Court No.3

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO 31 of 2013

Monday, this the 18th day of January 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

15374216F CHM, Ranjan Kumar Mishra (Retired), S/o Shri Durga Charan Mishra, R/o Village Nuasahi Post Office Gatanai via Kujanga, Tehsil Marshaghai, District Kendrapeda (Odisha).

…Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra, Advocate**

Versus

1. The Union of India, Through the Secretary, Ministry of Defence, Government of India, New Delhi.

2. Chief of Army Staff, Army Headquarters, DHQ Post Office, New Delhi.

3. The Officer-In-Charge, Signals Records, Jabalpur Cantt, Jabalpur District-Jabalpur (M.P.).

4. The Commanding Officer, 60 Wireless Experimental Unit, C/o 56 APO.

…….Respondents

Ld. Counsel for the Respondents: **Shri D.K. Pandey, Central Govt Counsel assisted by Lt Col Subodh Verma, OIC Legal Cell.**

ORDER (ORAL)

1. This application under Section 14 of the Armed Forces Tribunal Act 2007 has been preferred being aggrieved by impugned order of discharge dated 04.07.2011 from Army on account of Low Medical Category.

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

3. Solitary argument advanced by Ld. Counsel for the applicant is that the Release Medical Board was held subsequent to the passing of the impugned order of discharge.

4. Admitted fact on record is that the applicant was enrolled in the Army in the Corps of Signals on 28.02.1991. Later on he was promoted on the post of Havildar on 17.12.1996. It appears that the applicant was diagnosed to be suffering *BRONCHIAL ASTHMA* in October 2003. Later on in January 2008, he was diagnosed to be suffering from *LOW BACK ACHE.* In October 2010, the applicant was further diagnosed to be suffering from *PRIMARY* HYPERTENSION. For *BRONCHIAL ASTHMA, he was* placed in Low Medical Category P3 (T-24) with effect from October 2003, for *PRIMARY HYPERTENSION* in Low Medical Category P-3 (T-24) with effect from October 2010 and for *BACK ACHE* in Low Medical Category P-3 (T-24) with effect from February 2011.

5. It appears that on recommendation of Commanding Officer dated 30.06.2011 decision was taken on 04.07.2011 to discharge the applicant from service with due communication in writing. Order dated 04.07.2011 indicates that the applicant was required to be released from Army on 31.12.2011. The order of discharge dated 04.07.2011 has been passed in pursuance to Army Rule 13 (3) iii (a) as amended.

6. According to the amendment done in said rule by SRO 22 dated 13.05.2010 (with effect from 29.05.2010), Invaliding Medical Board has been substituted by Release Medical Board. Thus after 2010 only one medical board was required and it is Release Medical Board. Ld. Counsel for the applicant invited attention to the fact that Release Medical Board was convened on 06.08.2011 which has given its opinion with regard to unsuitability of the applicant to retain in the Army. His submission is that discharge order passed is illegal as the decision has not been taken in pursuance to recommendation of the Release Medical Board. It is also argued by Ld. Counsel for the applicant that mind should have been applied after receipt of opinion from the Release Medical Board to discharge the applicant from the Army. According to Ld. Counsel for the applicant, to meet out the requirement of law, and substantial illegality committed by the respondents, Release Medical Board was convened which has given its opinion on 06.08.2011 to

release the applicant from Army on the ground of unsuitability. Submission is that discharge order could have been passed after convening Release Medical Board. The provision contained in Army Rule 13 (3) iii (a) is reproduced as under:-

Category	Grounds of discharge	Competent Authority to authorise discharge	Manner of discharge
	(iii) (a) Having been found to be in permanent low medical category SHAPE 2/3 and when (i) no sheltered appointment is available in the unit, or (ii) is surplus to be organisation	Commanding Officer	The individual will be discharged from service on the recommendations of Release Medical Board

7. Plain reading of the aforesaid provision shows that once a person has been found medically unfit for Army services then after obtaining the recommendation of Invading Board, (now substituted by Release Medical Board) the Commanding Officer shall pass the order of discharge. In the present case on 04.07.2011, there was no opinion of the Release Medical Board in pursuance of which the Commanding Officer could have discharged the applicant. Accordingly, impugned order dated 04.07.2011 seems to be bad in law and unsustainable. The opinion of the Release Medical Board goes to the very root of the service career of the Army personnel and that is why the Rule provides that release shall be carried out on account of

medical unfitness only in pursuance to the recommendation of the Invaliding Medical Board (now Release Medical Board). In the absence of any opinion of Medical Board, it was not open for the respondents to pass the impugned order of discharge.

8. There is another aspect of the medical history of the applicant which shows that he was placed in Low Medical Category P3 (T-24) with effect from February 2011. In the present case T-24 means for a period of 24 weeks i.e. 6 months. Accordingly, it was not justifiable on the part of the respondents or the Commanding Officer to discharge the applicant with prospective date on account of P-3 medical category. Opinion of the Release Medical Board shows that the applicant was placed in Low Medical Category P-3 for Bronchial Asthama, from 27.03.2011, for Primary Hypertension from 05.05.2011 and for Back Ache from 19.07.2011.

9. OIC., Legal Cell as well as Ld. Counsel for the respondents submitted that all the three opinions with regard to medical category were in pursuance to decision of the Release Medical Board dated 06.08.2011. The fact remains that the applicant was discharged by order dated 04.07.2011. At least in one of the disease, i.e. Bronchial Asthama, the applicant was placed under Permanent Low Medical Category with effect from 27.03.2011. On the face of the record, it is evident that the Release Medical Board was convened on 06.08.2011 forming

its opinion relying upon all three Review Medicals while forming opinion with regard to applicant's release from Army. It means that after 06.08.2011 decision could have been taken for release of the applicant from Army. Thus, the decision taken for release of the applicant from Army appears to be a pre-decided action and not in conformity with the rules. Opinion dated 23.07.2011 is also an opinion expressed after passing of the impugned order of discharge from Army.

10. Provision contained in Army Rule 13 being statutory in nature has got binding effect. The procedure adopted by the respondents could not validate the action of the respondents while assessing the applicant's invalidity to release him from Army. It is condition precedent to obtain opinion of the Release Medical Board and only thereafter an order of discharge could have been passed releasing the applicant from Army. In the present case, reverse action has been taken by the respondents instead of following the statutory mandate.

11. According to the 'Maxwell on The Interpretation of Statutes (12th Edition Page 36), to quote:-

> *"A construction which would leave without effect any part of the language of a statute will normally be rejected."*

12. Thus while interpreting statutory provision every word as well as punctuation should be read and no line should be made

redundant. Hon'ble Supreme Court from time to time repeatedly reiterated interpretative jurisprudence and observed that while considering statutory provision, the provision should be considered by section by section, word by word, line by line along with punctuation in reference to context for which it has been used.

13. In a recent judgment reported in ***Vipulbhai M. Chaudhary vs. Gujarat Coop. Milk Mktg. Federation Ltd.*** (2015) 8 SCCC 1, the Hon'ble Supreme Court has held:-

> *"In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts."*

14. In the same judgment Hon'ble Supreme Court, while applying interpretative jurisprudence, further emphasized to implement constitutional mandate in the following words:-

> *'When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements of the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly."*
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> Again the Hon'ble Supreme Court has said as under:
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> *"Where the Constitution has conceived a particular structure of certain institutions, the legislative bodies are*

bound to mould the status accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an interference, it is the bounden duty of the court to do so."

(iii) In ***Deevan Singh vs. Rajendra Prasad Ardevi*** 2007 (10) SCC 28, Hon'ble Supreme Court held that while interpreting Statute the entire statute must be read as a whole, then section by section, clause by clause, phrase by phrase and word by word.

Further it is the settled law that *causus omissus* (Principle of reading down) may be applied in case there is any ambiguity or absurdity in the statutory provisions, vide ***Gujrat Urja Vikash Nigam Ltd vs. Essar Power Ltd***, 2008 (4) SCC 755.

15. In view of above, the impugned order suffers from substantial illegality and is not sustainable being not in consonance with the procedure prescribed by law.

16. The result of discussions made hereinabove is that the O.A. deserves to be allowed; hence allowed. Impugned order of dated 04.07.2011 is set aside with all consequential benefits. However, arrears of salary are confined only to 25%. The applicant shall be deemed to be continuing in service for the

purpose of other service benefits till end of his tenure in the rank he was holding at the time of discharge. Let consequential benefits be provided to the applicant in terms of the present order expeditiously, say, within four months from the date of presentation of a certified copy of this order.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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