.98 and the report was submitted by the Lt. Col. A.K. Choudhury of 155 Base Hospital to the effect that since the Petitioner was suffering from anxiety neurosis, he was disqualified for employment in the office of the 155 Base Hospital. The said medical report was forwarded to a Medical Board consisting of three Doctors and the said Medical Board of Doctors approved the said medical report and accordingly the Petitioner was informed by a letter dated 23.3.98 that he had not been found medically fit for the post of Messenger as per the medical examination held on 28.2.98.

4. In view of the said conflicting medical reports relied upon by the Petitioner and the Respondents, this Court directed in its order dated 28.7.98 that any other medical officer available with the Respondents would examine the Petitioner and submit a report to the Court as to whether the Petitioner was fit to work as Messenger for which he had been selected and pursuant to the said direction, the Petitioner went through a fresh medical examination by a Medical Board on 28.8.98 and the medical report of the said fresh medical examination was submitted to this Court alongwith an affidavit on 15.9.99. In the said medical report, the Medical Board opined that the Petitioner was unfit for service in peace station on account of mild degree of hypertension and anxiety neurosis. After having considered the said

report, this Court by order dated 3.6.99 directed the President or any member of the Medical Board to file an affidavit before this Court explaining as to why the Petitioner was permanently unfit for service in peace station on account of the aforesaid problems of mild degree of hypertension and anxiety neurosis. Pursuant to the said direction, an affidavit has been filed by Major J.R. Galagali who was one of the Medical Officers of the Medical Board which conducted fresh medical examination of the Petitioner on 28.2.98. Paragraph 4 of the said affidavit of Major J.R. Galagali is extracted herein below:

4. That the individual was found to have elevated blood pressure with sweating of palms and tachycardia (increased pulse rate) initially. After resting and making him to lie down for some time his tachycardia reduced, but blood pressure remained on higher side. In view of these findings which suggest anxiety and mild hypertension the individual was referred to the psychiatrist and medical specialist. The individual was examined by the Psychiatrist and he was of the opinion that the individual was having feature of anxiety, mild to moderate Annexure-I. The Medical Specialist also examined him and found that individual was having mild hypertension, Annexure-n.

It was not known whether individual was taking medication for the said problems of anxiety neurosis which could lessen his features.

Keeping in view the overall health state of the individual, elevated blood pressure at this young age could suggest underlying problem like kidney disease, thyroid disorder. Further anxiety proneness could lead to other psychiatric disorder like psychosis.

The stress and strain of service in the Armed Forces and the constitutional nature of the individuals detected suffering, which is likely to aggravate under stress and strain, the Medical Board therefore was of the opinion that the individual was permanently unfit for service in peace station, Annexure-III.

Temporary unfit is considered for those cases where the illness/disease can be cured/treated by medical/surgical procedure within 42 days.

The affidavit of Major J.R. Galagali quoted, above would thus show that the Medical Board was of the opinion that due to mild hypertension and anxiety neurosis the Petitioner will not be able to take the stress and strain of the Armed Forces.

5. In view of the aforesaid affidavit, this Court cannot possibly direct the Respondents to accept the medical report of the Joint Director of Health Services, Government of Assam and appoint the Petitioner to a post of Messenger. It is for the Respondents and not for the court to decide as to whether the Petitioner was medically fit for the post of Messenger for which he has been selected for appointment. The Court's jurisdiction is confined to ensuring that the Petitioner is not arbitrarily denied his right to equal opportunity in matters of public employment under Articles 14 and 16 of the Constitution. It is, in my considered opinion, for the

higher authorities of the Army to decide as to whether or not the Petitioner was unfit for the post of Messenger in the Army on account of mild degree of hypertension and anxiety neurosis as reported by the Medical Board.

6. In the result, I dispose of this writ petition with the direction that a certified copy of the judgment alongwith a representation will be filed by the Petitioner before the GOC, 4 Corps. C/O 99 APO and within 2 months from the date of receipt Of such copy from the Petitioner, the said authority will take a final decision as to whether or not the Petitioner is medically fit for appointment to the post of Messenger for which he was selected by the Selection Board and communicate the said decision to the Petitioner. I further direct that until such final decision is taken and communicated to the Petitioner, the aforesaid post of Messenger for which the Petitioner was selected will not be filled up by any other person including the Respondent No. 5.