

Court No. 1**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 301 of 2018**Wednesday, this the 22nd day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Army No. 10406757K, Sep Mainsh Kumar
Unit – 114 Inf Bn (T.A.) JAT
S/o Sri Satyveer Singh
Village & PO – Antawara,
PS & Tehsil – Khatauli,
District – Muzaffarnagar, Uttar Pradesh**.... Applicant**Ld. Counsel for the Applicant : **Shri Alok Kumar Singh**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi – 110011.
2. Chief of Army Staff, through Adjutant General Integrated HQ Ministry of Defence (Army) DHQ PO, New Delhi-110011.
3. The Additional Directorate General of the Territorial Army, General Staff Branch, HQ of MOD, L Block, Church Road, New Delhi – 110011.
4. Commanding Officer, 114, Inf Bn. (TA) PIN-934314, C/o 56 APO.
5. Brigadier Commander, T.A. Group HQ, Central Command, Pin-900354, C/o 56 APO.
6. OIC Records, (TA), JAT Regimental Centre Bareilly, Uttar Pradesh.

... RespondentsLd. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
Central Govt Counsel

ORDER

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. The Hon'ble Tribunal may be pleased to quash the order passed by opposite party No. 5 dated 31.01.2018 and pass the orders/directions to the opposite parties to grant reinstatement in service alongwith all consequential benefits.
- b. The Hon'ble Tribunal may also please be kind enough to direct the opposite parties to reconsider individual medical category for rehabilitation in Central Government Service as a measure of alternative remedy.
- c. To pass order or directions on opposite parties to grant disability pension with all service and consequential benefits.
- d. Any other benefits which this Hon'ble Court deems fit, just and proper considering the harsh circumstances faces by the applicant.”

2. Brief facts of the case are that the applicant was enrolled in 114 Inf Bn Territorial Army on 08.10.2012. While serving with 114 Inf Bn TA, the applicant was granted 28 days part of Annual Leave w.e.f. 10.02.2014 to 09.03.2014. On expiry of leave, applicant reported to 213 Transit Camp on 09.03.2014 to resume duty but due to organisational requirement i.e. transients management, he was sent on 12 days part of annual leave from 213 Transit Camp from 12.03.2014 to 23.03.2014 due to heavy snow fall enroute and closure of roads in terms of Rule 2 of Leave Rules for the Services. During

the leave period, the applicant sustained 'Upper Brachial Plexus Injury Right (Optd)' on 19.03.2014 in a road accident while he was travelling from residence to his maternal uncle in his personal motorcycle. He was admitted in MH Meerut on 19.03.2014 and later transferred to Army Hospital (R&R) Delhi on 20.03.2014 and was treated/ surgery of his hand done and thereafter he was downgraded in low medical category A-3 (T-24) w.e.f. 21.08.2014 and his injury was viewed as not attributable to military service by GOC 31 Sub Area. A court of Inquiry was also conducted and his injury was considered as not attributable to military service. The applicant was finally placed in low medical category A2. As per Para 2(c) of Army Order 460/1973, personnel downgraded to permanent low medical category are to be discharged from Territorial Army as service no longer required under Rule 14(b) (iii) and 14 (c) of Territorial Army Act Rules, 1948. As per rule, applicant was served with a Show Cause Notice vide 114 Inf Bn TA letter dated 23.01.2017 and the applicant replied to Show Cause Notice vide his letter dated 25.03.2017 wherein he admitted his medical category A-2 (Permanent) and his disability as not attributable to military service and requested for extension of his service minimum upto 31.01.2018 to enable him to resettle in civil to earn livelihood for his family. Since the applicant has total 4 years and 115 days embodied service and did not complete minimum qualifying service to earn service pension, Commander TA Group HQ Central Command accorded sanction for extension of his service upto 31.01.2018 and it was directed that

applicant will be discharged from service w.e.f. 01.02.2018. As per direction and Rule 14 (b) (iii) of Territorial Army Act Rules, 1948, applicant was discharged from service after carrying out Release Medical Board. The RMB assessed his disability "Upper Brachial Plexus Injury Right (Optd)" as neither attributable to nor aggravated by military service. Accordingly, under the provisions of Rule 173 of pension Regulations for the Army, 1961 (Part-1), applicant was not granted disability pension. The applicant was conveyed the reasons for non admissibility of disability pension vide JAT Records letter dated 14.06.2018. No appeal has been preferred by the applicant against the rejection of his disability pension claim. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was sent on 12 days part of annual leave from 213 Transit Camp due to organizational requirement and not on applicant's request and unfortunately met with an accident during the period of leave which resulted down gradation in LMC. His discharge from service is in contravention to provisions of GOI, MOD letter dated 01.09.2005 and 31.05.2006. The applicant is in great need of service in the T.A. especially to look after his family including one unmarried sister who all are totally dependent on the income of applicant and it will be difficult for him to maintain himself and his dependants due to his disability having no service.

4. Learned counsel for the applicant further submitted that applicant's injury being not declared as attributable to military service is against the natural justice and rules established by the GOI, MOD. The applicant has been declared fit for light duties, working in the office and has sufficient computer knowledge and rendering his services in the CSD Canteen also. The Company Commander and Commanding Officer of the applicant has strongly recommended his retention in service, therefore, keeping in view his willingness in service and overall performance, applicant should be reinstated in service till completion of his pensionable service as per Govt. of India letter dated 05.05.2008. During the course of hearing, learned counsel for the applicant has submitted that he is not pressing his relief clause 'b' & 'c' as prayed in O.A.

5. Learned counsel for the applicant placed reliance on the judgment of AFT (RB) Kolkata in O.A. No. 52 of 2015, ***Debasish Ghosh vs. Union of India & Ors***, decided on 14.03.2016 and pleaded that applicant's case is covered with the judgment, hence, his discharge order should be quashed and applicant should be reinstated in service.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant while serving with 114 Inf Bn TA, was granted 28 days part of Annual Leave w.e.f. 10.02.2014 to 09.03.2014 and on expiry of leave, applicant was again sent on 12 days part of annual leave from 213 Transit Camp from 12.03.2014 to 23.03.2014 due to

organisational requirement due to closure of roads in terms of Rule 2 of Leave Rules for the Services. During the leave period, he met with a road accident on 19.03.2014 while riding his motor cycle and sustained injury 'Upper Brachial Plexus Injury Right (Optd)'. He was admitted in Military Hospitals and after treatment and surgery he was downgraded in low medical category A-3 (T-24) w.e.f. 21.08.2014 considering his injury as not attributable to military service. A court of Inquiry was also conducted and his injury was considered as not attributable to military service. The applicant was finally placed in low medical category A2. As per Para 2(c) of Army Order 460/1973, personnel downgraded to permanent low medical category are to be discharged from Territorial Army as service no longer required under TA Rule 14(b) (iii) and 14 (c) of Territorial Army Act Rules, 1948. As per rule, applicant was served with a Show Cause Notice vide 114 Inf Bn TA letter dated 23.01.2017 and the applicant replied to Show Cause Notice vide his letter dated 25.03.2017 wherein he requested for extension of his service minimum upto 31.01.2018 to enable him to resettle in civil to earn livelihood for his family. Since the applicant has total 4 years and 115 days embodied service and did not complete minimum qualifying service to earn service pension, Commander TA Group HQ Central Command accorded sanction for extension of his service upto 31.01.2018 considering recommendations of Commanding Officer of the unit and it was directed that applicant will be discharged from service w.e.f. 01.02.2018. As per direction and Rule 14 (b) (iii) of Territorial Army

Act Rules, 1948, applicant was discharged from service after carrying out Release Medical Board. The RMB assessed his disability "Upper brachial Plexus Injury Right (Optd)" as neither attributable to nor aggravated by military service. Accordingly, under the provisions of Rule 173 of pension Regulations for the Army, 1961 (Part-1), applicant was not granted disability pension. The applicant was conveyed the reasons for non admissibility of disability pension vide JAT Records letter dated 14.06.2018 but no appeal has been preferred by the applicant against the rejection of his disability pension claim.

7. Learned counsel for the respondents further submitted that CO 114 Inf Bde (TA) in his recommendation letter dated 27.03.2017 clarified that "applicant does not come under the parameters of being retained in service as mentioned in GOI, MOD letter dated 05.05.2008, however, keeping his request for retention in service atleast upto 31.01.2018, his retention is recommended till 31.01.2018.". He pleaded that O.A. is devoid of merits and may be dismissed.

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

9. We find that applicant was downgraded to low medical category A2 (Permanent) due to his injury/disability "Upper Brachial Plexus Injury Right (Optd)" caused due to road accident while driving his own motor cycle during part of annual leave and the injury/disability was

considered as neither attributable to nor aggravated by service by a Court of inquiry and has no causal connection with military duty. Commanding Officer 114 Inf Bn (TA) in his recommendation letter dated 27.03.2017 has clarified that applicant does not come under the parameters of being retained in service as mentioned in GOI, MOD letter dated 05.05.2008, however, keeping his request for retention in service atleast upto 31.01.2018, his retention was recommended till 31.01.2018. Thereafter, under the provisions of para 2(c) of Army Order 460/1973, Rule 14 (b) (iii) and 14 (c) of Territorial Army Act Rules, 1948, respondents have rightly taken the decision to discharge the applicant in low medical category as per rules. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to reinstate him in service upto pensionable service.

10. We also find that applicant's injury/disability "Upper Brachial Plexus Injury Right (Optd)" was caused during part of annual leave in a road accident while driving his own motor cycle and the injury/disability was considered as neither attributable to nor aggravated by military service by a Court of Inquiry and thus there was no causal connection between disability and military service. Hence, applicant is not entitled for disability pension and his claim for grant of disability pension has rightly been denied by the respondents having no causal connection between his disability and military service.

11. In view of the above, we do not find any irregularity or illegality neither in discharging the applicant from service nor in granting disability pension. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

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

Member (A)

Member (J)

Dated: Sept., 2021

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