

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No. 538 of 2018

Monday, this the 2nd day of August, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 2489058K Havildar Avtar Singh
29 PUNJAB
C/o 56 APO

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate, holding
brief of **Shri Lalit Kumar**, Advocate

Versus

1. The Union of India, Through Secretary Ministry of Defence, South Block, New Delhi – 01.
2. The Chief of the Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi – 01.
3. Officer-in-Charge, Records The Punjab Regimental Centre & Records, C/o 56 APO.
4. Commanding Officer, 29 PUNJAB, C/o 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Neeraj Upreti**,
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 strike down SRO No. 22 dated 13th May 2010 (Impugned Order No. 1), declaring the same as unconstitutional and ‘ultra vires’ of Article 14, 16 and 21 of the Constitution.
- (ii) To quash and set aside the order dated 18th May 2018 (Impugned Order No. 2), in so far as it relates to illegal discharge of the applicant from service with effect from 30th November 2018, as reflected against serial No. 4 of

the Appendix attached to the said order dated 18th May 2018.

- (iii) To direct the respondents to allow the applicant to complete the statutory tenure of his service of 24 in 'colour' as a Havildar, i.e. till 26th December 2020.
- (iv) To direct the respondents to nominate the applicant for the promotion cadre course for his promotion to the rank of Naib Subedr as per his seniority.
- (v) To restrain the respondents from giving effect to the impugned order dated 18th May 2018 (Impugned order No. 2) in so far as it relates to the applicant, during the pendency of this O.A., AND
- (vi) To grant any other relief or reliefs which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 26.12.1996 and was discharged from service on 30.11.2018 in low medical category after rendering 21 years and 11 months of service before completion of terms and engagement under Rule 13 of Army Rules, 1954. The applicant suffered from '**Primary Hypertension**' in June 2017 and '**Normal Tension Glaucoma (Both Eyes)**' in 2015. The disabilities of the applicant were considered as neither attributable to nor aggravated by military service (NANA) by RMB but percentage and durations of disabilities are not given in the RMB proceedings filed alongwith O.A. as well as counter affidavit. 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.

3. Learned counsel for the applicant submitted that applicant has been discharged from service illegally. It is in violation of Article 14, 16 and 21 of Constitution of India. He further submitted that as per Regulation 164 of DSR, a Sepoy, on being promoted to the rank of Naik, acquires a statutory right to serve for 22 years in 'colour' and on being promoted to the rank of Havildar, acquires a further right to serve for 24 years in 'colour'. The provisions of Regulation 163 of DSR have also not been followed. The applicant being enrolled on 26.12.1996, the terms and conditions of service were governed by the un-amended Rule 13 of the Army Rules, 1954 for the simple reason that as per Statutory Regulatory Order (SRO) No. 22, the amended Rule 13 of the Army Rules, 1954, came into force only with effect from 13th May 2010 and therefore, the same could not be applied retrospectively against the persons who had been enrolled in the Army prior to the said date, i.e. 13th May 2010. The authorities concerned were required to follow the procedure as laid down by the Army HQ policy letter dated 30.09.2010. The eye disability of the applicant has also no employment restrictions for which he was discharged in low medical category. By not giving the sheltered appointment on the ground of his medical category, the discharge of the applicant is illegal, arbitrary, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India, applicant be allowed to join service to complete the statutory tenure. Hence, his discharge order should be quashed and applicant should be allowed to join duty upto the tenure of 24 years of service as he has been discharged from service illegally.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 30.11.2018 after rendering 21 years and 11 months of service but before completion of terms and engagement under Rule 13(3) III (iii) (a) (i) of Army Rules, 1954 in low medical category for the disabilities '**Primary Hypertension**' and '**Normal Tension Glaucoma (Both Eyes)**'. He has been discharged from service under the provisions of Army Rule, 1954, Army Order 46/80, IHQ of Mod (Army) letter dated 30.09.2010, 07.02.2011 and 06.05.2016 being no sheltered appointment was available in the unit. The applicant is in receipt of service pension. The applicant was also detailed for promotion cadre but being in low medical category he was not allowed to attend cadre. Before discharge from service, applicant was also served a Show Cause Notice. The applicant was granted sheltered appointment earlier w.e.f. 05.02.2016 to 04.02.2018. The applicant could not be accommodated any more in a sheltered appointment commensurate with the nature and degree of his disabilities. Therefore, there being no sheltered appointment available in the unit commensurating to his disabilities, he was discharged from service as per policy on the subject. He pleaded that O.A. may be dismissed.

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

6. We observe that SRO No. 22 being made effective w.e.f. 13th May 2010, and not retrospectively, cannot be held violative of Article 14, 16 and 21 of the Constitution of India.

7. We find that as per Ministry of Defence SRO No. 22 dated 13.05.2010, Records the Punjab Regiment letter dated 18.05.2018, Rule 13 of Army Rules, 1954 and AO 46/80 and there being no sheltered appointment available in the unit commensurating to his disability, applicant was discharged from service after due procedure as per policy on the subject. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to allow him to join duty.

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

9. No order as to costs.

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

Member (A)

Member (J)

Dated: 2nd August, 2021

SB