

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 508 of 2018**Monday, this the 11th day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sub/Dvr Spl JC-338936L

Jitender Pal Singh

S/o Shri Jagan Singh

R/o Moh-Sri narayanganj (near Railway Station Ujhani)

District-Badaun-243639

..... Applicant

Ld. Counsel for the Applicant: **Shri Virat Anand Singh**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. CRO, Records, BEG, Roorkee.
4. Officer Incharge, Addl AAG (Org & Coord), Adjutant General Branch (AG Coord), IHQ of MoD (ARMY), south Block, DHQ PO, New Delhi – 110011.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
Central Govt Counsel.**ORDER****“Per Hon'ble Mr. 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 being aggrieved by impugned order of discharge on account of Low Medical Category for the following reliefs :-

- “(i) To direct the respondents to hold the Release Medical Board in respect of the Applicant and re-consider him afresh for Discharge based on decision of Release medical Board, whereby quashing the Discharge Dte 30 April 2013.
- (ii) To pass an direction to respondents to pay all consequential benefits including the arrears of salary and other service benefits as applicable from the date of previous discharge (30 April 13) till next Discharge with interest of 08% P.A.
- (iii) To pass such other order(s) which their Lordships may deem fit and proper in the existing facts and circumstances of the case.
- (iv) Allow this application with cost of rupees 50,000/-.”

2. We have heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents duly assisted by Departmental Representative.

3. The factual matrix of the case is that applicant was enrolled in the Army on 01.05.1985 and discharged from service with effect from 30.04.2013 (AN) under Rule 13 (3) Item I (i)(a) of Army Rule 1954 on completion of service. The applicant was granted service pension @ Rs. 10675/- per month w.e.f. 01.05.2013 vide PCDA (P) Allahabad PPO No. S/062017/2012 (Army) dated 11.02.2013. As per AFMSF-15 dated 09.04.2013, applicant was placed in low medical category S1H1A1P3(T-24)E1 for 24 weeks due to disabilities “**Subclinical Hypothyroidism and Psoriasis with Psoriatic Arthritis**” w.e.f. 09.04.2013 by medical board at Military Hospital, Roorkee. As per IHQ of MoD (Army) letter No B/33098/AG/PD2(c) dated 20.09.2010, the JCO is ineligible for retention beyond existing service/age limit being low medical category. The applicant’s colour service (i.e. 28 years) was completed on 30.04.2013 and he was not eligible for extended service therefore, BEG Records, Roorkee

issued his discharge order dated 22.04.2013 with date of Struck of Strength (SOS) on 30.04.2013. The applicant was on leave that time, therefore, he was immediately recalled from service for preparing all necessary pension documents and to report to medical authority for medical board proceedings. The applicant reported to medical authority on 30.04.2013 for medical board but medical board could not be completed as the applicant was SOS on the same day i.e. 30.04.2013 (AN). Medical authority directed applicant to obtain sanction of the competent authority for his medical board proceedings.

4. Thereafter, HQ BEG and Centre, Roorkee forwarded statement of case in respect of the applicant alongwith connected documents to Headquarters UB Area for sanction of competent authority for carrying out release medical board after discharge from service vide their letter dated 12.06.2013. UB Area further forwarded connected documents to HQ Central Command, Lucknow vide their letter dated 07.06.2013 and HQ Central Command, Lucknow further forwarded the same to AG's Branch, IHQ of MoD (Army), New Delhi vide letter dated 15.06.2013. Besides this, BEG Records, Roorkee received applicant's petition dated Nil regarding holding of post discharge release medical board through Zila Saink Kalyan Evam Punarwas Budaun vide letter dated 30.06.2015 which was also processed for holding release medical board. After that so many letters/reminders were sent by applicant as well as by the BEG Records, Roorkee to hold release medical board but till date of filing Original Application, no reply received by the authorities concerned to hold release medical board. Being aggrieved, the instant Original Application has been filed.

5. Learned counsel for the applicant submitted that Commanding Officer discharged the applicant locally on completion of term of engagement in medical category P3 on 22.04.2013 being SOS w.e.f. 30.04.2013 (AN) without referring to Release Medical Board whereby gross violation of rules and infringement of natural justice. He further submitted that applicant's extended term of service was till 30.04.2015 and submitted that his case is squarely covered by the AFT, Regional Bench, Lucknow judgment in **O.A. No. 31 of 2013, Ranjan Kumar Mishra**, decided on 18.01.2016.

6. **Per contra**, learned counsel for the respondents submitted that applicant being placed in low medical category P3 (T-24) for the period from 09.04.2013 to 24.09.2013 for "**Subclinical Hypothyroidism and Psoriasis with Psoriatic Arthritis**" is ineligible for retention beyond existing service/age limit as per IHQ of MoD (Army) letter dated 20.09.2010 and Govt. of India letter No. F 14(3)/98/D(AG) dated 03.09.1998 by which terms of service/tenure and age limits of Subedar is "*28 years of pensionable service extendable by 2 years by screening or 52 years of age, whichever is earlier*". He further submitted that the instant Original Application does not have any merit and the same is to be dismissed.

7. The medical history of applicant shows that he was placed in low medical category P3 (T-24) with effect from 09.04.2013. 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. Thus, the decision taken for release of the applicant from Army appears to be pre-decided action and not in conformity with the rules.

Opinion dated 22.04.2013 is also an opinion expressed after passing of the impugned order of discharge from Army.

8. 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 release 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.

9. 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."

10. 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.

11. In a recent judgment reported in **Vipulbhai M. Chaudhary vs. Gujarat Coop. Milk Mktg. Federation Ltd.** (2015) 8 SCC 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."

12. 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.”

Again the Hon'ble Supreme Court has said as under:

“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.

13. 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.

14. The result of discussions made hereinabove is that the O.A. deserves to be allowed; hence allowed. Impugned order dated 22.04.2013 is set aside. The applicant shall be deemed to be continuing in service for the purpose of service benefits till end of his tenure (i.e. till 30.04.2015) in the same rank. However, arrears of salary are confined only to 25%. Let consequential benefits (Basic Pay + Rank Pay + Dearness Allowance only) 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. Default will invite interest @ 8% per annum till actual payment.

15. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: January, 2021

SB