

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 110 of 2020

Thursday, this the 2nd day of September, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15123138 H Badam Singh (Retired) S/o Shri D Ram, R/o Vill –
Ismalipur, Post – Kesarpur, Tehsil – Bareilly, Distt – Bareilly (UP).

.... Applicant

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

Versus

1. Union of India and others through, the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. SRO, Records DSC, PIN-901277, C/O 56 APO.
4. Commanding Officer, INS Hansa, Dabolin, Goa-403801.

... Respondents

Ld. Counsel for the : Dr. Shailendra Sharma Atal, Advocate
Respondents. Central 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 applicant has sought following reliefs:-

(a) To quash or set aside the Discharge order dated 30.09.2019 of the applicant from service.

(b) To issue order or directions to the respondents to re-instate applicant back to service for remaining part of his contractual period 25.04.2023 and pay all arrears of pay and allowances from date of discharge to re-joining service with interest along with service seniority loss, if any.

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

(d) Allow this Application with cost.

2. Brief facts of the case are that the applicant was enrolled in Defence Security Corps (DSC) on 26.04.2013 and after rendering only 06 years, 05 months and 04 days service, he was locally discharged from service on 30.09.2019 in low medical category under Rule 13 (3) I (i) (a) of Army Rules 1954. Prior to discharge, he was serving in low medical category S1H1A2(P)P2(P)E-1 on account of disabilities (i) Graves Disease, Post Radioablation Hypothyroidism and (ii) Non Union Fracture Distal 1/3rd Radius (Rt) optd. While serving in low medical category, a Show Cause Notice (SCN) was issued to him on 25.04 2019 by his Commanding Officer mentioning therein as to why his services may not be dispensed with being placed in low medical category on account of non availability of sheltered appointment to which applicant replied that as per medical authorities he is fit for all duties and keeping in view of this, he may be allowed to complete his contractual period. After discharge from service applicant submitted representations dated 02.05.2019, 19.09.2019 and 20.09.2019 repeatedly for his re-instatement in service but when nothing tangible was achieved he has filed this O.A. for his re-instatement in service to complete his balance contractual period.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is considered attributable to service during contractual period and prays for by

re-instating in DSC service as diseases have arisen during military service. Learned counsel for the applicant further submitted that applicant can only be discharged if no sheltered appointment is available, person is not surplus to organisation, does not exceed sanctioned strength and sheltered appointment should be in terms of Army Order 46 of 1980. Learned counsel for the applicant pleaded for retention in service for remaining period of contract in DSC.

4. On the other hand, learned Counsel for the respondents submitted that applicant is in receipt of service pension of Army granted vide PPO No S/021593 /2012 (Army) and has been denied serving balance contractual period in DSC being placed in Low Medical Category S1H1A2(P)P2(P)E-1 w.e.f 30.08.2018 for disease (i) Graves Disease, Post Radioablation Hypothyroidism (ii) Non Union Fracture Distal 1/3rd Radius (Rt) optd, in accordance with policy for retention elucidated in Adjutant General's Branch letter No B/10185/DSC/MP-3 dated 03.05.2018 and IHQ of Mod (Army) letter dated 20.11.2018.

5. Learned counsel for the respondents further submitted that applicant has replied to Show Cause Notice and stated he has no objection against the existing rules. Accordingly applicant is ineligible for further retention in service due to non availability of sheltered appointment. Learned counsel for the respondents also submitted that if the applicant is permitted to complete his initial terms of engagement of 10 years he will be discharged under clause 13 (3) I (i) (a) of Army Rules 1954 and thereby he may be deprived of service element of pension even if the applicant puts in minimum pensionable service of 15 years. Learned counsel for the respondents submitted that if the applicant is discharged under "medical clause", he may be treated to be invalided out in terms of Rule 95 of Pension Regulations and disability pension could be granted to applicant subject to assessment of disability by RMB. Therefore, applicant is not permitted to be retained in service for

remaining period of contract service in DSC and O.A. deserves to be dismissed.

6. We have heard learned counsel for both the parties and examined the medical documents filed on record. We find that the applicant has been discharged from DSC Service on completion of 06 years, 05 months and 04 days of service, on account of disabilities which resulted in downgradation of his medical category as S1H1A2(P)P2(P)E1. The policy for discharge promulgated by Adjutant General's Branch letter dated 03.05.2018 and IHQ of MoD (Army) letter dated 20.11.2018 have been followed in letter and spirit. Thus we find no infirmity in the procedure of discharge of the applicant

7. In view of above, the O.A. is liable to be dismissed and is therefore **dismissed**.

8. No order as to costs.

9. Pending applications, if any, are disposed off.

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

Dated : September, 2021
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