

Reserved
Court No.2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 362 of 2021

Thursday, this the 16th day of February, 2023

“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Ex - Sep Raju J Akkatangerhal (2816325L)

R/o Vill: Hosur TQ : Hukkeri Distt: Belgaum - 591221.

Local Address: C/O : Vikas Kumar

Prabudhnagar, Aurangabad Jagir

Bijnaur Road, Lucknow - 226002

..... **Applicant**

Ld. Counsel for the Applicant : Shri Om Prakash, Advocate

Versus

1. Union of India, through Secretary Ministry of Defence, South Block New Delhi - 110106
2. The Chief of the Army Staff, Sena Bhawan Rafi Marg, New Delhi 110106.
3. Commanding Officer, 18 Maratha LI, PIN: 911618
C/o 56 APO
4. OIC Records, Maratha LI, PIN : 900499, C/o 56 APO

.....**Respondents**

Ld. Counsel for the Respondents. :Shri Asheesh Agnihotri,
Central Govt Counsel.

ORDER**“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**

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

A. To allow the application of the applicant and set aside the order dated 31.03.2021 (Annexure No. A-1) passed by respondent No. 3 vide which the applicant has been discharged from service arbitrarily with SOS dated 01.04.2021 (FN)

B. To issue suitable orders / directions commanding the respondents to reinstate the applicant back in Army Service with all consequential benefits from the date of discharge in same unit.

C. Any other relief which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case, may be granted in favour of the applicant.

D. Award the cost of Original Application in favour of the applicant.

2. Brief facts of the case are that applicant was enrolled in the Army on 29.09.2015. He absented himself without leave and

re-joined duty after 29 days. He was admitted in Military Hospital for diagnosis "Adjustment Disorder" and placed in low medical category for 2 years. Applicant was discharged from service on 31.03.2021. He represented his case for reinstatement in the army which was rejected. Being aggrieved, applicant has filed instant O.A. with the prayer to re-instate him in service.

3. Learned counsel for the applicant submitted that applicant was placed in Low Medical Category S2 (permanent) 25.06.2018. When the applicant became due for re-categorization in the year 2019, the medical board could not be held due to non-availability of classified specialist. Applicant submitted his willingness to continue in service in January 2020. He was advised to undergo surgery of knee and advised for admission on 21.05.2021. On 04.04.2021 applicant reported to unit gate but Regimental Police snatched his Identity Card stating that he has been discharged from service wef 31.03.2021 and he was not allowed to enter in unit premises. Rule 13 of Army Rules 1954 clearly states that permanent low medical category personnel would be discharged from service only on the recommendation of RMB in case no shelter appointment is available but the respondents have grossly violated mandatory conditions precedent for passing of discharge order. Applicant was admitted to Surgical Ward of MH Jamnagar on 22.03.2021 for dislocation of right knee. He was discharged

from service wef 31.03.2021 on medical grounds and due to non-availability of sheltered appointment. The applicant had rendered 05 years and 06 months service but not eligible for service pension. Denial of sheltered appointment and ordering the discharge of applicant is fundamental irregularity and is hit by Article 21 of Constitution of India. Learned counsel for the applicant pleaded that direction be given to respondents to re-instate the applicant with all consequential benefits. He verbally prayed that keeping in view services rendered by the applicant, if re-instatement of the applicant in service is not permissible, respondents be directed to conduct re-survey medical board of the applicant to assess his medical category and if found suitable, disability pension be granted to him.

4. On the other hand, learned counsel for the respondents submitted that applicant was admitted to Military Hospital, Belgaum on 29.03.2017 along with AFMSF-10 in which it was reported that he had been absent without leave for 29 days and after re-joining voluntarily, he complained of feeling stressed and unable to cope with the routine duties. After re-joining, he again found it difficult to cope up with routine duties and perceived for suicide. He was downgraded to Low Medical Category S-2 (Permanent) for two years from 25.06.2018 to 24.06.2020. A show cause notice was issued stating that Battalion is presently deployed in sensitive area

at Line of Control and since there is no sheltered appointment available in the Battalion, why he should not be released from service. Applicant replied to show cause notice stating that he is willing to continue in service. Applicant was discharged from service wef 31.03.2021 under Army rule 13 (3) III (iii) (a) (i). Applicant refused to sign Release Medical Board and other pension documents and did not co-operate with his Battalion. Hence, his Release Medical Board could not be held at the time of his discharge from service. Applicant was discharged from service after following all prescribed procedure. There is no provision in Army Rules for re-instatement of such individuals. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. The questions before us to decide are of two folds. Firstly, whether the applicant can be re-instated in service or not and Secondly, whether Re-survey Medical Board of the applicant can be held for assessing his medical condition?

7. In the instant case, applicant was placed in permanent Low Medical Category S2 for disability "Adjustment Disorder". He was granted sheltered appointment for a period of two years. While his

unit was moving to Field Area, his sheltered appointment was withdrawn and he was discharged from service. Hon'ble Principal Bench, New Delhi in O.A. No 228 of 2012 titled **Sub Lakshmi Kant Mishra Vs UOI & Others** decided on 11.02.2016 has upheld the validity of Army Rule 13, Army order 46/80 and the policy of Manpower Directorate on the subject. Hon'ble Apex Court have also upheld the authority of the Commanding Officer to withdraw sheltered appointment. At this stage, neither the applicant can be re-instated in service nor he can be granted disability pension.

8. We, therefore, do not find any merit in the application to interfere with the impugned discharge order passed by the respondent authority in terminating the services of the applicant and applicant is not entitled for reinstatement in service.

9. However, keeping in view the future of the young trained soldier who has been thrown out from service after rendering more than 5 years of service without holding Release Medical Board, respondents are directed to hold Re-survey Medical Board of the applicant to assess his present medical category within 30 days from today to ascertain whether the applicant is entitled for grant of disability pension or not. The Respondents shall intimate date, place and time of Re-survey Medical Board to the applicant and applicant shall appear before Re-survey Medical Board as directed by the

respondents. If the applicant is found suffering from disability, he can approach the Tribunal for grant of the disability pension.

10. With aforesaid directions, Original Application is **disposed off**.
11. No order as to costs.
12. Pending applications, if any, stand disposed off.
13. Copy of this order be provided to learned counsel for the respondents for processing the case.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 16 February, 2023

Ukt/-