

RMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 679 of 2020
with M.A. No. 422 of 2020**

Monday, this the 20th day of September, 2021

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

JC-303078P Subedar (Operator) Sanath Kumar Naidu of 501
Air Defence Group (SP), C/O 56 APO, Pin-925501.

.... Applicant

Ld. Counsel for the: **Wg Cdr SN Dwivedi (Retd)**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110001.
3. Brigade Commander 787 (I) AD Bde (A), C/O 56 APO.
4. Officer-in-Charge Records, Army Air Defence Records, C/O 56 APO, PIN-908803.
5. Commanding Officer, 501 Air Defence Group, C/O 56 APO, PIN-925501.

... Respondents

Ld. Counsel for the: **Shri Devesh Kumar Mishra**, Advocate
Respondents. 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) Issue/pass an order or direction of appropriate nature to the respondents to quash/cancel the Discharge order issued in respect of the applicant vide Army Air Defence Records letter dated 19.08.2020 (Annexure No A-1), the same being issued by withdrawing sheltered appointment with malicious intention to curtail the service of the LMC applicant who had suffered accidental injury while performing bona fide military duty and the injury is declared attributable to military service; so that the applicant could complete at least his authorized colour service till 31.08.2022, the date of his retirement in the present rank in the normal course.

(b) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the Court of Inquiry held against the applicant swiftly and hurriedly with mala fide intention, on 27.07.2020 and subsequent days till 06.08.2020 without following the laid down provisions and affording proper opportunities of principles of natural justice to the applicant to defend himself.

(c) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the Tentative Charge Sheet dated 02.09.2020 framed

against the applicant and all subsequent proceedings of Hearing of Charge under Rule 22 of Army Rules, 1954; Recording of SoE and Summary Trial of the applicant u/s 85 of the Army Act, 1950 by declaring the same void ab-initio, on the grounds stated hereinabove in para 5.

(d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case and to stop further harassment being meted out to the applicant on fabricated and frivolous grounds with vindictive motive.

(e) To award the cost payable to the applicant for the grave injustice done to him.

ORDER (Oral)

2. Brief facts of the case are that applicant was enrolled in the Army on 16.08.1994 and is presently serving in low medical category S1H1A2(permt)P1E1. Being placed in low medical category and non availability of sheltered appointment, a Show Cause Notice (SCN) dated 18.01.2020 was served upon applicant, which was replied by applicant on 22.01.2020 mentioning therein to grant permission to file writ petition in Civil/Hon'ble High Court/Hon'ble Supreme Court. Applicant was due to be discharged from service w.e.f. 31.01.2021 but he filed this O.A. on 04.12.2020 against discharge order which was stayed by this Tribunal vide order dated 19.01.2021 and is still persisting. Respondents have filed an application for early hearing on the ground that applicant is not performing any

military duty in the unit. In this application, it was further submitted that applicant is doing abnormal behavior with his superior officers by taking undue advantage of ongoing case which is setting a bad example for the troops. This O.A. has been filed for cancellation of discharge order dated 19.08.2020, setting aside Court of Inquiry conducted between 27.07.2020 to 06.08.2020 and quashing of Tentative Charge Sheet dated 02.09.2020.

3. Learned counsel for the applicant pleaded that applicant has rendered impeccably clean service of 26 years in the Army and there is no red or black ink entry in his service record. His further submission is that his works were appreciated in the years 2005, 2007, 2013 and 2015 by senior officers and for his dedicated and remarkable performance his name was recommended for award of GOC-in-C Commendation Card during the year 2007. Applicant's contention is that he was put to a lot of difficulties by constant harassment at the behest of Commanding Officer, 501 AD Gp (SP) with malicious, unfair and unjust motive to help his own favourites. He has further submitted that he met with an accident on 02.08.2015 while on duty and his injury was regarded as attributable to military service. His further submission is that with ulterior motive, his sheltered appointment was withdrawn to discharge him from service debarring him to serve till 31.08.2022.

4. Per contra, learned counsel for the respondents submitted that during his 26 years of service applicant was an average soldier, did average trade work and committed several mistakes for which he was punished under respective Army Acts. His submission is that he was given ample opportunities for his personal growth and rise in career by providing sheltered appointment during his placement in low medical category. Further submission of learned counsel for the respondents is that applicant is having strained relation with his wife and she is getting maintenance allowance @ 22% from his salary every month. His other contention is that applicant had served legal notice to his Commanding Officer stating therein that his wife Smt Swapna PS, who is residing separately, should not be issued with hospital card, dependent card and canteen card. Learned counsel for the respondents further submitted that applicant is troubled soldier since his enrolment in the Army and has been dealt with summarily and left with minor punishments keeping in view of his welfare and strained relations with his wife. His contention is that applicant is habitual of serving notices to the organization on minor issues and gave life threats to his wife for solving his marital discord case. Concluding his submission, learned counsel for the respondents pleaded for dismissal of O.A. on the ground that applicant being mentally sick is a liability to the organization.

5. We have heard submission of both the parties and perused the pleadings placed on record.

6. Before proceeding further we would like to emphasize the sequence of events of the case in hand which are enumerated in succeeding paras:-

(a) **Strained Relations with Wife.** On 02.09.2014 applicant's wife Mrs PS Swapna had submitted an application (Annexure CR-16) to Sainik Welfare and Rehabilitation Department, Bangalore alleging her harassment by applicant and demanding Rs 15,000/- p.m. towards maintenance allowance. She was granted maintenance allowance to the tune of 22% of her husband's salary in terms of Army Order 2 of 2001 (Annexure CR-17) vide order dated 20.10.2015.

(b) **First Injury.** On 02.08.2015 applicant met with an accident while was on official work along with despatch rider and he sustained severe injury in his right leg. The injury was declared as attributable to military service in peace area vide remarks of Group Commander, 501 AD Regt (SP) dated 28.11.2015 (page 62 of O.A.). Applicant was temporarily placed in low medical category and thereafter he was placed in permanent low medical category S1H1A2(P)P1E1.

(c) **First Sheltered Appointment.** On being placed in low medical category, applicant was provided sheltered appointment for two years keeping in view of his welfare and giving ample time to recover and upgrade to Shape-I (Annexure CR-4 and CR-5).

(d) **Second Injury.** On 13.11.2019 applicant slipped from stairs and sustained injury 'Fracture Calcaneum (Lt)'. For this injury he was placed in permanent low medical category S1H1A2(P)P1E1 w.e.f. 18.01.2020. The injury was regarded as not attributable to military service. This injury further restricted his employability (Annexure CR-7).

(e) **Second Sheltered Appointment.** The applicant was again provided sheltered appointment for two years w.e.f. 12.01.2018 to 11.01.2020 keeping in view of his welfare (Annexure CR-6).

(f) **Show Cause Notice Dated 18.01.2020.** During course of his service while applicant was serving under sheltered appointment, strength of low medical categories personnel in the unit increased to permissible limit, therefore, a Show Cause Notice (SCN) dated 18.01.2020 (Annexure CR-8) was served upon applicant after giving him four years and three months sheltered appointment. Vide aforesaid SCN applicant was asked to show cause as to why his sheltered appointment should not be withdrawn

under the provisions of Govt of India, Ministry of Defence policy letter dated 30.09.2010 being placed in permanent low medical category and having completed pensionable service.

(g) **Reply to Show Cause Notice dated 18.01.2020.**

On receipt of SCN, applicant submitted reply dated 22.01.2020 (Annexure CR-9) in which instead of giving of suitable reply he asked permission to file a writ petition in High Court against the Commanding Officer (CO) without following proper chain of command for redressal of his grievance in contravention to Army Act, Section 26 read with para 364 of Regulations for the Army, 1987 (Revised Edition).

(h) **Show Cause Notice dated 06.07.2020 on Refusal to Sign Willingness/Unwillingness Cert.**

Applicant being placed in low medical category was required to sign willingness/unwillingness certificate as per policy letter dated 20.07.2018 but he refused to sign the same (Annexure CR-11). A SCN dated 06.07.2020 was served upon the applicant and on refusal, a Certificate dated 10.02.2020 to this effect witnessed by Sub (DS) KC Joshi and Sub (DMT) WR Singha was endorsed by Major Rahul Pandey (Annexure CR-10). A Court of Inquiry (C of I) was convened and Summary of Evidence (S of E) was recorded

(Appx AA). Applicant was provided Tentative Charge Sheet dated 02.09.2020. After C of I, applicant was found guilty of disobeying order given by superior officer and he was awarded 'Severe Reprimand' punishment under Army Act, 63.

(j) **Punishments during Service.**

(i) On 08.10.2000, applicant was awarded 07 days pay fine (black ink entry) under Army Act Section 39

(b) on account of overstaying of 39 days leave (Annexure CR-1).

(ii) On 02.11.2001, applicant was awarded 'Reprimand' (black ink entry) under Army Act Section 63 on account of disobeying lawful command of his superior officer (Annexure CR-2).

(iii) On 26.09.2020, applicant was awarded 'Severe Reprimand' (red ink entry) under Army Act Section 63 on account of disobeying lawful command of his superior officer (Annexure CR-3).

7. In addition to above, we have noticed that applicant had submitted documents for claiming the hostel subsidy and children education allowance of his wards. These documents on verification by the Principal, Kalpataru Central School, Titpur and Supdt of Police Vijayapura, were found forged (Annexure-

14 and 15) and disciplinary proceedings against applicant are under progress.

8. While filing rejoinder affidavit, applicant has submitted that he has been discriminated for providing Sheltered Appointment whereas seven other JCOs of the unit, who are in low medical category, have been provided with Sheltered Appointment and he has been denied the same as he has raised voice against his premature discharge. On this point contention of the respondents is that Sub Satpal Singh was not provided Sheltered Appointment and was discharged from service vide discharge order dated 07.03.2020. Nb Sub Thiruppathy and Nb Sub Leela Ram are in the process of being pensioned out. As far as the case related to Sub MD Islam and Sub Shambhu Kumar, contention of the respondents that they, being Technical Instructor, are controlled by AAD Records. The contention made by the respondents has weightage and is accepted.

9. On careful perusal of records we find that during the past two years applicant has been away from unit for about 281 days due to various reasons i.e. leave and visit to hospital etc., which shows his disinterest towards organization (Annexure CR-21).

10. We also notice that applicant, prior to filing of this O.A., has sent a legal notice dated 27.07.2020 (Annexure CR-13) to his Commanding Officer for withdrawal of Show Cause Notice dated 18.01.2020 and contemplated disciplinary action which

ought not to have been sent in an organization like Army which is a disciplined force.

11. On the point of withdrawal of sheltered appointment in respect of applicant, we have perused Show Cause Notice dated 18.01.2020 which for convenience sake is reproduced as under:-

"Show cause notice dated 18.01.2020.

1. It is intimated that you have been placed in low medical category S1H1A2(P)P1E1 with effect from 12 Jan 2018 on account of FRACTURE DISTIL TIBIA WITH PROXIMAL FIBULA (RT) (OPTD) by medical board. Under the provision of para 7 of integrated Headquarters of Ministry of Defence (Army) letter No B/10201/Vol-VI/MP-3 (PBOR) dated 30 Sep 2010, you were retained in the service for the public interest by HQ 787 (I) AD Bde while on Extra Regimental Employment (ERE) against a Sheltered Appointment with effect from 12 Jan 18 to till dt. Now you are reverted back to unit and on the posted str of this unit wef 15 May 19. Also you have already been given earlier Sheltered Appointment wef 12 Jan 16 to 11 Jan 18 while posted with this unit. However, due to non-availability of Sheltered Appointment in the unit, the undersigned is unable to provide further Sheltered Appointment and the same is being withdrawn. Also undersigned is unable to justice with SHAPE-1 JCOs being more than 16% JCOs in GD trade are posted as LMC and could not be desp him to the ERE to field area.

2. *In view of the above, you are hereby, called upon to show cause to me as to why your Sheltered Appointment should not be withdrawn under the provision of Integrated Headquarters of Ministry of Defence (Army) letter No B/10201/Vol-V/MP-3 (PBOR) dated 30 Sep 2010 as you were already completed your pensionable service in the Army. The following details may be included in Show cause reply for the period from your downgradation to permanent low medical category:-*

(a) Details of BPET & PPT attended by you after downgradation to low medical category.

(b) Details of SA & Msl firing attended by you after downgradation to low medical category.

(c) Details of Regimental Training/Exercise/SUTC attended by you after downgradation to low medical category.

(d) Details of guard & duties/detailment performed/given to you outside of the unit after your downgradation to low medical category.

(e) How many personnel accompany you while you were admitted in MH for your re-categorisation? Do you require an attendant?

(f) Number of years you served in field.

3. *Your reply must reach to undersigned by 22 Jan 2020 on receipt of this show cause notice, failing which it will be assumed that you have nothing to say in your defence."*

12. From the above Show Cause Notice we observe that applicant was serving in low medical category from the year

2016 and has completed pensionable service. The aforesaid Show Cause Notice was served upon applicant due to non-availability of Sheltered Appointment which is in conformity with Army HQ policy letter dated 30.09.2010. Thus, there seems to be no illegality on the part of the respondents.

13. We have also perused reply of Show Cause Notice submitted by the applicant dated 22.01.2020 which for convenience sake is reproduced as under:-

"REPLY OF SHOW CAUSE NOTICE DATED 18.01.2020

Respected sir,

1. *Refer to your letter No 323502/XX/A dt 18 Jan 2020.*
2. *I would like to submit the following few lines for your kind consideration and favourable action please.*
3. *I, JC-303078P Sub (OFR) Sanath Kumar Naidu of 501 AD Gp (SP) am enrolled in Indian Army wef 16 Aug 94 in SHAPE-I medical category and not in low medical category from Nasik Road Camp BRO and transferred to Army AD Centre, Nasik w.e.f. 16.08.1994 to 10.10.1995 and posted with 501 AD Gp (SP) w.e.f. 11.10.1995. Presently I am serving under your kind command since (sic) from 787 (I) AD Bde on completion of ERE tenure and have completed 25 years 05 months of service in the Army without any remarks and commandable IT NCO/JCO. I am not denied for performed any duties and related to my trade/rank.*
4. *I, am placed low medical category S1H1A2(P)P1E1 with effect from 12 Jan 2018 on*

account of Fracture Distal Tibia with proximal Fibula (Rt) (Optd) and performed the duties of Army and not my (sic). I am again repeat placed in low medical category S1H1A2(P)P1E1 with effect from 12 Jan 2018 on account of Fracture Distal Tibia with Proximal Fibula (Rt) (Optd) during the carryout of the duties of Army and not my fault because low medical category. However, you are not satisfy my reply, please accord permission as per provision given in DSR 1987 for filing a writ petition in civil court/High court/Supreme Court against you.

5. I shall be ever grateful to you for this act of kindness."

14. The aforesaid reply to Show Cause Notice clearly depicts that applicant has used haughty language for his Commanding Officer which ought not to have been done being a Junior Commissioned Officer when the Show Cause Notice was issued in accordance with extant Rules on the subject. The motive behind issue of Show Cause Notice was to give him ample opportunity to justify his retention in sheltered category. We have noticed that vide Show Cause Notice dated 18.01.2020 six questions were asked from applicant but he has not given answer of any of them which shows his lackadaisical attitude.

15. We are also of the view that initially an option was open for the applicant to submit a non-statutory or statutory complaint to higher authorities under Section 26 of Army Act, 1950 read with para 364 of Regulations for the Army, 1987 if he

was so aggrieved by his Commanding Officer. He submitted a statutory complaint without following the chain of command during his summary trial by the Commanding Officer which was later not accepted.

16. From the inquiry reports dated 23.09.2020 and 25.09.2020 (Annexure CR-14 and CR-15) it is crystal clear that applicant has forged some documents. Nothing has been brought on record to show whether any disciplinary action has been taken against applicant for his mis-conduct of forging documents related to hostel subsidy claim and children education allowance, though it has been stated that disciplinary proceedings are in progress against applicant.

17. In view of the above, we are of the view that respondents have not erred on issue of discharge order dated 19.08.2020. Thus, keeping in view the discussions made hereinabove, order dated 19.01.2021 is hereby vacated.

18. The O.A. has no force and deserves to be dismissed. It is accordingly **dismissed**.

19. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 20.09.2021
rathore

(Justice Umesh Chandra Srivastava)
Member (J)