

**Court No. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No 1 of 2015**Thursday, this the 31<sup>st</sup> day of March 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Dinesh Kumar Singh (No. 1480108-M Ex Havildar), lastly posted in 52 Engineer Regiment, C/O 99 APO, son of Late Shri Ajayab Singh, permanent resident of Village Bajpurwa, Post Office Raiganj, District Bahraich.

...Applicant

Ld. Counsel for the: **Shri Yash Pal Singh, Advocate**  
Applicant

**Versus**

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Commandant, Bengal Engineer Group & Centre, Roorkee-247667.
3. Commanding Officer, 55 engineer Regiment C/O 99 APO.
4. Officer-In-Charge, Records Bengal Engineer Group, Roorkee-247667.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**  
Respondents **Central Govt Counsel assisted by**  
**Lt Col Subodh Verma, OIC Legal**  
**Cell.**

**ORDER (ORAL)**

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of discharge dated 04.04.2011 passed during extended period of service while holding the rank of Havildar.

2. We have heard Ld. Counsel for the parties and perused the record.

3. The admitted fact is that the applicant was enrolled on 14.08.1986 as Sepoy in the Engineer Regiment of Indian Army as Radio Operator and became Havildar with effect from 14.08.2010. Thereafter his regular service of Havildar came to an end on 13.08.2010. The applicant was granted extension of service on 14.08.2010 in terms of relevant policy. However, on account of low medical category, by impugned order dated 04.04.2011 of Records Bengal Engineer Group, Roorkee, the applicant was discharged from service on 31.08.2011.

4. Submission of Ld. Counsel for the applicant is that the discharge order dated 04.04.2011 suffers from vice of arbitrariness.

5. On the other hand Ld. Counsel for the respondents has drawn attention of this Tribunal on policy letter dated 21.09.1998 which provides that in the event of drop in medical

category during extended period of service, personnel shall be discharged from service. For convenience sake policy dated 21.09.1998 is re-produced as under :-

“Appx ‘B’  
(Refers to Army HQ letter  
No B/33098/AG/PS2  
Dated 21 Sep 98)

### **RETENTION OF PBOR DURING EXTENDED TENURE**

1. *Retention of PBOR during the extended tenure will be governed by the following considerations:-*

(a) Medical Standard. *The individual should remain in medical category ‘A’. PBOR who are temporary low medical category at the time of Screening Board as well as during the currency of extension of service will continue to be in service. If temporary medical category is made into permanent low medical category except those who are battle casualties, wounded in action and consequently placed in LMC during enhanced service, the individual will be discharged under the existing rules.*

(b) Discipline. *The individual should not earn any red ink entry (Including recordable censure in case of JCOs only) during the extended tenure.*

(c) ACRs. *The individual should earn ACRs (where applicable) of not less than ‘Average’ grading during the extended tenure.*

2. *If, however, it is noticed that there is drop in the above criteria at any time during the extended tenure, the PBOR will be discharged under relevant Army Rules within a period of maximum of six months after serving the JCO/NCO the ‘Show Cause Notice’. Period of six months is basically meant for discharge drill”.*

6. Admittedly the applicant suffered drop in medical criteria. The applicant was suffering from Primary Hypertension and Obesity and was placed in medical category P2 (Permanent). Since the policy dated 21.09.1998 provides for discharge of persons during extended period of service on account of drop in medical category, impugned order does not suffer from any impropriety and illegality.

7. The second limb of argument advanced by Ld. Counsel for the applicant is that the applicant was superseded and was not promoted to the next promotional rank of Naib Subedar on 01.07.2010. It is also submitted by Ld. Counsel for the applicant that no disciplinary proceedings or any case of misconduct of any nature was pending against the applicant on said date.

8. In rebuttal, Ld. Counsel for the respondents submitted that the applicant was 'Severely Reprimanded' in accordance with Rules on account of certain misconduct. Fact remains that on 01.07.2010 applicant was not involved in any disciplinary case and no inquiry was pending against him. In such situation, it was incumbent upon the respondents to have considered the applicant for promotion to the rank of Naib Subedar. The disciplinary proceedings initiated at a later stage would not come in the way of the applicant for being considered for promotion on the date his batch mates were considered.

9. Ld. Counsel for the applicant submitted that statutory representation preferred by the applicant is still pending with the respondents.

10. Without entering into the merits of arguments advanced by Ld. Counsel for the parties, we direct the respondents to decide the pending representation of the applicant by passing a speaking and reasoned order expeditiously, say, within two months from the date of production of a certified copy of this order. It shall be open for the applicant to submit a fresh representation along with earlier one within one month. In case the grounds mentioned in the representation of the applicant are correct then respondents shall take decision in accordance with the law within two months and communicate the decision to the applicant forthwith.

11. With aforesaid observations/directions, the O.A. is disposed of finally.

No orders as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

ukt

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