

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No 55 of 2021

Ex Cfn Keval Rana
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>25.02.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>On the case being taken up for hearing Shri KKS Bisht, Ld. Counsel for the applicant is present.</p> <p>Maj Sini Thomas, Departmental Representative is present from the side of respondents.</p> <p>We have heard learned counsel for the applicant and the Departmental Representative.</p> <p>The facts of the case are that applicant was enrolled in Indian Army on 24.12.2010 as Infantry Soldier. He met with an accident on 10.12.2017 while performing military duties at OTA , Chennai and his disability was diagnosed as 'CLOSED HEAD INJURY' and his medical category was P3 (Permanent). He was served a notice dated Feb 2020 to show cause by 22 Feb 2020 positively why his case for discharge from the army should not be taken up with Records 14 GR. He submitted his reply to this notice in time intimating therein that he was a newly married having responsibility of his entire family on his shoulders, therefore, he should be allowed to complete his pensionable service. However, instead of paying any heed to his request the respondents have passed the order to discharge the applicant from service w.e.f. 28 Feb 2021. It is against this order the applicant has filed the present application and has also prayed that operation of the order be stayed till disposal of application.</p> <p>In objection, respondents have only stated that in view of various pronouncements of the Hon'ble Apex Court that if interim relief amounts to grant of final relief the same should not be granted, the prayer of interim relief</p>

claimed by the applicant cannot be allowed. To this, respondents have also quoted two pronouncements in the objection itself i.e. ***Burn Standard Co, Ltd and Ors V. Dinabandhu Majumdar and Anr***, AIR 1995 SC 1499 and ***Indian School Certificate Examination v. Isha Mittal and Anr*** (2000) 7SCC 521.

In reference to show cause notice dated Feb 2020, learned counsel for the applicant submitted that applicant was physically and mentally fit when entered into service. Applicant suffered the disability of **CLOSED HEAD INJURY** for no fault, on his part but while performing military duties. He is a newly married having responsibility of his entire family on his shoulders. He further submitted that in the event of being discharged from service, on account of alleged disability, the applicant would be put to great hardship and it would be very difficult for him to run his family from the little money he will be receiving as disability element as mentioned in the Show Cause Notice, a copy of which has been annexed as Annexure A-1 (i) with O.A. He submitted that despite the alleged disability applicant is capable of doing many duties in the unit which involve less stress, and there are so many soldiers with disabilities in his unit who have been given sheltered appointment, however respondents denied the same to the applicant citing increased state of LMC personnel in the unit. He thus submitted that considering that applicant's disability is not due to his own fault but is due to military duty and in similarly situated matters sheltered appointments have been offered in the unit and the applicant's circumstances also demand the same, operation of the respondents order should be stayed till disposal of O.A. or till next medical board is conducted.

With regard to a query made to the respondents on 17.02.2021, the Departmental Representative Maj Sini Thomas submitted on the basis of instructions received that total strength of jawans and LMC personnel in the unit is 881 and 51 respectively that the prescribed ratio between both of them is 19:1 and that as per policy not more than 5% of unit strength can be allowed in LMC. Presently LMC status is 5.78%. She also submitted that apart from disability element, applicant is also entitled to service element at the time of discharge.

The only objection raised by the respondents with regard to grant of interim relief is that if in the event of interim relief being granted it would amount

the grant of relief which may be granted at the time of final adjudication of the case only, the same should not be granted in view of pronouncements of the Hon'ble Apex Court in various cases. They have not raised any objection that when applicant met with accident which resulted into disability diagnosed as '**CLOSED HEAD INJURY**' and categorised as P3 (Permanent), he was performing military duties. They have also not raised objection that individuals with disability, which applicant has, can do duties which involve less stress and also that many in the unit in similar matters have been offered sheltered appointment.

Respondents have denied the sheltered appointment to applicant citing reasons of increased number of LMC personnel and deficiency in manpower in the unit. The reasons cited by the respondents for denying sheltered appointment to the applicant prima facia does not inspire confidence of us, more so when LMC personnel strength in the unit is only marginally higher and there being no definite policy that in the given situation who may be retained and who may out.

As per Show Cause Notice, Annexure A-1 (i), applicant has been placed in Low Medical Category P3 (Permanent) w.e.f. 20 Jan 2020 to 19 Jan 2022 for diagnosis '**CLOSED HEAD INJURY**' as per medical board proceedings AFMSF-15A (Ver-2006) dated 21 Jan 2020. This indicates that present medical category of the applicant is for a period of three years only and his future medical category will be assessed in next medical board proceeding which may be conducted on or after 19 Jan 2022. Thus, when the medical category of the applicant is not for life, but for a period of three years only and further medical category will be assessed in the next medical board proceeding, it would be unfair if he (applicant) is discharged from service due to increased number of LMC personnel in the unit.

While recording the aforesaid we are conscious of the pronouncements of the Hon'ble Apex Court that interim relief claimed in a suit/application should not be allowed if it amounted to decreeing the suit/application in such relief can be allowed at final adjudication only. However, in situation when there is no definite rule or policy as stated above and there may be possibility of being irrational in granting sheltered appointment, the court or Tribunal cannot sit idle

with closed eyes.

In the facts of the case when it is prima facia established that applicant's disability for which he is being discharged from the service is not due to his fault, and in similar matters sheltered appointment has been offered to others and the applicant is being denied the same without any plausible reason, but in the name of increased number of LMC persons only which is only marginally high as per own submission of the respondents we find that it is a fit case in which indulgence of the Tribunal is required.

Accordingly, the prayer of interim relief is allowed. The operation of the respondents order contained in letter dated 09 Sep 2020, i.e. Annexure No A-1 (ii) to the O.A., is stayed till disposal of O.A. or till the next medical board proceeding in the matter is held, whichever ever be earlier.

Respondents have not filed counter affidavit so far. They are directed to get it filed within four weeks from today.

List the matter before Registrar on **26.04.2021** for exchange of pleadings.

List the matter before Tribunal on **12.05.2021**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-

