

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 144 of 2020**Wednesday, this the 25th day of August, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. JC-612317Y Sub (RT) Ravi Narayan Tripathi, S/O Sri Indra Narayan Tripathi, R/O 145/5, Sanjog Chetri Vihar, Post-Dilkusha, Distt-Lucknow, Pin-226002 (U.P.).

..... Applicant

Ld. Counsel for the : **Shri KP Datta, Advocate.**
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, COAS Sectt, Integrated HQ of MoD (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, Records 11 Gorkha Rifles, Pin-900450, C/O 56 APO.
4. Commanding Officer, 2/11 GR, PIN-910302, C/O 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh, Advocate**
Respondents. Central Govt Counsel.

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

“(i) To issue/pass an order or direction to set aside/quash the discharge order No 57/2019, passed by respondent No 3 for discharge of the applicant from service on medical ground, vide discharge order letter No 06214/05/RA dated 31.12.2019 with date of discharge w.e.f. 30.04.2020.

“(ii) To issue/pass an order or direction to the respondents to continue the applicant in army service till Sep 2006, and age limit upto 57 years, with seniority of promotion to the rank of Sub Major and Hony Lt/Capt in active service as per seniority and policy in vogue.

“(iii) To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

“(iv) To allow this original application with costs.

2. Brief facts of the case are that applicant was enrolled in the Indian Army as Religious Teacher (RT) in the rank of Nb Sub on 24.03.2000 and was discharged from service w.e.f. 30.04.2020 (AN) in the rank of Sub. During the service in the year 2013 he was detected to be suffering from ‘**Beta Thalassemia Minor**’ and thereafter, ‘**Obesity and Diabetes Mellitus**’ in the year 2015. He was downgraded to medical category S1H1A1P2(P)E1. Being placed in low medical category he was provided sheltered appointment and his services in that appointment were below average. A Show Cause Notice (SCN) dated 16.07.2019 was served upon him to which he did not reply. The SCN dated 12.09.2019 was again served upon him which applicant refused to

accept. Accordingly, his sheltered appointment was withdrawn in terms of AO 46/80 and Army HQ policy letter dated 30.09.2010. Later sanction from Army HQ was taken to discharge applicant. On receipt of discharge order dated 31.12.2019, applicant was sent on leave to get his pension papers completed which he did not do. He was again granted leave in March, 2020 for completion of pension papers. He was to undergo Release Medical Board (RMB) prior to discharge which he also failed to do. During pendency of this O.A. applicant has retired from service w.e.f. 30.04.2020. This O.A. has been filed for quashing of discharge order dated 31.12.2019.

3. Learned counsel for the applicant submitted that applicant was not suffering from any disability at the time of enrolment and the disabilities '(i) Obesity (E-66), (ii) Diabetes Mellitus Type-II and (iii) Beta Thalassemia Minor' have taken place on account of mental and physical stress in the Army. His further submission is that applicant was willing to serve further and no SCN was issued to applicant prior to discharge. Applicant's learned counsel further submitted that applicant has unjustly been denied for retention in service, and has not been provided with sheltered appointment which was available in the Regiment for low medical category personnel though applicant was willing to continue in service in low medical category. Placing reliance on decision of Hon'ble Apex Court judgment in the case of ***Union of India vs Rajpal Singh***, Civil Appeal No 6587 decided on 07.11.2008, the learned counsel submitted that keeping in view of aforesaid judgment applicant

should have been discharged from service by conducting Invaliding Medical Board (IMB) and not on the recommendation of Release Medical Board. A representation dated 30.01.2020 submitted against discharge order has not been decided as yet and applicant has been discharged from service on 30.04.2020. His further contention is that had applicant not been discharged from service, he would have served till the age of 57 years and got further promotion to the rank of Sub Maj and Hony Lt/Capt on active list.

4. Per contra, learned counsel for the respondents submitted that applicant being placed in low medical category was provided sheltered appointment but his services were below average on that appointment. Thereafter, Show Cause Notices were issued two times which he did not accept. Later after getting sanction of higher headquarters, he was discharged from service w.e.f. 30.04.2020. Prior to discharge he was to undergo RMB which he refused. His further submission is that keeping in view of applicant's discharge from service without holding RMB, sanction from competent authority was also obtained to hold post retirement RMB vide letter dated 28.03.2019. Learned counsel for the respondents further contended that when no reply was received from applicant after issuance of two Show Cause Notices, a Board of Officers was convened on 21.10.2019 to ascertain whether applicant has received Show Cause Notice for withdrawal of his sheltered appointment. The Board of Officers has found that though two Show Cause Notices were served upon the applicant but he did not reply

any of them. Accordingly, he was discharged from service by following due procedure. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is undisputed case of the parties that applicant was enrolled in the Army on 24.03.2000 and discharged from service on 30.04.2020 in low medical category. Applicant is in receipt of service element of pension. Applicant being in low medical category was provided sheltered appointment but his services were found unsatisfactory. Accordingly, he was issued Show Cause Notice twice but he did not accept it. He was discharged from service after taking prior approval of the competent authority.

7. It may be noted that applicant is a Religious Teacher whose involvement in unit's physical/mental work is limited, therefore it cannot be said that applicant has developed aforesaid diseases/disabilities due to stress and strain of military service. Applicant was suffering from 'Obesity' from the year 2012 while posted at Lucknow and developed 'Diabetes Mellitus Type-II' in the same year. Medical literature on obesity provides as under:-

"Obesity means having too much body fat. It is different from being overweight, which means weighing too much. The weight may come from muscle, bone, fat and/or body water. Both terms mean that a person's weight is greater than what's considered healthy for his or her height. Obesity occurs over time when you eat more calories than you use. The balance between calories-in and calories-out differs for each person. Factors that might tip the balance include your genetic makeup, overeating, eating high-fat foods and not being physically active. Being

obese increases your risk of diabetes, heart disease, stroke, arthritis and some cancers. If you are obese, losing even 5 to 10 percent of your weight can delay or prevent some of these diseases.”

8. From the above, we may infer that applicant being a Religious Teacher was not involved in any physical activities and developed Obesity during course of duty followed by Diabetes Mellitus Type-II. Therefore, these disabilities cannot be related to military service.

9. The applicant has been discharged from service by following due procedure and no injustice has been done to him. Show Cause Notices were issued twice but Army authorities were not given reply to Show Cause Notices. Thereafter, a Board of Officers was convened to ascertain issuance of Show Cause Notice and its receipt by applicant and withdrew his sheltered appointment and he was discharged from service by obtaining prior approval of competent authority.

9. We have observed from the record that applicant was serving in low medical category and prior to discharge from service his RMB was not conducted which is a mandatory requirement.

10. Thus, keeping in view that his RMB has not been conducted, respondents are directed to hold applicant's RMB within four months from today.

9. In view of the above, O.A. is **disposed off**.

10. No order as to costs.

11. Pending application, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 25th August, 2021
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RESERVED

Form No. 4
 {See rule 11(1)}
 ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 144 of 2020

Sub (RT) Ravi Narayan Tripathi
 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>25.08.2021</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>Judgment pronounced. Original Application is disposed off. For order, see our judgment passed on separate sheets. Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>