

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 102 of 2017****Tuesday, this the 9th day of November, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Nk/AA No. 13998122N Deepu Dwivedi
S/o Late Shiv Kumar Dwivedi
R/o Village – Karkarapur, Post – Sunderpur Gajen,
Tehsil – Rasoolabad, District – Kanpur Dehat (UP)

.... Applicant

Ld. Counsel for the Applicant : **Shri A.K. Singh**, Advocate

Versus

1. Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi-110011.
2. Director General of Medical Services (Army) L-Block, IHQ of MOD (Army), New Delhi-110011.
3. The Commandant, NDA Khadakwasla, Pune – 411023.
4. Col. Anand Mishra, CO, Military Hospital, Khadakwasla, Pune – 411023.
5. Officer IC Records, AMC Record Office, Lucknow Cantt.

... Respondents

Ld. Counsel for the Respondents : **Dr. Gyan Singh**,
Govt Standing Counsel**ORDER (Oral)**

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 applicants have sought following reliefs:-

“(a) Issue/pass an order or direction to quash/set aside the impugned discharge order vide Army Medical Corps Record

Office letter No. 490009MP/RO(A&D)/Ser-118 dated 15 June, 2016 for illegally discharging the applicant, as contained in Annexure A-1 w.e.f. 31 Oct 2016.

(b) Issue/pass an order or direction to reinstate the applicant in service with all consequential benefits including promotion.

(c) issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow the application with cost.”

2. The facts of the case in brief are that the applicant was enrolled in the Army on 22.02.1998. The applicant was promoted to the rank of Naik (Time Scale) w.e.f. 30.03.2015 on 2 years extension. The applicant was placed in low medical category S2 (T-24) w.e.f. 18.03.2016 for disability “**Accentuation of Personality Traits**” during extended period of service and became ineligible for future retention in service and was discharged from service on 31.10.2016 (AN).The applicant preferred a representation dated 14.09.2016 which was processed by AMC Records for disposal by the competent authority vide letter dated 19.01.2017. Being aggrieved, the applicant has filed the present Original Application to set aside the discharge order and to reinstate him in service with all consequential benefits including promotion.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Naik (Time Scale) w.e.f. 30.03.2015 on 2 years extension. The applicant was directed to report on temporary duty to HQ Dakshin Maharashtra, Sub Area, Pune vide MH Khadakwasla Movement Order dated 26.01.2016. The applicant was having no previous experience of the job for which he was sent on temporary duty and he faced difficulty in understanding English and therefore, he was directed to

go back to his unit. The applicant reported for collection of movement order at about 0800 hrs on 02.02.2016 and reported back to MH Khadakwasla on 02.02.2016 at about 1100 hrs. However, on 03.02.2016, applicant was issued a charge sheet under Section 39 (d) of Army Act, 1950 on false and baseless allegations that he was absent from 0800 hrs to 1100 hrs on 02.02.2016. On 08.02.2016 applicant was tried summarily by Commanding Officer, MH Khadakwasla and was awarded three punishments (Reprimand, 14 days Pay Fine and 14 days extra guards and duties). The applicant being aggrieved by unjust and arbitrary decision of the Commanding Officer wrote a letter dated 19.02.2016 to the Commandant NDA through proper channel under the provisions of Section 26 of Army Act, 1950 for unjust punishments awarded to him but this application was not sent to Commandant NDA and Commanding Officer issued another charge sheet under Section 63 of Army Act, 1950 dated 26.02.2016 to the applicant for writing letter directly to the Commandant NDA and was awarded "Reprimand". Thereafter, on 05.03.2016 applicant was ordered to report to Psychiatrics at Command Hospital, Pune. On investigation, Col P. Madhusudan, Sr. Adviser (Psychiatry) mentioned in his remark that applicant had no psychiatric symptoms, no abnormality and no drugs and he is to be discharged.

4. Learned counsel for the applicant further submitted that Commanding Officer misusing his official position, filled AFMSF-10 vide letter dated 08.03.2016 showing the applicant having mental illness and he was downgraded to low medical category S2 (T-24) by Command Hospital due to his influence being Medical Officer. The applicant was

thrown out of service without any medical problems. To cover up the illegal, irrational and unjust actions of the Commanding Officer, applicant was issued a counselling letter vide letter dated 27.04.2016 and the applicant sent his reply in May 2016. On 02.05.2016, applicant submitted his statutory representation to the higher authorities. On this, applicant was issued a Show Cause Notice dated 03.05.2016. The applicant was placed in LMC S2 (T-24) on 18.03.2016 and his Re-cat Board was due on 17.09.2016 but by misusing his power, Commanding officer influenced to AMC Records to issue discharge order of the applicant on 15.06.2016 and accordingly, applicant was discharged from service on 31.10.2016 (AN) due to low medical category for “**ACCENTUATION OF PERSONALITY TRAITS**”. He pleaded for setting aside the discharge order and to reinstate the applicant in service with all consequential benefits.

5. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 21.02.1998. While serving with MH Khadakwasla, applicant was granted two years extension of service w.e.f. 21.02.2015 to 20.02.2017 vide AMC Record Office Part II Order No. 1/0171/0678/2013. The applicant was placed in low medical category S2 (T-24) w.e.f. 18.03.2016 for disability “**Accentuation of Personality Traits**” during extended period of service and became ineligible for future retention in service and was discharged from service on 31.10.2016 (AN). A Show Cause Notice was served to the applicant on 02.05.2016 vide MH Khadakwasla letter dated 02.05.2016. Consequently, extension of service of the applicant w.e.f. 01.11.2016 to 20.02.2017 was cancelled

and retirement order to be SOS from service w.e.f 01.11.2016 was issued by AMC Record Office letter dated 15.06.2016. During Release Medical Board, the applicant was placed in S2 (Permanent) and accordingly, he was discharged from service w.e.f. 31.10.2016 (AN) in low medical category. The applicant preferred a representation dated 14.09.2016 which was processed by AMC Records for disposal by the competent authority vide letter dated 19.01.2017. He pleaded for dismissal of O.A.

6. We have given our anxious consideration to submissions of both the parties as also perused guide lines and rules and regulations on the subject.

7. We find that applicant was granted two years of extension in service w.e.f. 21.02.2015 to 20.02.2017, thereafter, he was placed in low medical category S2 (T-24) w.e.f. 18.03.2016 for disability “**Accentuation of Personality Traits**” and therefore, he was discharged from service w.e.f. 31.10.2016 (AN) on account of being placed in low medical category by cancelling his extension of tenure.

8. We also find that applicant was discharged from service as per policy on the subject being in low medical category during the extension period under the provisions of IHQ of MoD (Army) letter dated 20.09.2010 and 30.06.2015 and Army Rules 13 (2A). Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

9. In the result, we do not find any illegality or illogicality in discharging the applicant from service. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending Misc. Applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 9th November, 2021
SB