

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 75 of 2018**Tuesday, this the 23rd day of November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)JC-571469H Nb Sub Kamlesh Kumar
S/o Shri Mijaji Lal
R/o Village – Piharpur, PO – Kokawali, Tehsil – Jaswant Nagar,
District – Etawah (UP) – 206245
Presently at 9 MAHAR, C/o 56 APO**.... Applicant**Ld. Counsel for the Applicant : **None for the Applicant**

Versus

1. Union of India through The Secretary, Ministry of Defence, DHQ PO, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. Officer-in-charge Records MAHAR, PIN-900127, C/o 56 APO.
4. The Commanding Officer, 9 Mahar Regiment, PIN – 911509, C/o 56 APO.

... RespondentsLd. Counsel for the Respondents : **Shri Sunil Sharma,**
Central Govt Counsel**ORDER (Oral)**

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

- “(a) Call for the records including the policy instruction based on which the Respondents have withdrawn the Shelter appointment and on that basis have passed the impugned order dated 09.10.2017 ordering discharge of the

applicant from service w.e.f. 31.01.2018 and thereafter quash all such orders including order dated 09.10.2017.

- (b) Direct the respondents to retain the applicant in service and allow him to complete his prescribed term of engagement with all consequential benefits of continuity of service promotion etc.
- (c) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 25.12.1993 and was discharged from service on 31.01.2018 in low medical category after rendering more than 24 years of service under Rule 13 (3) I (ii) (a) (i) of Army Rules, 1954 read in conjunction with Army Rule 13 (2A) as amended vide Gazette Notification issued vide SRO 22 dated 13.05.2010 on being placed in permanent low medical category and not upto the prescribed physical standard and no sheltered appointment was available in the unit. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to allow him to join duty.

3. Learned counsel for the applicant submitted that applicant has been discharged from service illegally and unreasonably. The applicant was permanently downgraded to low medical category P2 (Permanent) w.e.f. 22.07.2014. On 25.05.2014 respondent No. 4 sent a warning order to the applicant asking him to sign pension documents. On 26.05.2015, sent a Show Cause Notice to the applicant as to why he should not be discharged from service. The applicant sent a letter dated 19.11.2015 to respondent No. 4

requesting to extend his service and to grant promotion. Again in June 2016, applicant sent a letter to respondent No. 4 to extend service and to grant promotion. In the mean time, applicant was promoted to the rank of Naib Subedar based on his ACR profile and seniority. On 16.07.2016 respondent No. 4 issued another Show Cause Notice to the applicant stating that why the applicant should not be discharged from the service as reply of notice dated 12.06.2016 not submitted by him. On 26.09.2016, wife of the applicant sent a letter to the respondent No. 4 and other higher superior authorities stating that applicant is being harassed by the Commanding Officer and promotion has also been denied. On 07.10.2016, respondent No. 4 again issued a Show Cause Notice to the applicant stating that applicant was granted leave to complete/submit his pension documents but pension documents not submitted by him. On 10.10.2016 respondent No. 4 again sent a Show Cause Notice to the applicant. On 22.10.2016 respondent No. 4 sent a legal notice to the wife of the applicant to tender unconditional apology for the allegations made by her. Finally on 09.10.2017 discharge order was issued by respondent No. 3 and applicant was discharged from service w.e.f. 31.01.2018.

4. He further submitted that withdrawing sheltered appointment and ordering discharge from service is illegal, unreasonable and violation of fundamental rights granted under Articles 14, 15, 16 and 21 of the Constitution of India, against the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Raj Pal Singh,***

reported in (2009) 1 SCC, 216, Army Order 46/1980 and Regulation 162 of the Regulations for the Army, 1987 and therefore, discharge order of the applicant should be quashed and applicant be allowed to retain in service till completion of his prescribed terms of engagement.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was placed in permanent low medical category in January 2010 and he was granted suitable sheltered appointment in public interest under the provisions of Special Army Instruction 2/S/1976. The applicant had completed pensionable service and had also been promoted to the rank of Naib Subedar and further grant of sheltered appointment to the applicant was not feasible due to the unit's deployment in newly raised mountain strike Corps. The applicant was served a Show Cause Notice on 10.10.2016 to confirm allegations made by his wife on the respondents to which he submitted an undertaking that he had nothing to do with the petition submitted by his wife and that she had done it at her own volition. The applicant was in permanent low medical category S1H1A1P2(P)E1 w.e.f. 22.07.2014 for diagnosis **“PORTAL AND SUPERIOR MESENTERIC VEIN THROMBOSIS”** and accordingly, his discharge order was issued on withdrawal of sheltered appointment being placed in low medical category. Therefore, applicant was discharged from service under Rule 13 (3) I (ii) (a) (i) of Army Rules, 1954 read in conjunction with Army Rule 13 (2A) as amended vide Gazette Notification issued vide SRO 22 dated 13.05.2010 on being placed in permanent low medical category and not upto the prescribed physical

standard and no sheltered appointment was available in the unit commensurating to his disability. He pleaded that O.A. may be dismissed.

6. We have heard learned counsel for the respondents and perused the material placed on record.

7. We find that applicant was downgraded to low medical category S1H1A1P2E1, permanently for his disability “**PORTAL AND SUPERIOR MESENTERIC VEIN THROMBOSIS**” and was initially granted suitable sheltered appointment in public interest under the provisions of Special Army Instruction 2/S/1976. The applicant was promoted to the rank of Naib Subedar and has completed his pensionable service. Thereafter, there being no sheltered appointment available in the unit commensurate to his disability, respondents have rightly taken the decision to discharge the applicant in low medical category as per policy on the subject. The applicant was discharged from service after due procedure under Rule 13 (3) I (ii) (a) (i) of Army Rules, 1954 read in conjunction with Army Rule 13 (2A) as amended vide Gazette Notification issued vide SRO 22 dated 13.05.2010 on being placed in permanent low medical category and not upto the prescribed physical standard and no sheltered appointment was available in the unit commensurating to his disability. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to retain in service till completion of his prescribed terms of engagement.

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

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated: November, 2021

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