

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 568 of 2019**Wednesday, this the 29th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No-1482327-M Manoj Kumar Singh
S/o Nageshwar Singh
R/o Vijay Nagar, Sector B, Neelmatha, Lucknow**.... Applicant**Ld. Counsel for the Applicant : **Shri Prabhat Kumar Tripathi,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, Govt. of India, New Delhi.
2. Chief of the Army Staff, South Block, New Delhi.
3. Senior Record Officer, Defence Security Corps PIN – 901277, C/o 56 APO.
4. The Commanding Officer 445 DSC Platoon att to 7 Wing Air Force Station, PIN 936807, C/o 56 APO.

... RespondentsLd. Counsel for the Respondents : **Shri Rajiv Pandey,**
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) Issue an order, direction to set aside the order dated 09.07.2019, contained in Annexure no. 1, issued by the respondent no. 3 by means of which the applicant has

been discharged from service w.e.f. 30.09.2019 with all consequential benefits.

- (b) Issue an order, direction and command to the respondents to reinstate the applicant in service on the rank/post on which he was working prior to passing the impugned order, contained in Annexure no. 1, without reference to the order, impugned in the Petition, contained in Annexure no. 1.
- (c) Issue such other order/direction which may be deemed just and proper in the circumstances of the case.”

2. Brief facts of the case are that the applicant was initially enrolled in the Indian Army on 01.09.1988 and was discharged from service on 31.08.2014 (AN) after rendering more than 26 years of service for which he was granted service pension for life. Thereafter, applicant was enrolled in DSC on 29.09.2015 and did not opt to count his former service towards DSC service. During the service of initial terms of engagement for 10 years, applicant was placed in low medical category P3 (T-24) w.e.f. 29.09.2016 for “DIABETES MELLITUS TYPE-II”. In subsequent review medical board applicant was placed in permanent low medical category w.e.f. 15.03.2019. As per policy laid down vide Army Headquarters letters dated 03.05.2018 and 20.11.2018, all DSC persons who are in permanent low medical category will be discharged from service during contract or extension period in accordance with the statutory provision of Army Rule 13 (3) III (ii) (a) (i) as no sheltered appointment is available in DSC. The applicant being in low medical category was issued a Show Cause Notice in presence of two witnesses vide 445 DSC Platoon letter

dated 13.05.2019 to show cause as to why he should not be discharged from service being placed in permanent low medical category. The reply given by the applicant was not considered a sufficient ground by the competent authority for his retention in service, a reasoned speaking order dated 16.05.2019 was issued to him by the Commanding Officer elaborating his ineligibility for further retention in service due to non availability of sheltered appointment. Thereafter, his discharged order dated 09.07.2019 was issued by which, the applicant was to be discharged from service as on 30.09.2019 (AN). There being no sheltered appointment available in the unit, applicant was discharged from service w.e.f. 30.09.2019 (AN). 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 initial terms of engagement of service.

3. Learned counsel for the applicant submitted that applicant has been discharged from service illegally and arbitrarily. 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 various pronouncements of the Hon'ble Apex Court on the subject and pleaded that applicant's case is covered with the 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 enrolled in DSC for an initial terms of engagement of 10 years service. During the initial terms of engagement, applicant was placed in permanent low medical category w.e.f. 15.03.2019 for the diagnosis "**Diabetes Mellitus Type-II**". As per policy laid down vide Army Headquarters letter dated 03.05.2018 and letter dated 20.11.2018, all DSC 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 in accordance with the statutory provision of Army Rule 13 (3) III (iii) (a) (i), issued vide Gazette Notification SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. There being no sheltered appointment available in the unit commensurating to his disabilities, he was discharged from service. He pleaded that O.A. may be dismissed.

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

6. We find that applicant was downgraded to low medical category permanently for his disability, "**Diabetes Mellitus Type 2**". In DSC, General Duty (GD) personnel are meant for sentry/guard duties and there being no sheltered appointment available for a GD soldiers

