

Court No. 1
Reserved
(AFR)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 484 of 2018

Tuesday, this the 07th day of February, 2023

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)"

No. JC-811936-K Nb Sub Jagbhan Singh Tomar S/o Shri Tejpal Singh presently posted at Central Command Counter Int Unit (CCCIU), Lucknow PIN: 900450, C/o 56 APO.

..... Applicant

Ld. Counsel for the : Mohd Zafar Khan, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Army Headquarter, South Block, New Delhi.
3. The OIC Records, Intelligence Corps, Pin-908793, C/o 56 APO.
4. Central Command CIU, PIN-900450, C/o 56 APO.
5. Brig Devendra Pal Singh, HQ Eastern Command Intelligence Branch, PIN-908542, C/o 99 APO.
6. Col Deo Dutt, Eastern Command intelligence Branch, PIN-908542, C/o 99 APO.
7. Lt Col Amit Sharma, 2-Gujrat (Intelligence), Coy-NCC, Sector -15, 2-College Gandhinagar, PIN-382015, C/o 56 APO.
8. Sub Maj Sonam Tsering, Eastern Command intelligence Branch, PIN-908542, C/o 99 APO.

.....Respondents

Ld. Counsel for the Respondents. : Shri GS Sikarwar, Advocate
Central Govt. Counsel

ORDER

“Per Justice Umesh Chandra Srivastava, Member (J)”

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

(a) to call the record and quash/set aside Medical Board Proceedings held on 1st January 2018 at Command Hospital (EC), PIN-900285, C/o 99 APO and Medical Board Proceedings held on 3rd Jul 2018 at Command Hospital (CC) Lucknow.

(b) to issue/pass an order order/direction to the respondents to held a fresh Re-Survey Medical Board, if this Hon’ble Tribunal deems fit and proper in the circumstances of the case.

(c) to issue pass an order/direction to the respondents to grant shelter appointment to the applicant in his unit, wherever he deems fit.

(d) to issue any such other and further suitable order or direction which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. Brief facts of the case are that the applicant was enrolled in the Army Intelligence Corps on 27.08.1992 and during the course of his service he was promoted to the rank of Naib Subedar. He was due for promotion to the rank of Subedar w.e.f. 01.12.2017 as per promotion order dated 29.11.2017. While posted with No. 1 Counter Terrorism/Internal Security Detachment Eastern Command Counter Intelligence Unit, the applicant proceeded on 62 days annual leave w.e.f. 02.06.2017 to 07.08.2017, the applicant lost his Identity Card bearing machine No F-727173 on 27.07.2017. On rejoining the unit, a Court of Inquiry (C of I) was convened on 26.08.2017 which on being finalized on 30.05.2018

recommended disciplinary action against the applicant. Since disciplinary proceedings were pending against the applicant, he was not promoted to the next rank. During visit of Lt Col Amit Sharma, Officer Commanding for the period 09.09.2017 to 12.09.2017 the applicant declined to perform bonafide military duty, with the result the Officer Commanding wrote a letter to Col Deo Dutt, Commanding Officer, Eastern Command Counter Intelligence Unit. He was interviewed by Commanding Officer on 09.10.2017 and 10.09.2017 and was counseled to improve his performance. The Commanding Officer submitted reply to Officer Commanding recommending that an opportunity be provided to the applicant to improve his conduct. On 11.10.2017 applicant wrote a letter to his Commanding Officer stating that his seniors and subordinates were conspiring against him with intention to trap him in some suspicious activity. The allegations were investigated and found baseless. Subsequent to the investigations and on same being found false, the applicant was given a Show Cause Notice on 20.10.2017 to explain as to why disciplinary action should not be initiated against him due to his failure in performing bonafide military duty which he replied on 21.10.2017 in which he failed to provide any valid reason due to which he failed to perform bonafide duties assigned to him. On the same day, the applicant during his interaction with Subedar Major Sonam Tsering Kee told that he will commit suicide after informing his family. On being asked as to why the applicant has stated that he wants to commit suicide, he replied that due to

sudden emotional outburst he had given such statement. The Subedar Major, taking cognizance of his emotional breakdown, suicidal tendency and his overall depressive/stressful behavior ever since he lost his identity card, sent the applicant to Command Hospital, Eastern Command for psychiatric evaluation on 21.10.2017 where he remained admitted from 21.10.2017 to 03.12.2017 and was provided four weeks sick leave for the period 04.12.2017 to 31.12.2017. After expiry of sick leave, he was again admitted in the hospital for the period 01.01.2018 to 18.01.2018. On 18.01.2018 he was discharged from hospital in low medical category S3 (T-24) with diagnosis 'Other Acute Predominantly Delusional Psychotic Disorders (F23.3)'. Thereafter, on being declared unfit for operation/combat area, he was posted out to No. 2 Counter Intelligence Detachment Central Command Counter Intelligence Unit (Bareilly) w.e.f. 02.04.2018 on completion of C of I held for loss of his Identity Card. The JCO was serving in the unit in extension period which was suspected to be cancelled due to his being placed in low medical category. Accordingly, due to being placed in low medical category and non availability of sheltered appointment, a Show Cause Notice (SCN) dated 01.10.2018 was issued to show cause as to why he should not be discharged from service under Rule 13 (3) I (ii) of Army Rules, 1954 to which he submitted reply on 03.10.2018 requesting for 20 days time for suitable reply. Prior to discharge from service, his Release Medical Board (RMB) was conducted at Military Hospital, Bareilly on 09.02.2019 and accordingly, he was

discharged from service w.e.f. 31.03.2019 (AN) in low medical category S2(P)H1A1P1E1. The applicant has filed this O.A. to quash/set aside re-categorization medical board proceedings dated 01.01.2018 held at Command Hospital, Eastern Command and re-categorization medical board proceedings dated 03.07.2018 held at Command Hospital, Central Command, pass an order to hold his Re-survey Medical Board (RSMB), cancel his discharge order dated 31.03.2019 and re-instate him into service by providing sheltered appointment.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 27.08.1992. He further submitted that the applicant was due for further promotion to the rank of Subedar w.e.f. 01.12.2017 which being not granted and his juniors being promoted, he submitted RTI application dated 26.07.2018 which was replied on 13.08.2018 intimating him that the applicant could not be promoted to the next rank due to pending C of I being conducted for loss of his Identity Card and also him being placed in low medical category S3 (T-24).

4. Learned counsel for the applicant further submitted that applicant's next re-categorization medical board was due on 04.01.2019 even then he was issued with a Show Cause Notice on 01.10.2018 to show cause 'why you should not be discharged from the service under Rule 13 (3) I (ii) of Army Rules, 1954'. It was further submitted that in the said re-categorization medical board proceedings there was no mention that the applicant should be discharged from service on being placed in low medical

category. His other contention is that since the medical board has given no advice for his discharge, his discharge order is illegal and arbitrary in the eyes of law.

5. Learned counsel for the applicant further submitted that the opinion of the 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 recommendations of the Invaliding Medical Board (IMB). It was further submitted that in the absence of any opinion of Medical Board, it was not open for the respondents to pass the order of discharge in view of the settled law that without conducting next re-categorization medical board the applicant could not have been discharged from the service.

6. Further submission of learned counsel for the applicant is that rather than discharging the applicant from service, he ought to be provided sheltered appointment due to being placed in low medical category. His further submission is that the applicant has got himself examined by the All India Institute of Medical Science (AIIMS), New Delhi in which the specialist doctor has mentioned -'impression- Nil Psychiatric Issue' meaning thereby that the applicant is not suffering from 'Acute Predominantly Delusional Psychotic Disorder' as has been diagnosed by Army Psychiatric Specialists at two different military hospitals under influence of respondent No 5 to 8. He pleaded for quashing of discharge order and re-instate him into service.

7. Per contra, learned counsel for the respondents submitted that the applicant, while posted with No. 1 Counter Terrorism/Internal Security Detachment, Eastern Command Counter Intelligence Unit, proceeded on 62 days annual leave for the period 02.06.2017 to 07.08.2017. During the period of leave he lost his Identity Card on 27.07.2018 for which a C of I was conducted on his arrival in the unit which being concluded on 30.05.2018 recommended disciplinary action against the applicant.

8. Learned counsel for the respondents further submitted that during visit of Lt Col Amit Sharma, Officer Commanding No. 1 Counter Terrorism/Internal Security Detachments Eastern Command Counter Intelligence Unit between 09.09.2017 to 12.09.2017 when applicant failed to discharge his duties entrusted to him, a letter from Officer Commanding was forwarded to Col Deo Dutt, Commanding Officer highlighting indisciplined behavior of the applicant to which he was interviewed by the Commanding Officer on 10.10.2017 and counseled to improve his performance and behaviour. Later, Col Deo Dutt wrote a letter to Lt Col Amit Sharma recommending an opportunity to be provided to JCO to improve his conduct. It was further submitted that the applicant had written to Col Deo Dutt on alleged conspiracy by his seniors and subordinates which on being found baseless, a Show Cause Notice dated 20.10.2017 was issued to applicant to perform his duties cautiously.

9. Learned counsel for the respondents further submitted that on an occasion while interaction with Subedar Major Sonam Tsering, the applicant told him that he will commit suicide after informing his family. On being asked as to why he has stated that he would commit suicide, he replied that due to sudden emotional outburst he had given such statement. On taking cognizance of his emotional breakdown, suicidal tendency and his overall depressive/stressful behaviour ever since he lost his identity card, applicant was referred for Psychiatric evaluation to Command Hospital, Eastern Command where he was found to be suffering from 'Other Acute Predominantly Delusional Psychotic Disorders (F 23.3)' and he was placed in low medical category S3 (T-24) which was re-categorized from time to time at Command Hospital, Eastern Command and Command Hospital, Central Command and in RMB dated 09.02.2019 he was placed in permanent low medical category S2(P)H1A1P1E1 which resulted in his discharge from service due to non availability of sheltered appointment under Rule 13 (3) I (ii) of Army Rules, 1954. He pleaded for dismissal of O.A. on the ground that the applicant was rightly discharged from service and no prejudice was done to him.

10. Heard Mohd Zafar Khan, learned counsel for the applicant and Shri GS Sikarwar, learned counsel for the respondents and perused the material placed on record.

11. JC-811936K Naib Subedar Jagbhan Singh Tomar was posted to No. 1 Counter Terrorism/Internal Security Detachments

Eastern Command Counter Intelligence Unit w.e.f. 02.03.2017. He lost his Identity Card on 27.07.2017 while on annual leave. A C of I to investigate the same was convened on 26.08.2017 and proceedings were finalized on 30.05.2018 wherein disciplinary action against the applicant was recommended.

12. The applicant was due for further promotion w.e.f. 01.12.2017 but prior to implementation of this promotion it was cancelled vide letter dated 29.11.2017 on the ground of pending disciplinary proceedings due to loss of his Identity Card and him being placed in low medical category. Applicant had written a letter to his Commanding Officer (Col Deo Dutt) stating therein that a conspiracy was being made by his seniors and subordinates. On investigation the allegations were found baseless and consequent to that a Show Cause Notice dated 20.10.2017 was issued which he replied on 21.10.2017 mentioning therein that during interaction with Sub Maj he emotionally told him that he will commit suicide if he does not get justice.

13. Prior to his promotion a letter dated 30.07.2018 was sent by the applicant to Chief of the Army Staff with copies endorsed to the President of India, Defence Minister and DGMI, Army Headquarters leveling allegations on Brigadier Devendra Pal Singh, BGS (Int), Eastern Command Central Intelligence Unit, Col Dev Dutt, his Commanding Officer and Lt Col Amit Sharma, his Officer Commanding which was replied by Army Headquarters vide letter dated 26.09.2018 as under:-

"1. आपके पत्र दिनांक 30 जुलाई 18 के संदर्भ में, जो की सेनाध्यक्ष को संबोधित किया गया है, तथा भारत के राष्ट्रपति, प्रधानमंत्री, रक्षामंत्री तथा डी जी एम आई को प्रतिलिपि है।

2. इस महानिदेशालय द्वारा आपके पत्र पर गहन अध्ययन किया गया और उनमें उजागर किए गए मुद्दे एवं टिपणियां निम्नलिखित हैं:-

(क) **ओ सी, ले. कर्नल अमित शर्मा द्वारा उत्पीड़न:** जब आपका प्रोन्नति होने वाला था, बी जी एस (ईट), मुख्यालय पूर्वी कमान (ब्रिगेडिएर डीपी सिंह) ने ले. कर्नल अमित शर्मा, ओ सी न. 1सी टी/आई एस डेट पर दवाब बनाकर आपको उत्पीड़ित किया।

टिप्पणी ब्रिगेडिएर डीपी सिंह के अनुसार जब वे बी जी एस (ईट), मुख्यालय पूर्वी कमान में सेवारत थे उस दौरान उनका आपके साथ कभी भी परस्पर संवाद नहीं हुआ। आपके केस के संदर्भ में कभी भी सी ओ, पूर्वी कमान सी आई यू द्वारा उनके साथ विचार-विमर्श नहीं हुआ। अतः आपका ये कहना की आपको उत्पीड़ित किया गया, पूर्णतः असंगत और तथ्यविहीन है।

(ख) **मनोवैज्ञानिक वार्ड कमान अस्पताल, पूर्वी कमान में भर्ती कराने के संबंध में** पूर्वी कमान सी आई यू के सूबेदार मेजर सादा कागज के पत्र के आधार पर आपको मनोवैज्ञानिक वार्ड कमान अस्पताल, पूर्वी कमान में भर्ती कराया गया।

टिप्पणी सूबेदार मेजर से परस्पर संवाद के दौरान 21 अक्टूबर 2017 को आपने उनसे कहा कि अपने परिवार को बताने के पश्चात आप आत्महत्या करने जा रहे हैं। इसके पश्चात स्थिति की गंभीरता और आपके मनोस्थिति को ध्यान में रखते हुए सूबेदार मेजर साहब, जो कि यूनिट के एक वरिष्ठ ओहदेदार होते हैं उन्होंने एहतियाती तौर पर उचित कार्यवाही की।

(ग) **जान बूझकर मनोवैज्ञानिक रोगी घोषित करना** आपने आरोप लगाया है कि ब्रिगेडिएर डीपी सिंह, कर्नल देव दत्त एवम ले. कर्नल अमित शर्मा कमान अस्पताल के चिकित्सक को बताकर जान बूझकर आपको मनोवैज्ञानिक रोगी घोषित कर दिया।

टिप्पणी

(i) चिकित्सा वर्गीकरण किसी उच्च अधिकारी के दबाव या अनुशंसा के आधार पर स्वीकृत नहीं किया जा सकता। चिकित्सा विशेषज्ञ नीतिशास्त्र का पालन करते हैं जो कि गलत करने की अनुमति नहीं देता जैसा कि आपने आरोप लगाया है।

(ii) आपके केस में दो अलग-अलग कमान अस्पताल (कमान अस्पताल, पूर्वी कमान तथा कमान अस्पताल, सेंट्रल कमान) ने जांच किया।

वर्तमान जांच के अनुसार कमान अस्पताल, सेंट्रल कमान ने 20 जुलाई 18 को यह संस्तुति की है कि आपका इलाज और दवाई लगातार जारी रहे। तथ्य यह दर्शाता है की दो अलग-अलग अस्पताल, दो अलग-अलग मेडिकल बोर्ड तथा मेडिकल विभाग के दो अलग-अलग शीर्ष अधिकारी ने चिकित्सा वर्गीकरण का पुष्टिकरण किया है। अतः आपका आशय निराधार प्रतीत होता है।

(घ) **प्रोन्नति आदेश का कार्यान्वयन नहीं करना** आपने आरोप लगाया है कि प्रत्येक अधिकारी जो कि इस श्रृंखला में शामिल थे उन्होंने जान बूझकर षड्यंत्र रचकर आपको अस्पताल में भर्ती कराया जिससे आपको सूबेदार पद पर प्रोन्नति ना मिले।

टिप्पणी आसूचना अभिलेख ने आपके सूचना के अधिकार के द्वारा पूछे गए प्रश्न का स्पष्टीकरण देते हुए बताया है कि पहचान पत्र के कोर्ट ऑफ इन्कायरी के लंबित होने के कारण जो कि 30 मई 2018 को पूर्ण किया गया तथा जिसमें आपके विरुद्ध अनुशासनिक कार्यवाही की संस्तुति की गई थी, के कारण आपका प्रोन्नति सूबेदार पद पर नहीं हुआ। अतः आपका आशय निराधार है।

3. आपकी जानकारी हेतु प्रेषित है।"

14. Thus, keeping in view of the above and the fact that the aforesaid reply clearly depicts the whole picture, allegations levelled by the applicant against officers are not tenable.

15. Contention of the applicant that due to conspiracy between his senior officers and medical authorities at different levels, he was falsely made a victim of psychiatric disability by Command Hospital, Eastern Command and Command Hospital, Central Command, therefore, re-categorization medical boards held on 01.01.2018 and 03.07.2018 are liable to be quashed. In regard to this we find that both re-categorization medical boards were held at different hospitals presided over by senior officers and concerned specialists. While admitted in Command Hospital, Eastern Command, Lt Col RA Khan, Classified Specialist (Psychiatry) endorsed the following remarks on 11.01.2018 on applicant:-

"x x x x x x x x x x

Condition and course during current hospitalization. On admission, general physical and systemic examinations were WNL. Mental state examination revealed him to be kempt, cooperative and observing service etiquettes. He appeared anxious and contested his psychiatry referral. He had normal psychomotor activity. No hallucinatory behaviour noted. Speech was spontaneous, normal rate/ tone and volume, relevant and coherent. Mood was described as 'Theak Hai', normal in quality, reactive and no diurnal variation. Affect was anxious congruent to thought process. Thinking was of normal in stream and goal directed. He had well formed non bizarre persecutory delusions with systematization and significant pressure, extension and full conviction with acting out behaviour. Affective valence to the belief was significant. He was also noted to be preoccupied with pending court of inquiry and his due promotion in near future. No obsession or depressive cognitions, no disorder of possession of thought were seen. There were no perceptual abnormalities.

Individual had intact cognition, but had poor judgment and insight. Sensorium was clear. Biodrives were adequate. Relevant haematological & biochemistry inv including thyroid profile and NCCT head were WNL BPRS at admission was 30/118, BDI was 0/62 (score <9 non significant) and Rorschah ink blot test suggested presence of psychotic features MCMII-III revealed - high desirability. AFMSF 10 dated 27 Oct 2017 revealed him to be in disciplined, average in-profession/motivation, gloomy general outlook, tends to overreact, suspicious and accusative. In view of acute onset of psychotic

symptoms, in an otherwise stable and well adjusted JCO with unblemished service record, in the form of well systematized non bizarre delusion of persecution without hallucination with significant distress and gross dysfunction lasting for about 02 months and complete resolution without any residual/negative symptoms, a diagnosis of Other Acute Predominantly Delusional Psychotic Disorder (ICD 10 F23.3) was made after ruling out Organicity/substance abuse. He was managed in a warm empathetic milieu with SGA's (Tab Olanzapine 10 mg OD which was later built up to 10 mg BD) and benzodiazepines. He was also given benefits of individual psychotherapy targeted of correction of cognitive distortions. He responded adequately to the interventions. His BPRS scores improved to 16/112. Gradually with treatment delusion fragmented and insight improved. Upon improvement he was sent 04 weeks of sick leave to consolidate gains of therapy. Patient claimed drug compliance, maintaining improvement adequately functional and denied any reoccurrence of symptoms during sick leave. On rejoining His BPRS repeat scores were 16/112 and ward observation and serial MSE did not revealed any other syndromal psychopathology & fragmentation of delusion was observed. He was also psychoeducated about the nature and course of his illness, risk factors & signs of relapse, expected side effects of the medications necessity of compliance of compliance on medications and regular follow up. He expresses motivation for treatment compliance and further service. To be placed in LMC S3 (T-24) for Other Acute Predominantly Delusional Psychotic Disorder (ICD 10 F 23.3) and review with fresh AFMSF-10x3 when due. Monthly review at nearest psychiatric OPD. To continue under supervision of AMA-Tab Olanzapine (10 mg)1-0-1.To work under supervision. Regular walking and to keep weight under prescribed limits. Not to consume alcohol/intoxicants. Unfit for HAA/CI Ops/combat area. Unfit to handle firearms/live ammunition/explosives. Unfit to drive MT vehicles. Other employability restrictions as per AO 3/2001 and DGAFMS memorandum 171/2002."

16. Thereafter, while he was admitted in Command Hospital, Central Command, Lt Col Vikas Mathur, Classified Specialist (Psychiatry) gave the following remarks on 19.07.2018 on applicant's condition :-

"Present Evaluation: Presently offered no complaints and expressed well adjustment since his discharge from Hospital in Jan 18. Physical exam is normal. Mental state examination reveals him kempt, active cooperative euthymic and congruous. AFMSF-10 dated 02 Jul 18 mention punctual disciple, non drinker, above average professional motivation good regimental & satisfactory performance under stress. No active psychopathology noted. No active delusions. However has no insight into his illness. He was clinically well. Currently in view of course of illness he will require to be kept on maintenance medication and thus pursuant to instruction of DG memorandum 171 (2002) he was recommended to be continue LMC S3 (T-24+24) for Other Acute Predominantly Delusional Psychotic Disorder (F-23.3). To continue Tab Olanzapine 5mg ½-1/2-1/2. Complete lifelong abstinence from alcohol. Monthly review in Psy/Med OPD. Unfit for posting for Fd/HAA/CI Ops and isolated posts. Unfit not to issue liquor to the individual in any form. Unfit for handling fire arms with ammunitions. Review with a fresh AFMSF-10x03 copies."

17. The aforesaid different endorsements made by two Psychiatric Specialists placed at different hospitals clearly envisage that the applicant was suffering from 'Other Acute Predominantly Delusional Psychotic Disorder (F 23.3)' and he was treated adequately in both the Army Hospitals. We see no reason to believe that due to conspiracy he was admitted in hospital and the Psychiatric Specialists were influenced by his superior officers to downgrade his medical category which came in his way for denial of his further promotion.

18. Contention of learned counsel for the applicant that being placed in low medical category and his next re-categorization medical board being due in June 2019, applicant's RMB ought not to be carried out on 07.02.2019 which is illegal. In this regard we have perused policy letter dated 30.09.2010 which deals with disposal of low medical category personnel. We find that during the extended tenure the individual must continue to remain in medical category 'SHAPE-I'. PBOR who are in temporary low medical category at the time of Screening Board as well as during the currency of extension of service will continue to be in service. If temporary low medical category is made into permanent low medical category except those who are battle casualties/wounded in action and consequently placed in LMC (pt) during enhanced service, the individual will be discharged under the existing rules. This indicates that a person who is placed in a permanent low medical category, except a battle casualty or a person wounded in action, and consequently placed

in a permanent low medical category during the extended service will be discharged under the existing rules. In the instant case the applicant was serving during the extended period and on account of being placed in low medical category and due to non availability of sheltered appointment, his RMB was carried out and he was discharged from service.

19. It will not be out of place to mention here that applicant's sole reliance is the judgment of the Hon'ble Apex court in ***Union of India and others Vs. Rajpal Singh***, 2009(2) RSJ 233. The Hon'ble Supreme Court found the discharge as invalid in the case of ***Rajpal Singh*** (supra) on the ground that there the petitioner was not brought before the Invaliding Medical Board and was discharged on the recommendations of the Release Medical Board as per the un-amended rules applicable to Army. That position has now been changed due to amendment vide gazette notification dated 13th May, 2010, in exercise of the power conferred by section 191 of the Army Act, 1950. The requirement to bring in low medical category Shape 2/3 Army personnel before an Invaliding Medical Board before discharge has now been done away with. An individual may be discharged, as per the amended Rule (ii) (a) in the Table to Rule 13, on the recommendation of the Release Medical Board. This amendment to Rule 13 of the Army Rules and its validity has further been upheld by a Full Bench judgment of the Principal Bench, Armed Forces Tribunal in ***Sub Lakshmi Kant Mishra vs. Union of India & Others***, Mil LT 2014 AFT (Delhi) 96. The issue has thus

attained finality. Therefore, Rajpal's case is not applicable in case of the applicant.

20. We are further of the view that applicant's promotion order was rightly cancelled as a disciplinary proceeding was pending against him, on account of loss of his Identity Card, which culminated on 30.05.2018 i.e. after five months from the date he was due for promotion. In the circumstances his promotion order was cancelled. In the promotion order it was mentioned that a fresh promotion order will be issued on fulfillment of requisite criteria for promotion. Meanwhile applicant, being on extension period, was downgraded to low medical category and due to non availability of sheltered appointment, he was discharged from service as per policy in vogue.

21. Considering all aspects of the case we are of the view that the applicant was rightly discharged from service and O.A. is liable to be dismissed. It is accordingly, **dismissed**.

22. No order as to costs.

23. Miscellaneous application(s), pending if any, stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 07.02.2023

rathore

(Justice Umesh Chandra Srivastava)
Member (J)