

AFR

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 91 of 2021

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)

No. 2992167K Sepoy Raj Kumar (Retd from DSC), S/o Shri (Late) Yadu Nath, R/o- Village- Ranapur Tadiya, Post – Milkipur, Tehsil- Milkipur, Distt- Ayodhya (U.P.)- 224164.

.....Applicant

Ld. Counsel for the : **Shri Shaialendra Kumar Singh,**
Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi- 110011.
3. The Officer in Charge Defence Security Corps Records, Pin- 901277, C/o 56 APO.
4. Commanding Officer, No 1129A DSC Plt attached to 2 Comn Coy, 551 sub Group, PIN- 916551, C/o 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Namit Sharma,**
Respondents **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, whereby the applicant has sought following reliefs:-

(A) To quash the order of discharge dated 26 Jun 2020 (Annexure A-1 & Impugned Order) wherein services of applicant are being terminated wef 31 Oct 2020 arbitrarily by the respondents.

(B) To issue order/ direction to the respondents to allow the applicant to continue in service till next Re-categorisation Medical Board scheduled for 13 Jan 2022.

(C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.04.1992 and was discharged from service on 30.04.2016 after rendering more than 24 years of service and applicant is getting service pension for service rendered in the army. Thereafter, he joined Defence Security Corps (DSC) service on 14.09.2016 in the rank of Sep for terms of 10 years in Medical Category SHAPE-1. On 29.07.2019, applicant was diagnosed to be suffering from “**BILATERAL INGUINAL HERNIAL (OPTDT)**” and “**CHRONIC VIRAL HAPATITIES -B**” and was placed in

low medical category P3 (Temp). Final re-categorization board of the applicant was fixed on 28.06.2020 for 'BILATERAL INGUINAL HERNIAL (OPTDT)' and 13.01.2022 for CHRONIC VIRAL HAPATITIES- B. A show cause notice was issued and applicant was discharged from service on 31.10.2020 under Rule 13 (3) item III (iii) (a) (i) as no sheltered appointment was available. 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 till completion of his terms of engagement of service.

3. Learned counsel for the applicant submitted that applicant was enrolled in DSC on 14.09.2016 in medical category SHAPE-1 for the terms of 10 years. On 29.07.2019, applicant was diagnosed to be suffering from "**BILATERAL INGUINAL HERNIAL (OPTDT) AND CHRONIC VIRAL HAPATITIES -B**" and was placed in low medical category P3 (Temp) with direction for next re-categorisation board for 12.01.2020. Re-categorisation Medical Board of the applicant was held on 13.01.2020 and the applicant was upgraded to medical category P2 (T-24) for '**BILATERAL INGUINAL HERNIAL (OPTDT)**' and downgraded to P2 (P) for

'CHRONIC VIRAL HAPATITIES- B' (02 years). Further next re-categorization board of the applicant was fixed for 28.06.2020 for **'BILATERAL INGUINAL HERNIAL (OPTDT)'** and 13.01.2022 for **'CHRONIC VIRAL HAPATITIES- B'**. A show cause notice dated 16.03.2020 was issued and applicant was discharged from service on 31.10.2020 vide discharge order 26.06.2020 under Rule 13 (3) item III (iii) (a) (i) as no sheltered appointment was available. On 04.07.2020, re-categorisation medical board of the applicant was held and applicant was upgraded in medical category SHAPE-1 for **'BILATERAL INGUINAL HERNIAL (OPTDT)'** and continued to P2 (P) for **'CHRONIC VIRAL HAPATITIES- B'** (02 years). In spite of being fit for all duties in DSC, applicant was discharged from service illegally and arbitrarily. Thus he was prematurely discharged prior to completion of his terms of engagement for the reason being no sheltered appointment available. Learned counsel for the applicant submitted that as per Army Order 03 of 2001 a person placed in medical category 2 or 3 (temporary or permanent) cannot be discharged from service. He submitted that a mere perusal of Para 13 clearly indicates that the individual placed in the medical category P-2 would be retained in service and he

shall be given the assignment commensurate to the restrictions imposed by the Medical Board. However, this was not done in the case of the applicant and he was prematurely discharged from service which is arbitrary and illegal and against the provisions of law. Rule 13 as amended vide SRO 22 of 2010 specifically deals with the manner of discharge of permanent low medical category personnel when no sheltered appointment is available in the Unit and the same has not been followed by the respondents while discharging the applicant from service. He placed reliance on the judgments of the Hon^{ble} Apex Court in case of ***Union of India vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, Division Bench of Punjab and Haryana High Court in case of ***Subedar Manjit Singh vs. Union of India*** in CWP No. 988/2012, decided on 19.05.2014 and AFT (RB) Chandimandir in OA No. 2360 of 2013, ***Rakesh Kumar Singh vs. Union of India***, decided on 17.04.2015 and T.A. No. 27 of 2013, ***R.K. Patel vs.. Union of India and Ors***, decided on 02.11.2017 and pleaded that applicant's case is covered with aforesaid judgments, hence, his discharge order should be quashed and applicant should be allowed to join duty till completion of his terms of engagement.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was placed in low medical category on 29.07.2019 for disability '**BILATERAL INGUINAL HERNIAL (OPTDT)**' and '**CHRONIC VIRAL HAPATITIES- B**' and he was granted sheltered appointment. Further he was upgraded to SHAPE-1 for disability '**BILATERAL INGUINAL HERNIAL (OPTDT)**' and was downgraded to low medical category P2 (Permanent) for '**CHRONIC VIRAL HAPATITIES-B**'. No sheltered appointment was available in the unit, therefore the applicant was not recommended for retention in service and the individual was recommended to be discharged from service on medical grounds under the provisions of Army HQ letter No B/10185/DSC/MP-3 dated 03 Mar 2018 for the diagnosis '**CHRONIC VIRAL HAPATITIES-B**' and Army Headquarters letter No A/00585/LMC/Policy/DSC-1/57 dated 20 Nov 2018. As per this policy, all DSC (GD) persons who are in permanent Low Medical Category and persons even who are placed in temporary low medical category for 'Alcohol Dependency syndrome (ADS)' will be discharged from service during contract or extension period. Now the applicant by means of instant O.A. has prayed for reinstatement him in service till completion of his terms of engagement of service.

Applicant has been granted all his retiral dues for his services rendered in DSC. While discharging the applicant, all rules and policies were followed and as per current policy applicant is not entitled to reinstate in service. In view of the facts, Original Application is devoid of merit and lacks substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. The question before us to decide is where a DSC person placed in low medical category but fit for all duties can be retained in service?

7. In the instant case applicant was placed in low medical category but was found fit for all duties in DSC. Learned counsel for the applicant has placed reliance on various case laws and Army Order 46/1980 as well as Rule 13 as amended vide SRO 22 of 2010.

8. The latest policy issued on disposal of low medical category DSC personnel has been issued vide Army Headquarters, Min of Def letter dated 03.05.2018. Relevant paras of said policy letter are as under:

1. x x x

2. Under the provisions of delegated powers to the AG vide Ser No 4 of Appx -1 to MoD letter No 7 (50)/200-D(AG) dt 14 Aug 2001, approval is hereby accorded for revision of terms & conditions for disch of JCOs/OR in the DSC as under:-

(a) All DSC pers will serve in DSC till the period of their contract (10 yrs for Sep/Nk and 05 years for JCOs as the case may be) however subsequent extension will be accorded only to pers who are found in SHAPE-1 on screening.

(b) Services of all pers declared ADS (S-Cat) after obsn of two months will be terminated while serving in DSC during contract or extension pd.

(c) Permt LMC pers in DSC will be disch from service at any time during service in accordance with provisions of AR-13 if no sheltered appt is available.

(d) xxxxx xxxxx

9. In the instant case, we find that applicant was downgraded to low medical category P2 (permanent) and was discharged from service in view of the policy letter quoted above which states that low medical personnel even fit for all duties shall be discharged from service. In DSC, General Duty (GD) personnel are not only detailed for the task of guarding the vital sensitive defence installations in the country which are located at various part of the country including Field and High Altitude Area but also assigned with the responsibility which included static guards, searching, quick reaction team, escorting and mobile patrolling round the clock. The DSC personnel are always armed to afford a higher degree of protection, which is a

challenging task compared to many other services in the Armed Forces. In today's scenario, defence installations are facing threat from the ante-national elements and DSC Personnel are the prime targets being the first line defence, as happened in the Pathankot Air Force Station attack on 02 Jan 2016, where 01 JCO and 04 jawans of DSC had laid down their lives. As such physical and medical fitness of a DSC person plays a vital role in defending the vital defence installations. Since, the authorization of man power for a DSC Platoon is as per the number of posts to be guarded, there was no sheltered appointment available. Moreover, with limited man power authorized and posted, if any person of the platoon strength gets medically unfit to perform his charger of duties, it leads to extra burden of performance additional duties by other fit personnel on the cost of their authorised rest/recoup time, which causes stress and strain on those fit individuals which has an adverse effect on operational efficiency and may endanger the defence installation itself. DSC persons, being first line of defence for vital defence installations, the security of the installation is more important than the personal welfare. Considering all these aspects, Integrated Headquarters of MoD (Army) has revised the policy of terms and conditions for

retention of JCOs/OR in DSC and directed that all DSC (GD) persons who are permanent low medical category will be discharged from service during contract or extension period. There being no sheltered appointment available in the unit commensurate to his disability, applicant was discharged from service after due procedure as per Army Headquarters policy letters dated 03.05.2018 and 20.11.2018 and SRO No. 22 dated 13.05.2010 as no sheltered appointment was available in unit. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to join duty till completion of his initial terms of engagement of service.

10. Rules and policies quoted by the applicant have been super ceded and latest policy regarding disposal of low medical category personnel has been issued vide Army Headquarters policy letter dated 03 May 2018 and 20 Nov 2018 as quoted above. As per these letters first conditions for retention in service for low medical category personnel is that sheltered appointment commensurate to disability of the applicant should be available. Such retention of low medical category personnel should not exceed the sanctioned strength of the unit/regiment. This sheltered appointment should be

justifiable in the public interest. Further while giving sheltered appointment, priority to retain in service should be given to those nearing their minimum pensionable service. Under the provisions of Army Rule 13, the commanding officer is the competent authority to sanction discharge to those who have been found medically unfit for further retention in service. To ensure better management, this authority has been enhanced to OIC Records for sanctioning discharge of JCOs/OR who have been found medically unfit for further service for low medical category (Non- Battle Casualties- Willing to serve). Sheltered appointment shall be formally withdrawn with effect from the date of approval of discharge by the competent authority. In the instant case, disease of the applicant was diagnosed within three years of joining DSC service. Though, the applicant was declared fit for all duties but as per policy, low medical category personnel in DSC shall be discharged from service, hence, the applicant is not entitled for reinstatement in service as claimed. The case laws as well as policy letters quoted by the applicant have been super ceded.

11. We, therefore do not find any merit in the application to interfere with the impugned discharge order dated 23.06.2020 passed by the respondent authority in terminating the services

of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**.

12. Accordingly, Original Application is **dismissed**.

13. No order as to cost.

14. Pending applications, if any, stand disposed off.

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

Dated: 23 November, 2021

Ukt/-