

Court No.3

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

1/AFR

Original Application No. 314 of 2012

Thursday, This the 8th day of October 2015

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 13883392W Ex Hav (MT)
Gorakh Nath Chaudhary,
son of Saryu Chaudhary
Village: Prasounda (Karaila)
Post: Prasounda, Tehsil: Jagdishpur
District: Bhojpur

.....Applicant

Ld. Counsel for : Col (Retd) Ashok Kumar,
the Applicant Advocate

Versus

1. Chief of Army Staff, DHQPO, New Delhi-110011
2. Commandant cum Chief Records Officer
Army Service Corps (South) Centre and Records
Bangalore
3. Union of India, Through Secretary, Ministry of Defence,
DHQPO, New Delhi.

..... Respondents

Ld. Counsel for the : Shri D.K. Pandey, Advocate
Respondents assisted by Capt Ridhishri Sharma,
OIC., Legal Cell.

ORDER (ORAL)

1. Heard learned counsel for the parties and perused the record.
2. This O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred by applicant being aggrieved by order of discharge.
3. In brief, applicant Ex Hav Gorakh Nath Chaudhary was enrolled in the Indian Army on 09.10.1980 and later on was promoted to the rank of Havaldar with effect from 01.06.1998. Before completion of his term of service, he exercised option in pursuance to Army Headquarter Policy dated 21.09.1998 for extension of 2 years' service subject to medical fitness. The applicant completed his term of engagement of 24 years on 08.10.2004. He was granted two years' extension of service with effect from 09.10.2004 to 08.10.2006 in the rank of Havaldar.
4. During the extended period of service, in terms of Army Order, he was issued promotional order on 13.01.2006 subject to fulfillment of medical and disciplinary criteria. After issuance of promotion order, it was found that the applicant had been placed in low medical category (Permanent) with effect from 31.08.2005.
5. According to Army Headquarter Letter dated 21.09.1998, in case there is drop in medical standard, discipline and Annual Confidential Report at any time during the extended tenure,

army personnel shall be discharged under Army Rules within maximum period of six months. It is further clarified by Army Headquarter letter (supra) that if a person is downgraded to low medical category, he or she shall be discharged under existing Rules and the period of six months would be basically meant for discharge drill.

6. Since the applicant became low medical category (Permanent) from 31.08.2005 during the extended/enhanced period of service, his promotional order dated 13.01.2006 was cancelled by ASC Records (South) vide letter dated 20.01.2006 and order of discharge was to be given effect from 31.03.2006. Time was given for the purpose of necessary preparation with regard to discharge documents.

7. In consonance to Armed Forces Tribunal (Regional Bench), Lucknow, order dated 20.07.2011, the statutory complaint was considered and rejected through speaking order dated 08.02.2012. It is not disputed that applicant has been placed in low medical category (Permanent). It is also not disputed that under the policy letter (supra) read with letter dated 18.06.2001, a person in low medical category (Permanent) shall not be entitled for promotion or shall not be entitled to enjoy extended period of service.

8. However, learned counsel for the applicant relied upon certain orders, which do not seem to relate to govern service condition of extended period of service of army personnel.

There appears no error that due to condition of service of the

armed force personnel enjoying extended period of service are regulated by certain additional Army Orders passed by Chief of Army Staff. Additional safe-guard seems to have been provided to ensure that the person enjoying extended period of service must be physically and mentally healthy with discipline in life to serve the ^ANation. Such condition, keeping in view the nature of service rendered by armed forces personnel seems to be justified and must be acted upon to maintain discipline and activity of armed forces personnel.

9. Learned counsel for the applicant further argued that disability suffered by the applicant relates to the extended period of service, meaning thereby, it is because of army service and also aggravated because of service rendered in the army, hence the applicant is entitled for disability pension. Learned counsel for the applicant has relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of ***Veerpal Singh vs. Secy. Ministry of Defence*** reported in AIR 2013 SC 2827; ***Dharamvir Singh vs. Union of India***, reported in AIR 2003 SC 2840 and ***Sukhvinder Singh vs. Union of India*** reported in 2014 (8) SCALE 619.

10. The applicant has claimed relief only for setting aside the order passed by the appropriate authority being aggrieved with regard to discharge. The petition has been filed to quash the discharge order. We do not find any merit in the this O.A. to interfere with the discharge order.

11. However, so far as payment of disability pension is concerned, it is consequential to discharge, hence we would the relief and permit the applicant to submit a representation within one month to the competent authority with regard to payment of disability pension. The authority concerned is directed to consider and decide the representation for payment of disability pension keeping in view the Hon'ble Supreme Court's judgments (supra) referred to by the learned counsel for the applicant.

12. In view of above, we decline to interfere with the impugned order. However, we would the relief with regard to payment of disability pension and direct that the competent authority shall dispose of the representation of the applicant for payment of disability pension by passing a reasoned and speaking order, expeditiously, say, within three months from the date of production of certified copy of this order with due communication.

12. Subject to aforesaid discussion, O.A. is disposed of finally.

13. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)