

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 167 of 2020

Friday, this the 09th day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)

No. JC-385976X Ex Nb Sub (OPCOM) Fateh Chand, S/o
Late Shyam Lal, R/o Village-Chinoura, P.O.-Pauta, Distt-
Pilibhit, PIN-262001 (UP).

..... Applicant

Learned counsel for the: **Shri KP Datta**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Min of Defence,
New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South
Block, New Delhi-110011.
3. Officer-in-Charge, The Records Signals, PIN-908770,
C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad-211014,
C/o 56 APO.
5. PAO (OR), Signals, Jabalpur (MP).

..... Respondents

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

ORDER (Oral)

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

- (a) *To issue/pass an order or direction to set-aside/quash the discharge order issued by Records Signals, Jabalpur vide letter No 287530/CA-3/T-1/06-2020 dated 07 May 2019, before completion of his terms of engagement, discharging applicant w.e.f. 01.07.2020.*
- (b) *To issue/pass an order or direction to the respondents to grant him promotion to the rank of Subedar w.e.f. 01.01.2019, and re-instate him in Army service from the date of his discharge w.e.f. 01.07.2020, alongwith arrears of pay and allowances, and all consequential benefits with interest on arrears @ 18% p.a.*
- (c) *To issue/pass an order or direction to respondents to rectify his observations regarding wrong deduction of Rs 100750/- (Rupees one lakh seven hundred fifty only) by PAO (OR) Signals, and refund/credit the same at the earliest.*
- (d) *To issue/pass an order or direction to respondent No 2 to decide the appeal of the applicant dated 08.05.2020.*
- (e) *To issue/pass an order or direction to set aside/quash unwillingness certificate signed during his stress & illness, forcefully by CO, 17 RR Bn and Medical Categorization held, duly investigated the circumstance under which the applicant has come under heavy mental stress and agony, as a result of his present low medical category diag: Depressive Episode (F32), started from the month of Nov 2017 while serving with 17 RR Bn (J&K), due to excessive mental torture, harassment and horrible behaviour by IC-75111K Major Ajit Singh Balyan, then OC HQ Coy (Signals), 17 RR Bn. Also, suitable remedial measures may be taken to prevent the above named officer, so that he will not be able to spoil the life of any other soldier in future, who sacrifices their life for the safeguard of our motherland.*
- (f) *To issue/pass any other order or direction as the Competent Authority may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (g) *To allow this original application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 24.06.1994. During the course of his service he was promoted to the rank of Naib Subedar w.e.f. 01.12.2016. While posted with 17 Rashtriya Rifles (RR) (MARATHA LI) he was downgraded to medical category S3 (T-24) for diagnosis 'Depressive Episode (R32)' w.e.f. 22.06.2018. Thereafter, his medical category was reviewed from time to time and ultimately he was placed in low medical category S2H1A1P1E1 (Permt) by the Release Medical Board held at Military Hospital, Bareilly on 27.02.2020. The applicant was completing his terms of engagement on 30.06.2020 and prior to that an option for willingness/unwillingness was asked for extension of two years tenure in the present rank which the applicant denied and signed unwillingness certificate dated 28.06.2018. He was also due for promotion to the rank of Subedar as per his seniority and accordingly, his promotion order was issued vide letter dated 31.12.2018. Since he was not

meeting promotion criteria with respect to medical category, his promotion order was cancelled vide letter dated 01.01.2019 and he was discharged from service w.e.f. 30.06.2020 in low medical category S2H1A1P1E1 under Rule 13 (3) I (i) of the Army Rules, 1954 having completed 26 years and 07 days service. Applicant's wife had served legal notice dated 17.11.2018 to Maj Ajit Balyan, the then Officer Commanding but nothing was done as he was posted out to Officer Training Academy, Gaya (Bihar). The applicant also submitted various representations and the last representation dated 08.05.2020 was submitted to Signals Records but there was no response of his letter dated 08.05.2020 hence this O.A.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 24.06.1994 and due to his sincerity and devotion to duty he was promoted to the rank of Naib Subedar w.e.f. 01.12.2016. He further submitted that while posted with 17 RR Battalion (J&K), due to excessive mental torture/harassment by his Officer

Commanding, he suffered with depressive episode and subsequently admitted to Command Hospital (Northern Command) on 22.06.2018 where his medical category was downgraded to S3(T-24)H1A1P1E1. His other submission is that while he was serving in low medical category he was forced to sign unwillingness certificate for further extension of service of two years.

4. Learned counsel for the applicant further submitted that having qualified for further promotion, his promotion order was issued vide letter dated 31.12.2018 but he was denied promotion due to this unwillingness certificates and low medical category. It was further submitted that in the promotion order dated 31.12.2018 the applicant was shown in SHAPE-1 medical category, even then he was not promoted to the next rank which he was very much entitled to. His other submission is that this unwillingness certificate had no role to play in his promotion as on the date he was due for promotion i.e. 01.01.2019 he was very much on the posted strength of Rashtriya Rifles and was

discharged from service after one and a half year from the date when his promotion was due. He pleaded for applicant's re-instatement in service, grant of next promotion and refund of Rs 1,00,750/- which was wrongly deducted by PAO (OR) Signals, Jabalpur.

5. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 24.06.1994 and was discharged from service w.e.f. 30.06.2020 under Rule 13 (3) I (i) of the Army Rules 1954 on completion of service/age limit. He further submitted that the applicant has rendered 26 years and 07 days service in the Army and he is in receipt of service pension vide PPO dated 16.06.2020. It was further submitted that while the applicant was serving in 17 RR his medical category was downgraded to S3 (T-24)H1A1P1E1 for diagnosis 'Depressive Episode (R32)' w.e.f. 22.06.2018 and in successive re-categorization medical boards he remained in the same medical category.

6. Learned counsel for the respondents further submitted that Signals Records vide letter dated 09.02.2018 had asked willingness/unwillingness certificate for extension of two years tenure from the affected Junior Commissioned Officers (JCOs) but the applicant submitted unwillingness certificate dated 28.06.2018 and that was the reason his two years service extension was not granted. He further submitted that the applicant was also not promoted to the next rank being placed in low medical category. His other submission is that the low medical category was upgraded to S2H1A1P1E1 (permt) w.e.f. 27.02.2020 when his RMB was conducted prior to release from service. He submitted that S2 medical category is a non promotable medical category. He pleaded for dismissal of O.A. stating that the applicant was not promoted to the next rank being placed in low medical category.

7. Heard Shri KP Datta, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents and perused the record.

8. The applicant was enrolled in the Army on 24.06.1994 and during the course of his service he was promoted to the rank of Naib Subedar w.e.f. 01.12.2016. While posted with 17 RR in February, 2018 he suffered with 'Depressive Episode (R32)' and was placed in low medical category S3(T-24)H1A1P1E1 for the period 22.06.2018 to 06.12.2018. The medical category was reviewed and he was further placed in the same medical category.

9. During the year 2018, letter dated 09.02.2018 was received asking willing/unwilling certificate for extension of two years tenure which the applicant signed on 28.06.2018 expressing his unwillingness for further extension of two years tenure. Since the applicant was placed in low medical category, the respondents issued certificate dated 28.06.2018 denying two years extension of tenure. For convenience sake, extract of certificates dated 28.06.2018 are reproduced as under:-

"Unwillingness Certificate

I, JC-385976X Rank-Nb Sub (OCC) Name Fateh Chand of 17 RR (MARATHA LI) am unwilling for extension

of two years service/age by screening board. My date of enrolment is 24 Jun 1994, date of birth 26 Jun 1973, present med cat S3 (T-24)H1A1P1E1 w.e.f. 22 Jun 2018. Diag Depressive Episode and date of present rank assumed w.e.f. 01 Dec 2016, date of present appt 01 Dec 2016.

Station : C/o 56 APO

sd/- x x x x

Date: 28 Jun 2018

(Nb Sub Fateh Chand)"

"Physical Fitness Certificate

No JC-385976X Rk Nb Sub Trade OCC Name Fateh Chand Unit 17 RR (MARATHA LI) is found physical unfit for extn of two years service/age limits as per guidelines issued vide Army HQ letter No B/33098/AG/PS2(c) dt 20 Sep 2010 and amdt thereto by the screening board."

Station : C/o 56 APO

Dated : 28 Jun 2018

sd/- x x x x x

(illegible)"

10. Applicant has contended that he was eligible for extension of tenure for further two years but he was forced to sign on unwillingness certificate under coercion. This submission of the applicant is not tenable on the ground that in the instant case there is no relation between extension of tenure and promotion to the next higher rank as the promotion order was issued prior to start of the extension period.

11. It is observed that procedure and criteria for granting enhanced tenure of service has been specified in Army

Headquarters letter dated 20.09.2010. The criteria include aspects such as willingness of the individual, medical classification, physical fitness, annual confidential report and discipline. Scrutiny of Para 2 (b) (ii) of Appendix 'A' to aforesaid letter clearly lays down that *'personnel placed in medical category 'BEE' will be eligible for extension in service. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable/non-attributable to or aggravated by service conditions. However, cases of medical category 'BEE' (both temporary and permanent) due to psychological causes, misconduct or self-inflicted injuries will not be eligible for extension in service.*

12. We have also given our anxious consideration for applicant's promotional avenues and we find that policy letter dated 10.10.1997 clearly stipulates that 'personnel placed in medical category 'BEE' will be eligible for promotion to the next higher rank. This will include both

temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable/non-attributable to or aggravated by service conditions. *However, cases of medical category 'BEE' (both temporary and permanent) due to psychological causes, misconduct or self inflicted injuries will not be eligible for promotion*'. Since the applicant was downgraded to medical category S3(T-24)H1A1P1E1 w.e.f. 22.06.2018 which was further extended to 07.06.2019, therefore he was not fulfilling the criteria for promotion to the next higher rank as per provisions laid down in policy letter dated 10.10.1997.

13. Applicant has also contended that he was posted second time in Rashtriya Rifle units which is contrary to rules. In regard to this we have gone through letter dated 12.09.2005 and we find that 'individual can get up to two tenures as Non Commissioned Officer (NCO)/Other Rank (OR) and third tenure can be in the rank of Junior Commissioned Officer (JCO) and gap between two tenures

will be minimum four years.’ We find that the applicant was posted to 6 RR Battalion from 11.04.2004 to 05.05.2006 as NCO and from 04.04.2017 to 12.02.2019 as JCO after a gap of more than 10 years, therefore there is nothing wrong that the applicant was posted to a RR unit for the second time.

14. We further find that applicant had preferred a representation dated 08.05.2020 to Chief of the Army Staff against his contemplated discharge w.e.f. 30.06.2020 but it seems to have not been decided as yet. In view of this we are of the view that the respondents ought to decide his representation within a period of three months from today.

15. During the course of hearing, learned counsel for the applicant has relied upon order dated 27.05.2015 passed by AFT (RB), Chandigarh in O.A. No 3038 of 2012, **Nb Sub Gurmit Singh**. We have perused the aforesaid order and we find that facts of the aforesaid case are different with the case in hand. In that case the applicant was placed in P2 (permt) medical category for the disability ‘closed head

injury' which he suffered while on duty. Since P2 (Permanent) medical category is equivalent to medical category 'BEE' which being a promotable medical category, the applicant in that case was granted relief as per policy letter dated 10.10.1997 but in the instant case applicant is suffering from 'Depressive Episode' which being a psychological disorder, promotion in this medical category is prohibited in terms of aforesaid policy letter.

16. Perusal of re-categorization medical board dated 02.12.2019 reveals that the applicant was suffering from tension type headache from the year 1996-97 and was treated in various service hospitals. In Command Hospital (Central Command), Lt Col Vikas Mathur, Classified Specialist (Psychiatry) had endorsed the following remarks on the applicant on 26.11.2019:-

" x x x x

Perusal of old medical documents and history revealed that he initially came under psychiatric care when he was admitted to MH Bareilly on 06 Feb 2018 at the behest of AMA. On admission incl c/o headache, sleep disturbance, decreased concentration, giddiness, decreased energy, low mood and negative thoughts of about 2-3 months duration. A detailed history revealed that individual had joined present unit in May 2017 and was

apparently functioning satisfactory till mid Nov 2017. Indl disclosed that following a scolding by his OC he felt extremely upset and had negative thoughts. Over the next few days his symptoms worsened and indl state that he went on a month's leave in Dec 2017. He remained symptomatic at home and took treatment from civil psychiatrist and was put on psychotropic medications. On rejoining from leave he reported to RMO as he was still symptomatic and hence referred for psychiatric evaluation/treatment. x x x x x

x x x x x MSE revealed a kempt, indl who appears tense, depressed and had decreased PMA. He spoke a low monotone, had negative ruminations and guilt ideation. x x x x Biodrives disturbed x x x x"

17. Thus, from the aforesaid an inference may be drawn that the applicant was suffering from mild psychosis w.e.f. the year 1996 and it manifested over a passage of time when he was posted in Counter Insurgency Operational Area in the year 2017.

18. From the aforesaid following is derived:-

(i) Applicant while serving with 17 RR was downgraded to low medical category for disability 'Depressive Episode (R32)' and extension of two years tenure was not granted to him being placed in low medical category.

(ii) Applicant had himself submitted unwillingness certificate for extension of two years service tenure.

(iii) Individuals serving in low medical category 'BEE' temporary or permanent may be promoted but those placed in low medical category for psychiatric disorder are not entitled for further promotion.

19. The organization is not supposed to carry a liability beyond a certain point of time and as has been stated hereinabove, the organization has been more than considerate to the applicant in permitting him to serve further, although he could have been boarded out because of psychological disability in the year 2018 when it manifested. This was done precisely so that he can earn his pension for the rank which he was holding. Keeping in view the aforesaid background, we feel that there is no illegality or impropriety in the order denying the extension of service and further promotion to the applicant and accordingly, the original application of the applicant with respect to extension of service and further promotion is **dismissed**.

20. Applicant's other contention is that PAO (OR) has illegally and arbitrarily deducted a sum of Rs 1,00,750/-

from his account. We have perused the statement of account for the month of January, 2020 and we find that this amount is related to his being in UN Mission in the year 2009-2010 which has not been clearly explained in the said paper. However, we direct the respondents to scrutinize the details and refund the amount, if any, as per rules.

21. The O.A. with regard to refund of amount is disposed of.

22. No order as to costs.

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

(Lt Gen Rakesh Kumar Anand)
Member (A)

Dated: 09.12.2022

Rathore

(Justice Umesh Chandra Srivastava)
Member (J)