

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 252 of 2020****Tuesday this the 26th day of April, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No 14372123X Umesh Chandra, S/o Late Ganga Sagar
Tiwari, R/o Village & PO Newarna, Tehsil & District-
Unnao.

.....Applicant

Ld. Counsel for the : No one is present on behalf of
Applicant the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, (Army), South Block, New Delhi- 110011.
3. Commanding Officer, DSC Records- 901277, C/o 56 APO.
4. OIC Records, DSC Centre, Cannanore, PIN-901277, C/O 56 APO.

... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents **Central Govt Counsel**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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 whereby commanding the respondents to quash/ set aside the illegal discharge order passed on 30.09.2014 and reinstate the applicant with immediate effect.*
- (b) Issue/ Pass another order or direction which may deem fit and proper of the case.*
- (c) Allow the application with all consequential benefits with exemplary cost.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 02.06.1983 and was discharged from service on 01.03.2003 after rendering more than 19 years of service. Thereafter, he joined Defence Security Corps (DSC) service on 30.09.2004 for a term of 10 years and he was discharged from DSC service on 30.09.2014 under Army Rule 13 (3) (iii) (i). Applicant was willing for extension of service but prayer for extension of service was not considered being Low Medical Category P2 (P). 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. In Original Applicant, learned counsel for the applicant has submitted that applicant was enrolled in DSC on 30.09.2004 for a term of 10 years. He was placed in Low Medical Category P2 (P). He gave his willingness on 16.08.2013 for extension of service for next two years from 14.04.2014 to 14.04.2016. The order for extension of service from 14.04.2014 to 14.04.2016 was published on 13.07.2014 by DSC Records but applicant was illegally discharged from service on 30.09.2014. Learned counsel for the applicant in O.A. has submitted that in similar circumstances several other incumbents approached the Hon'ble Tribunals and have been granted relief by the Tribunals on the ground that the incumbents cannot be discharged from service on the basis of P2 medical category. In spite of being fit for all duties in DSC, applicant was discharged from service illegally and arbitrarily. Thus he was prematurely discharged 02 years prior to completion of his terms of engagement for the reason there being no sheltered appointment available. Learned counsel for the applicant in O.A. has submitted that as per Army Order 03 of 2001 a person placed in medical category 2 or 3 (temporary

or permanent) cannot be discharged from service. A mere perusal of Para 13 clearly indicates that the individual placed in the medical category P-2 would be retained in service and shall be given the assignment commensurate to the restrictions imposed by the Medical Board. However, this was not done in the case of the applicant and he was prematurely discharged from service which is arbitrary and illegal and against the provisions of law. 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 the judgments of the Hon^{ble} Apex Court in case of ***Union of India vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, Division Bench of Punjab and Haryana High Court in case of ***Subedar Manjit Singh vs. Union of India*** in CWP No. 988/2012, decided on 19.05.2014 and AFT (RB) Chandimandir in OA No. 2360 of 2013, ***Rakesh Kumar Singh vs. Union of India***, decided on 17.04.2015 and T.A. No. 27 of 2013, ***R.K. Patel vs.. Union of India and Ors***, decided on 02.11.2017 and pleaded that applicant's case is covered with aforesaid judgments, hence,

his discharge order should be quashed and applicant should be allowed to join duty for further two years.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was diagnosed disabilities "**DM TYPE- II**" and "**PRIMARY HYPERTENSION**" and was downgraded to low medical category P2 (Permanent). No sheltered appointment was available in the unit, thereafter the applicant was not recommended for retention in service as sheltered appointment was not available and the individual was recommended to be discharged from service on medical grounds under the provisions of Army HQ letter No B/10185/DSC/MP-3 dated 03 Mar 2018 for the disabilities "**DM TYPE- II**" and "**PRIMARY HYPERTENSION**" and Army Headquarters letter No A/00585/LMC/Policy/DSC-1/57 dated 20 Nov 2018. As per this policy, all DSC (GD) 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. Now the applicant by means of instant O.A. has prayed for reinstatement in service for further two years. Applicant has been granted service pension and all his retiral dues for his services rendered in the

army. While discharging the applicant, all rules and policies were followed and as per current policy applicant is not entitled to be reinstated in service. In view of the facts, Original Application is devoid of merit and lacks substance and is liable to be dismissed.

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

6. The question before us to decide is whether a DSC person placed in permanent Low Medical Category, but fit for all duties, can be granted extension of service or not?

7. In the instant case applicant was placed in low medical category but was found fit for all duties in DSC. Learned counsel for the applicant has placed reliance on various case laws and Army Order 46/1980 as well as Rule 13 as amended vide SRO 22 of 2010.

8. The latest policy issued on disposal of low medical category DSC personnel has been issued vide Army Headquarters, Min of Def letter dated 03.05.2018. Relevant paras of said policy letter are as under:-

1. x x x

2. *Under the provisions of delegated powers to the AG vide Ser No 4 of Appx -1 to MoD letter No 7 (50)/200-D(AG) dt 14 Aug 2001, approval is hereby accorded for revision of terms & conditions for disch of JCOs/OR in the DSc as under:-*

(a) All DSC pers will serve in DSC till the period of their contract (10 yrs for Sep/Nk and 05 years for JCOs as the case may be) however subsequent extension will be accorded only to pers who are found in SHAPE-1 on screening.

(b) Services of all pers declared ADS (S-Cat) after obsn of two months will be terminated while serving in DSC during contract or extension pd.

(c) Permt LMC pers in DSc will be disch from service at any time during service in accordance with provisions of AR-13 if no sheltered appt is available.

(d) xxxxx xxxxx

9. In the instant case, we find that applicant was downgraded to low medical category P2 (permanent) and was discharged from service in view of the policy letter quoted above which states that low medical personnel even if fit for all duties shall be discharged from service. In DSC, General Duty (GD) personnel are not only detailed for the task of guarding the vital sensitive defence installations in the country which are located at various part of the country including Field and High Altitude Area but also assigned with the responsibility which included static guards, searching, quick reaction team, escorting and mobile patrolling round the clock. DSC personnel are always armed to

afford a higher degree of protection, which is a challenging task compared to many other services in the Armed Forces. In today's scenario, defence installations are facing threat from the ante-national elements and DSC Personnel are the prime targets being the first line defence, as happened in the Pathankot Air Force Station attack on 02 Jan 2016, where 01 JCO and 04 jawans of DSC had laid down their lives. As such physical and medical fitness of a DSC person plays a vital role in defending the vital defence installations. Since, the authorization of man power for a DSC Platoon is as per the number of posts to be guarded, there was no sheltered appointment available. Moreover, with limited man power authorized and posted, if any person of the platoon strength gets medically unfit to perform his charger of duties, it leads to extra burden of performance additional duties by other fit personnel at the cost of their authorised rest/recoup time, which causes stress and strain on those fit individuals which has an adverse effect on operational efficiency and may endanger the defence installation itself. DSC persons, being first line of defence for vital defence installations, the security of the installation is more important than the personal welfare. Considering all these aspects, Integrated Headquarters of MoD

(Army) has revised the policy of terms and conditions for retention of JCOs/OR in DSC and directed that all DSC (GD) persons who are permanent low medical category will be discharged from service during contract or extension period. There being no sheltered appointment available in the unit commensurate to his disability, applicant was discharged from service after due procedure as per Army Headquarters policy letters dated 03.05.2018 and 20.11.2018 and SRO No. 22 dated 13.05.2010 as no sheltered appointment was available in DSC. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to join duty for further two years.

10. Rules and policies quoted by the applicant have been super ceded and latest policy regarding disposal of low medical category personnel has been issued vide Army Headquarters policy letter dated 03 May 2018 and 20 Nov 2018 as quoted above. As per these letters first condition for retention in service for low medical category personnel is that sheltered appointment commensurate to disability of the applicant should be available. Such retention of low medical category personnel should not exceed the sanctioned strength of the unit/regiment. This sheltered appointment should be

justifiable in the public interest. Further while giving sheltered appointment, priority to retain in service should be given to those nearing their minimum pensionable service. Under the provisions of Army Rule 13, based on the recommendations of an Invaliding Board, the commanding officer is the competent authority to sanction discharge to those who have been found medically unfit for further retention in service. To ensure better management, this authority has been extended to OIC Records for sanctioning discharge of JCOs/OR who have been found medically unfit for further service for low medical category (Non- Battle Casualties- Willing to serve). Sheltered appointment shall be formally withdrawn with effect from the date of approval of discharge by the competent authority. In the instant case, applicant was discharged only on recommendation of medical board. Though, the applicant was declared fit for all duties but as per policy, low medical category personnel in DSC shall be discharged from service, hence, the applicant is not entitled for reinstatement in service as claimed. The case laws as well as policy letters quoted by the applicant have been super ceded.

11. We, therefore do not find any merit in the application to interfere with the impugned discharge order passed by the

respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**.

12. Accordingly, Original Application is **dismissed** on merit.

13. No order as to cost.

14. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 26 April, 2022

Ukt/-