

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION NO 100 of 2013**

Tuesday, this the 24th day of November 2015

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

Ex-Subedar Narender Singh (Army No. JC-260595W), son of Late Vishal Singh, resident of House No 555, Anubhav ELDECO Udyan-II, Raibareilly Road, District-Lucknow, PIN code-226025.

.....Applicant

Ld. Counsel for the:
Applicant

Shri S.K. Singh, Advocate

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.
3. Director General Artillery, Integrated Headquarter of the Ministry of Defence (Army), Sena Bhawan, New Delhi-110011.
4. Artillery Records, Nasik Road Camp.
5. Commanding Officer, 39 Medium Regiment, C/o 56 APO.

...Respondents

Ld. Counsel for the :
Respondents.

**Shri D.K. Pandey, Central
Govt Counsel assisted by
Lt Col Subodh Verma,
OIC, Legal Cell.**

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the record.
2. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, being aggrieved with the impugned order of discharge dated 31.03.2005 whereby applicant was discharged from service on the basis of Release Medical Board in medical category P-2 on account of disability.
3. Applicant had joined the Indian Army as Sepoy on 22.07.1980. Later on, he was promoted as Subedar. While working on the post of Subedar, a show cause notice was served on the applicant to show cause as to why his services may not be terminated on account of low medical category P-2. The applicant submitted reply dated 22.11.2004 to the show cause notice. Admittedly, the applicant was suffering from 'HYPERTROPHIC CARDIOMYOPATHY POST PTSMA' which according to Ld. counsel for the applicant was because of stress and strain of the service.
4. According to Ld. counsel for the applicant, the applicant could not have been discharged from service on account of medical category P-2 in view of Army Order 3/2001, copy of which has been filed as Annexure-1 to the Original Application. Para 13 of the Army Order 3/2001 provides that Army personnel who are placed in medical category P-2 shall be employed on suitable duty. Accordingly, applicant was liable to be permitted to continue on some other duty instead of being discharged from Army.
5. It has been held by the Delhi High Court in the case of ***Subedar (SKT) Puttan Lal vs. Union of India and others*** decided on 20.11.2008

in Writ Petition No. 5946 of 2007 which has been upheld by Hon'ble the Supreme Court in the case of **Union of India & ors vs. Rajpal Singh** reported in (2009) 1 Supreme Court Cases 216. Hon'ble the Supreme Court in the case of Rajpal Singh (supra) has held that a person falling under medical category P-2 should not be discharged, but be given sheltered appointment. In pursuance to judgment of Hon'ble Supreme Court in the case of **Rajpal Singh** (supra), Circular of 2010 was issued. The applicant has suffered on account of omission and commission on the part of the respondents. In view of the policy (supra), the Original Application deserves to be allowed.

6. Accordingly, Original Application is **allowed**.

7. Impugned order of discharge dated 31.03.2005 is set aside with all consequential benefits. Applicant shall be deemed to be continuing in service right from the date of impugned order of discharge notionally till he completes 28 years' of service, i.e. 31.07.2008 and shall be paid arrears of pay and pension along with other post retiral dues based on new retirement date and service expeditiously, say, within four months from the date of production of certified copy of this order. The applicant shall be paid full amount of back wages within the aforesaid period.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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