

Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 283 of 2016

Friday, this the 30th day of Jun, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Rakesh Singh (JC-479730X Sub) s/o Shri Gitam Singh R/O
village-Khiriya Pipar, PO-Lakhowara, District-Mainpuri-205265
(UP).

.....Applicant

Ld. Counsel for the : **Shri R. Chandra, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence,
Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters Delhi, DHQ, PO-
New Delhi.
3. The Officer-in-Charge, Records, The Rajput Regiment,
PIN-900427, C/O 56 APO.
4. The Commanding Officer, 25 Battalion The Rajput
Regiment, PIN-912125, C/O 56 APO.

...Respondents

Ld. Counsel for the : **Shri Amit Jaiswal, Central**
Respondents. Govt Counsel assisted by
Maj Soma John, OIC, Legal Cell.

ORDER (Oral)

1. Being aggrieved with the impugned order of discharge, the applicant has approached the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 on the ground that the Release Medical Board (RMB) was alleged to be held on 25.11.2013 but the order of discharge has been passed on 30.08.2013.
2. We have heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell and perused the records.
3. Admittedly the applicant was enrolled in the Indian Army on 27.09.2092 as soldier. There after he was granted promotion to higher ranks and was promoted to the rank of Naib Subedar on 02.11.2005 and thereafter on 01.04.2008 he was promoted to rank of Subedar.
4. It appears that the applicant was suffering from Bronchil Asthma hence he was placed under permanent low medical category P2 (P). Keeping in view the fact that the applicant was in P2 (P) medical category on account of Bronchil Asthma vide letter dated 30.08.2013 (**Annexure A-2**) all concerned were informed to initiate action for applicant' release from Army on account disability in accordance with due procedure prescribed under the Rules. The letter dated 30.08.2013 seems to be a circular informing all concerned to the effect that the petitioner

has not been granted sheltered appointment for further retention in service by the Commanding Officer approved by OIC Records, hence he is liable to be discharged in pursuance of recommendation of Release Medical Board under the provisions of Rule 13 (3) III (iii)(a)(i) of Army Rules 1954. The letter further commanded that the applicant should be produced before the Release Medical Board immediately on receipt of medical documents from the office. A request was also made to forward AFMSF-16 duly approved by the competent authority along with other discharge documents duly completed in terms of Para 6 of ROI 1/88. The letter further requested that discharge of the applicant may be sanctioned under Army Rule 13 (3) III (iii)(a)(i) for the applicant in accordance with S.R.O. 22 dated 13.05.2010. In pursuance of the letter dated 30.08.2013 further proceedings took place and the applicant was placed before the Release Medical Board on 25.11.2013 and later on released from Army on 01.02.2014. The applicant has been granted disability pension @ 40 % rounded to 50% at the time of release from Army.

5. Argument advanced by Ld. Counsel for the applicant that the applicant has been released earlier than the Release Medical Board seems to be misconceived argument for the reason that on the face of the record the impugned letter dated 13.08.2013 is not a discharge order rather it is a request to proceed with Release Medical Board followed by further action keeping in view the fact that the applicant has been placed in

P2(P) medical category on account of Bronchil Asthma. Once applicant's medical status has not been disputed and he has been placed in P2(P) medical category because of Bronchil Asthma, the respondents do not seem to have committed any wrong by issuing letter dated 30.08.2013 to proceed in accordance with Rules for the discharge from service on account of disability. Letter dated 30.08.2013 itself is not discharge order but it is a request to complete formalities for the purpose of discharge of the applicant. Of course, in case the Release Medical Board would have recorded opinion that the petitioner medical category is in SHAPE-1 or he is not suffering from any medical ailment, then the applicant could not have been discharged from Army services. Since the opinion of the Release Medical Board is same in terms of medical report of the applicant, the respondents have rightly discharged the applicant from 01.012014. We do not find any error or illegality in the decision taken by the respondents.

6. It is not disputed that decision with regard to discharge from Army service on account of medical ailment and disability of 40% has been recorded in the service record with reference to opinion of the Release Medical Board. In such situation no good ground for interference with the impugned order of discharge has been made out since the impugned order is simple a communication to the authorities concerned to complete formalities.

7. However, it appears that the discharge order has not been provided to the applicant though according to the opinion Release Medical Board is to discharge the applicant on account of low medical category. The respondents shall furnish the applicant copy of the discharge order in terms of Section 23 of the Army Act, 1950 within a month from the date of production of a certified copy of this order with liberty to the applicant to approach appropriate forum, if advised.

8. Subject to above, we **finally dispose** of the O.A.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: 30 Jun, 2017
anb