

RESERVED**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 221 of 2016****Wednesday, this the 31st day of January, 2018****“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)****“Hon’ble Air Marshal BBP, Sinha, Member (A)”**

**No. 13991616-P Ex- Sep (GD) Pramod Singh (DSC), S/o Late
Ramjee Lal Singh, R/O Village & Post: Aishah, Tehsil: Ambah, Dist
: Morena (MP) - 476134 Applicant**

**Ld. Counsel for the : Shri Shailendra Kumar Singh, Advocate
Applicant (Counsel for the applicant)**

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block – III, New Delhi – 110011.
3. Addl Dte Gen of Personnel Services, Adjutant General’s Branch/ PS – 4 (Imp-II), Integrated of HQ of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi – 110
4. Dy Dte Gen DSC, GS Branch, IHQ of MoD (Army), West Block – III, RK Puram, New Delhi – 110 066.
5. OIC Records, DSC Records, PIN : 901277 C/O 56 APO.
6. Dir Gp Stn DSC, HQ Jodhpur Sub Area, PIN: 900066 C/O 56 APO.
7. OIC Records, Army Medical Corps Records, Lucknow (UP) – 226002.
8. OC, 426 DSC PL att to 25 Amn Coy, PIN - 909425 C/O 56 APO.

...Respondents

Ld. Counsel for the: **Shri R.C. Shukla, Advocate,**
Respondents. Addl. Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa, OIC Legal Cell.**

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. Present O.A has been preferred for the relief of reinstating him in Defence Security Corps w.e.f 10.02.2016 and for setting aside the order of discharge from Defence Security Corps dated 12.06.2016.

2. The facts in nutshell are that the Applicant was initially enrolled in the Indian Army on 28.04.1995 and was discharged on 30.04.2014 after rendering 19 years of qualifying service. While serving in the Army he was placed in low medical category (S-3) w.e.f 28.01.2010 and on 16.07. 2010 and with effect from 29.12.2010 he was placed in SHAPE-2 on account of suffering from “ALCOHOL DEPENDENCE SYNDROME” which was later upgraded to category Shape -1 on 16.07.2011. After discharge from the Army, he was re-enrolled in the Defence Security Corps on 16.03.2015 but was discharged with effect from 09.02.2016 on the ground that as per DSC enrollment rules he was not entitled to be re-enrolled in the D.S.C on account of diagnosis ALCOHOL DEPENDENCE SYNDROME during the last five years of former service. The DSC enrollment rules

require no Alcohol Dependence Syndrome during last five years of former service where as the applicant had become SHAPE-I just about 3 years before his discharge.

3. Learned counsel for the Applicant submitted that his low medical category was upgraded to SHAPE - 1 way back in the year 2011 and as such he was fully fit and was erroneously discharged from the DSC services.

4. Per contra, learned counsel for the respondents contended that in terms of IHQ of MoD (Army) letter No 62502/Rtg B (A) dated 28.02.2014 and letter No 62502/Rtg B(A) dated 05.08.2014 which postulates that "Personnel placed in LMC (Low Medical Category) (both temporary and permanent) during the last five years of former service preceding the date of discharge (even upgraded to Shape-1 before discharge) due to "Alcohol Dependence Syndrome" are not eligible for re-enrolment into DSC". Hence his re-enrolment in the DSC was irregular in terms of aforesaid letter and according he was discharged from DSC services being irregular re-enrolment under the provisions of Rule 13 (3) Item III (v) of Army Rule 1954 on 09.02.2016. It is further contended that relief was sought in the earlier O.A by the Applicant vide O.A No 75 of 2016 which was disposed of attended with direction to the respondents to dispose of the statutory complaint by a speaking order within three months

which was done and a reasoned and speaking order was passed disallowing the statutory complaint of the applicant.

5. The short question that comes up for consideration before us is whether the Applicant was rightly discharged from the DSC services for being in low medical category in last five years in the former service on account of "ALCOHOL DEPENDENCE SYNDROME" though he was in SHAPE-I, about three years before discharge. Before we proceed further we would like to refer to the IHQ of MoD (Army) letter No 62502/Rtg B (A) dated 28.02.2014 and letter No 62502/Rtg B(A) dated 05.08.2014 the substance of which being relevant is quoted below.

"Personnel placed in LMC (Low Medical Category) (both temporary and permanent) during the last five years of former service preceding the date of discharge (even upgraded to Shape-1 before discharge) due to "Alcohol Dependence Syndrome" are not eligible for re-enrolment into DSC".

6. In this connection, we would refer to the submissions of the learned counsel for the Applicant which is to the effect that he was placed in low medical category (S-3) w.e.f 28.01.2010 and on 16.07. 2010 and with effect from 29.12.2010 he was placed in SHAPE-2 on account of suffering from "ALCOHOL DEPENDENCE SYNDROME" which was later upgraded to category SHAPE -1 on 16.07.2011. After discharge from the Army, he was re-enrolled in the

Defence Security Corps on 16.03.2015 but was erroneously discharged with effect from 09.02.2016 on the ground that he was not entitled to be re-enrolled in the D.S.C on account of diagnosis "ALCOHOL DEPENDENCE SYNDROME during the last five years of former service while the fact remains that re-verification was done by the authorities before being re-enrolled in the DSC services. The Applicant was upgraded to SHAPE-I approximately three years before discharge i.e. with effect from 16.07.2011 and he was enrolled in DSC services on 16.03.2015. This shows that he was no more suffering from "ALCOHOL DEPENDENCE SYNDROME". It is nobody's case that the Applicant was subjected to any medical examination before being discharged from DSC and he was merely discharged heavily relying upon IHQ of MoD (Army) letter No 62502/Rtg B (A) dated 28.02.2014 and letter No 62502/Rtg B(A) dated 05.08.2014 which postulated that the personnel suffering from "ALCOHOL DEPENDENCE SYNDROME" during the last five years of former service, shall not be eligible for service in DSC.

7. On being confronted how the Applicant was re-enrolled in utter disregard of IHQ of MoD (Army) letter No 62502/Rtg B (A) dated 28.02.2014 and letter No 62502/Rtg B(A) dated 05.08.2014, the learned counsel for the respondents conceded the fact it was on account of faulty pre-verification report of AMC Records prepared on old format which was

applicable prior to issue of integrated HQ of MoD (Army) letter aforesaid. Para 15 of the counter affidavit being relevant is quoted below.

"That in reply to the contents of Para 4.1 & 4.2 it is submitted that, applicant was re-enrolled in DSC from AMC Centre and College, based on the faulty pre-verification report of AMC Records prepared on old format prepared prior to issue of integrated HQ of MoD (Army) policy letter No. 62502/Rtg B (A) dated 28 Feb 2014. However, as per ibid Integrated HQ of MoD (Army) policy letter, he was not qualified for re-enrolment into DSC."

8. It would thus transpire that the applicant was re-enrolled in the DSC services after pre-verification report from AMC Records though as conceded it was faulty and was based on an old format. It is also conceded that at the time of re-enrollment of the applicant in DSC he was in shape-1. There is no indicia on record to show that the Applicant was medically examined before being discharged from DSC services.

9. In view of the above, we converge to the view that the Applicant was discharged without any valid basis and against the principles of natural justice. It is not a case of enrollment by fraud or misinformation by the applicant but a case of failure of respondents to follow their own new & modified orders on enrollment into DSC. Thus discharging the applicant merely on the grounds that the policy decision as contained in policy letter No. 62502/Rtg B (A) dated 28

Feb 2014 was not followed by respondents is against natural justice. Thus the discharge of the Applicant is held to be erroneous and the order to this effect is liable to be set aside.

10. As a result of foregoing discussion, the O.A is allowed and the impugned order of discharge dated 12.06.2016 is set aside. The respondents are directed to reinstate the applicant in DSC Service forthwith. His reinstatement in DSC shall be deemed from the date of discharge. The Applicant shall be paid 50% of the back-wages for the period he has not worked within four months from the date of submission of a certified copy of this order failing which the respondents shall be liable to pay interest @ 9% per annum on the total amount from the date of its accrual till the date of actual payment. Registry is directed to provide copy of this order to the learned counsel for the respondents for onward transmission to ensure compliance.

11. There shall be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: January, 31 ,2018
MH/-