

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 409 of 2020**Tuesday, this the 10th day of August, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No-1477610-W Ex Sep. Raghawandra Kumar Singh
R/o Vill & Post – Gahmar, Tehsil – Seroi,
District – Gazipur (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, new Delhi – 110011.
2. Chief of Army Staff, Army Headquarters Ministry of Defence, Government of India, South Block, New Delhi – 110011.
3. Senior Record Officer, Defence Security Corps Records, Mill Road, Buenachery Post Kannur (Kerala) PIN – 670013.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “(I) To set aside of Discharge order dated 26.10.2019 and Order dated 27.07.2019 being in violation of Rule 13 III (iii) (a) (i) of Army Rule 1954 and in violation of Law laid down by various AFT.

- (II) To and reinstate him in service immediately and pay regular salary till his engagement of service i.e. 26.03.2022.
- (III) To pay arrears of salary along with 12% interest W.E.F. 01-12-2019 till it is actually paid.
- (IV) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted."

2. Brief facts of the case are that the applicant was initially enrolled in the Indian Army on 07.06.1985 and was discharged from service on 30.06.2011 (AN) after rendering more than 26 years of service for which he was granted service pension for life. Thereafter, applicant was enrolled in DSC on 27.03.2012 and did not opt to count his former service towards DSC service. During the service of initial terms of engagement for 10 years, applicant was placed in permanent low medical category S1H1A1P2 (P) E2 (P) w.e.f. 19.01.2018 for the diagnosis "**Diabetes Mellitus Type 2**" and "**Cataract (RE) Optd Sfiol Implantation Cataract (LE)**". As per policy laid down vide Army Headquarters letter dated 03.05.2018 and letter dated 20.11.2018, all DSC (GD) persons who are in permanent low medical category and persons even who are placed in temporary low medical category for 'Alcohol Dependency Syndrome (ADS)' will be discharged from service during contract or extension period in accordance with the statutory provision of Army Rule 13 (3) III (iii) (a) (i), issued vide Gazette Notification SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. The applicant being in low medical category was issued a Show Cause Notice in presence of two

witnesses vide 18 Wing Air Force letter dated 02.04.2019 to show cause as to why he should not be discharged from service being placed in permanent low medical category. The reply given by the applicant was not considered a sufficient ground by the competent authority for his retention in service, a reasoned speaking order was issued to him by the Commanding Officer elaborating his ineligibility for further retention in service due to non availability of sheltered appointment. Thereafter, his discharged order dated 27.07.2019 was issued by which, the applicant was to be discharged from service as on 30.09.2019. The Records letter dated 27.07.2019 could not reached unit of the applicant in time and the applicant continued in service. As such, again an approval was granted by the Records vide letter dated 26.10.2019 mentioning his date of Discharge from service w.e.f. 30.11.2019. Accordingly, applicant was sent for RMB in 167 Military Hospital on 31.10.2019 where Release Medical Board found him to be Fit for discharge in low medical category S1H1A1P2E2 (P). There being no sheltered appointment available in the unit, applicant was discharged from service w.e.f. 30.11.2019. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to allow him to join duty till completion of his initial terms of engagement of service i.e. up to 26.03.2022.

3. Learned counsel for the applicant submitted that applicant has been discharged from service illegally and arbitrarily. Rule 13 as amended vide SRO 22 of 2010 specifically deals with the manner of

discharge of permanent low medical category personnel when no sheltered appointment is available in the Unit and the same has not been followed by the respondents while discharging the applicant from service. He placed reliance on the judgments of the Hon'ble Apex Court in case of ***Union of India vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, Division Bench of Punjab and Haryana High Court in case of ***Subedar Manjit Singh vs. Union of India*** in CWP No. 988/2012, decided on 19.05.2014 and AFT (RB) Chandimandir in OA No. 2360 of 2013, ***Rakesh Kumar Singh vs. Union of India***, decided on 17.04.2015 and T.A. No. 27 of 2013, ***R.K. Patel vs.. Union of India and Ors***, decided on 02.11.2017 and pleaded that applicant's case is covered with aforesaid judgments, hence, his discharge order should be quashed and applicant should be allowed to join duty till completion of his terms of engagement i.e. up to 26.03.2022.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in DSC for an initial terms of engagement of 10 years service. During the initial terms of engagement, applicant was placed in permanent low medical category S1H1A1P2 (P) E2 (P) w.e.f. 19.01.2018 for the diagnosis "Diabetes Mellitus Type 2" and "Cataract (RE) Optd Sfiol Implantation Cataract (LE)". As per policy laid down vide Army Headquarters letter dated 03.05.2018 and letter dated 20.11.2018, all DSC (GD) persons who are in permanent low medical category and persons even who are placed in temporary low medical category for 'Alcohol Dependency Syndrome (ADS)' will be

discharged from service during contract or extension period in accordance with the statutory provision of Army Rule 13 (3) III (iii) (a) (i), issued vide Gazette Notification SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. There being no sheltered appointment available in the unit commensurating to his disabilities, he was discharged from service. He pleaded that O.A. may be dismissed.

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

6. We find that applicant was downgraded to low medical category S1H1A1P2E2, permanently for his both disabilities, Physical (P) and Eye (E). In DSC, General Duty (GD) personnel are meant for sentry/guard duties and there being no sheltered appointment available for a GD soldiers except a sentry/guard duties, low medical category personnel may not be provided any other type of duties/sheltered appointment, therefore, respondents have rightly taken the decision to discharge the applicant in low medical category as per policy on the subject. There being no sheltered appointment available in the unit commensurating to his disability, especially EYE disability, applicant was discharged from service after due procedure as per Army Headquarters policy letters dated 03.05.2018 and 20.11.2018 and SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge

order and to allow him to join duty till completion of his initial terms of engagement of service i.e. up to 26.03.2022.

7. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

8. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: 10th August, 2021
SB