

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 320 of 2022**Wednesday, this the 03<sup>rd</sup> day of August, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 13970625H Nk/DSC Upendra Kumar Singh, S/o Bhola Singh, presently posted at 35 DSC PI Attached to 25 WEU, C/o 56 APO (Uttar Pradesh).

Learned counsel for the: **Shri US Mishra**, Advocate  
Applicant **Shri Trilok Chand**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Room No 101A, South Block, DHQ, PO-New Delhi, PIN-110011.
2. Chief of Army Staff, IHQ of MoD (Army), Room No 195, South Block, DHQ, PO-New Delhi, PIN-110011.
3. The Commandant & OIC DSC Centre & Records, Mill Road, Burnacherry, Post-Kannur, Kerla, PIN-670013.
4. The Officer in Charge, 35 DSC PI attached to 25 WEU, C/o 56 APO.

.....Respondents

Learned counsel for the : **Shri Sunil Sharma**, Advocate  
Respondents. Central Govt. Counsel

## **ORDER**

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

(i) *Call for the record based on which the service note/so called policy dated 03.05.2018 was formulated and was implemented. And order to respondents for production of all correspondents between Commanding Officer and OIC Records with regards to calculation of Shelter Appointment of applicant as per Appx 'B' to AG/MP-3 letter No B/10201/Vol-VI/MP-3 (PBOR) dated 30.09.2010 (Annexure A-8 Colly) as applicant has exceeded the sanctioned strength of DSC and applicant was given opportunity to re-muster in other Arm/Branch as per Appendix 'A' of AO 46/80 (Annexure A-7) and certified copy applicant's AFMSF-16.*

(ii) *Set aside/stay the operation of the impugned service note/so called policy dated 03.05.2018 (Annexure A-1) (colly) which has caused prejudice to the applicant.*

(iii) *Set aside the impugned discharge order dated 28.03.2022 (Annexure A-1) by which the applicant discharged from service; relying upon such impugned service Note dated 03.05.2018 including policy dated 20.11.2018 (Annexure A-1 Colly) and minutes sheet and calculation of sheltered appointment exceeding the sanctioned strength of DSC; thereafter quash the same.*

(iv) *Direction to the respondents to stay on the operation of impugned discharge order dated 28.03.2022 (applicant service will be 13 years 7 months 11 days at the time of discharge on 31.07.2022) till final disposal of O.A. with retrospective seniority, salary and all consequential benefits in terms of law laid down on the matter of stay order in the case of L/Hav S Thirumalai vs Union of India & Ors (O.A. No 81/2019 order dated 05.05.2019 by Hon'ble AFT (RB) Chennai) (Annexure A-12), on the matter of the 'the order of discharge taken without opinion of the Release Medical Board cannot be sustained and consequently the same is set aside' by Hon'ble Punjab & Haryana High Court in the case of Subedar Manjit Singh vs UOI & Ors (CWP 988/2012 (O&M) order dated 19.05.2014 (Annexure A-9 Colly), on the matter of near to pensionable service in the case of Surendra Oraon vs Union of India and Others (O.A. No. 2393/2013 order dated 05.02.2014 by Hon AFT RB Chandigarh, (Annexure A-10) and in the case of Sep Bablu Singh vs Union of India & Ors (O.A. No. 1990/2019 Order dated 26.11.2019)p; Nk Jivan Singh vs Union of India & Ors (O.A. No. 1405/2019 order dated 11.09.2019) (Annexure A-11 colly), and allow applicant to continue in service till he completes his bond period upto 20.12.2023.*

(v) *The applicant be granted any other relief which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case.*

(vi) *Award cost of the O.A. to the applicant.*

2. Brief facts of the case are that the applicant was initially enrolled in the Indian Army on 28.10.1986 and was discharged from service on 31.10.2008 (AN) after rendering more than 22 years of service for which he is in receipt of service pension for life. Thereafter, applicant was re-enrolled in Defence Security Corps (DSC) on 21.12.2008 and did not opt to count his former service towards DSC service. He was placed in permanent low medical category P2 (P) w.e.f. 24.07.2020 for the diagnosis 'Primary Hypertension'. Policy letters dated 03.05.2018 and 20.11.2018 lay down that DSC personnel placed in permanent low medical category may be discharged from service at any time during the service as sheltered appointment is not available in DSC. Since the applicant was placed in low medical category P2 (Permanent) w.e.f. 24.07.2020, his discharge order has been issued vide letter dated 28.03.2022 to be discharged from service w.e.f. 31.07.2022 on the ground that in DSC sheltered appointment is not available. 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 continue in service upto 20.12.2023 so that he could complete his pensionable service.

3. Learned counsel for the applicant submitted that applicant has been ordered to be discharged from service illegally and arbitrarily. He further submitted that Rule 13 of Army Rules, 1954 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 AFT, RB, Kolkata order dated 18.04.2014 passed in O.A. No. 117 of 2013, **Sub/SKT Tuhin Manti Biswas vs UOI & Ors**, Hon'ble Punjab & Haryana High Court order dated 19.05.2014 passed in CWP 988 of 2012, **Subedar Manjit Singh vs UOI & Ors** and order dated 16.12.2019 passed in CWP 36077 of 2019, **Satbir Singh vs UOI & Ors**, and pleaded that applicant's case is covered with aforesaid judgments, hence, his discharge order should be quashed and applicant should be allowed to continue in service till completion of his term of engagement i.e. up to 20.12.2023.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in DSC for initial term of engagement of 10 years. During the second spell of his service applicant was placed in low medical category P3 (T-24) w.e.f. January, 2020 and in re-categorization medical board he was placed in permanent low medical category S1H1A1P2 (P) E1 w.e.f. 24.07.2020 for the diagnosis "Primary Hypertension". As per policy laid down vide Army Headquarters letter dated 03.05.2018 and letter dated 20.11.2018, all DSC (General Duty) persons who are in permanent low medical category 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 commensurate to his disability, he was ordered to be discharged from service vide discharge order dated 28.03.2022. 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 the applicant while serving/attachment with 25 WEU was placed in low medical category P2 (Permanent) w.e.f. 24.07.2020. In DSC, General Duty (GD) personnel are meant for sentry/guard duties and there being no sheltered appointment available for a GD soldier except a sentry/guard duties, low medical category personnel may not be provided with any other type of duties/sheltered appointment, therefore, respondents have rightly taken the decision to discharge the applicant being in low medical category as per policy on the subject. There being no sheltered appointment available in the unit commensurate to his disability, applicant was issued a Show Cause Notice dated 08.01.2021 to show cause as to why he should not be discharged from service being placed in low medical category. However, the applicant refused to accept the notice and did not submit any reply. Show Cause Notice dated 08.01.2021 is reproduced as under:-

"1. You are voluntarily re-enrolled in to Defence Security Corps on 21 Dec 2008 for an initial contractual period of 10 years from 21 Dec 2008 to 20 Dec 2018 vide Government of India, MoD (Army) letter No A/00592/DSC-2/813-III/D (GS-IV) dated 05 Dec 1981. You were further recommended by a board of officers for grant of 05 years of periodical extension of service upto 55 years of age and have published necessary Part II Order thereto documenting your extended period of service from 21 Dec 2018 to 20 Dec 2023 vide DSC Records Part II Order No 1/1756/ERG/0003/2017 provided you remain in acceptable medical category during the period.

2. It is intimated to you that pers placed in low medical categories SHAPE-2 or 3 permanent are to be considered for disch as no sheltered appointments are available in DSC. Since you have been placed in low medical cat S1H1A1P2(P)E1 (permt) for the disability 'primary hypertension' there is no sheltered appt available in 35 DSC Pl att to 25 WEU, you are being considered for disch from DSC under the provisions of Rule 13 (13) item (ii) (a) (i) (for JCOs) and Rule 13 (3) item III (iii) A (i) (for OR) of Army Rules, 1954.

3. Under the conditions as explained in paragraph 1 and 2 above, you are hereby served a Show Cause as to why you should not be discharged from service with effect from 08 Jan 2021 within six months from the date of serving this Show Cause Notice.

Indl refused to sign

Signature of witness

1. sd/-x x x x x x

2. sd/- x x x x x x"

7. When the aforesaid Show Cause Notice dated 08.01.2021 was not accepted/received by the applicant, the respondents after waiting for one year issued a speaking order dated 05.01.2022 mentioning therein that he will be discharged from service within six months due to non availability of sheltered appointment. Order dated 05.01.2022, for convenience sake, is reproduced as under:-

"1. 35 DSC Pl att to 25 WEU letter No Show Cause Notice letter No 02/PL-35/DSC/Pen dt 08 Jan 2021 (SCN).

2. AND WHEREAS, you were re-enrolled into DSC on 21 Dec 2008 as a DSC GD in a SHAPE-I for a period 10/05 yrs. As per Base Hospital Lucknow AFMSF-15 dt 24 Jul 2020 you were placed in Med Cat P2 (P) for Diag 'Primary Hypertension'. The DSC Pls are auth manpower as per PE and have been posted with

*manpower to man auth No of guard post to guard the security of installations with limited manpower auth and posted. If any personnel of the PI strength gets medically unfit (temp/permt) to perform charter of duties, it leads to extra burden of performance additional duties by other fit personnel at the cost of their auth rest/recoup time which causes stress & strain on those fit indls which has an adverse effect on OP efficiency available in DSC PI, you are being discharged from service within six months from the date of issue SCN provisions of Rule 13 (3) item III (iii) (a) (i) for OR of Army Rule 1954 and policy on the subject.*

*3. Keeping in view the above, you are being discharged from service."*

8. The aforesaid order is crystal clear that applicant's discharge order was issued due to non availability of sheltered appointment in DSC.

9. Additionally, DSC is a corps of the Indian Army responsible for providing security cover to the defence installations of the three services (Army, Navy, Air Force) and other sensitive installations. The DSC troops are sanctioned and attached to various bases/installations to ensure protection against sabotage and pilferage. It is the sixth largest Corps of the Army. In our country defence installations are facing threat from the ante-national elements and DSC persons are the prime targets being the first line defence. As such, physical and medical fitness of a DSC person plays a vital role in defending the vital defence installations.

10. With regard to provision of sheltered appointment in DSC it may be mentioned that since the authorization of man power for a DSC platoon is as per the number of posts to be guarded, there is no sheltered appointment available in DSC. Moreover, with limited manpower authorized and posted, if any person of the

platoon strength gets medically unfit to perform his charter of duties, it leads to extra burden of performing additional duties by other fit personnel at the cost of their authorized rest/recoup time which causes stress and strain on those fit individuals, which has an adverse effect on operational efficiency and may endanger the defence installations. During the course of hearing we have been informed that many of the guard posts are manned by single sentry. DSC persons being first line of defence for vital defence installations, the security of the installation is more important than the personal welfare. Thus, considering all these aspects IHQ of MoD (Army) have revised the policy of terms and conditions for retention of JCOs/OR in DSC vide policy letter dated 03.05.2018 and 20.11.2018 and issued directions that permanent low medical category personnel will be discharged from service at any time during service in accordance with Army Rule 13 as no sheltered appointment is available in DSC.

11. Applicant's contention is that his RMB has not been conducted and that order of discharge should have been issued after recommendation of RMB. In this regard, we observe that the applicant has been serving in low medical category since 2020 for two disabilities, one of which was upgraded to SHAPE-I vide AFMSF-15 dated 25.07.2020, but he remained in medical category P2 (permanent) for the disability 'Primary Hypertension' which is unacceptable medical category in terms of policy on the subject.



12. Placing reliance on judgments rendered by various AFTs, learned counsel for the applicant submitted that the applicant should not have been discharged from service. We have perused the facts and circumstances of aforementioned case laws and we find that facts and circumstances of the cases are different with the case in hand. The true fact is that in the instant case the applicant was placed in permanent low medical category w.e.f. 24.07.2020 and low medical category personnel are not allowed to serve further in DSC keeping in view the non availability of sheltered appointment.

13. With the aforesaid we find that discharge order dated 28.03.2022 in respect of the applicant has rightly been issued which needs no interference. Hence, the applicant is not entitled to the relief prayed in Original Application.

14. The O.A. is dismissed.

15. No order as to costs.

16. Pending application (s), if any, stands disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated: 03.08.2022

*rathore*

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**