

**Court No.3**

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

**ORIGINAL APPLICATION NO 16 of 2011**

Monday, this the 07<sup>th</sup> day of December 2015

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

No 2967141 Ex Nk Jagbir Singh son of Basant Singh resident of Village and Post Office Maudha, District Farrukhabad.

.....Applicant

Ld. Counsel for the: **Shri K. K. Mishra, Advocate**  
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence; New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. Officer Incharge, Records, Defence Services Corps (DSC), Kannanore (Kerla).
4. C.D.A. (Pension) Allahabad.

...Respondents

Ld. Counsel for the : **Shri Ishraq Farooqui, Central**  
Respondents. **Govt Counsel assisted by**  
**Capt Priti Tyagi,**  
**OIC, Legal Cell.**

**ORDER (ORAL)**

1. We have heard Shri K.K. Mishra, Ld. Counsel for the applicant and Shri Ishraq Farooqui, Central Govt Counsel assisted by Capt Priti Tyagi, OIC, Legal Cell and perused the record.
2. Being aggrieved with the impugned order of discharge, the applicant has preferred present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007.
3. Solitary argument advanced by Ld. Counsel for the applicant is that no Invaliding Medical Board was convened as applicable in the year 2006 before passing the impugned order of discharge. The ground raised by Ld. Counsel for the applicant is not disputed by Ld. Counsel for the respondents.
4. Admittedly, Invaliding Medical Board was not convened while passing the impugned order of discharge and the applicant has been discharged from service only on the basis of Release Medical Board. The appeal filed by the applicant against discharge order has been set aside by the competent authority, hence the present O.A. has been preferred.
5. Ld. Counsel for the applicant has relied upon the case of ***Union of India vs. Rajpal Singh*** reported in [2008(5) ESC 718 (SC)] whereby their Lordships of the Hon'ble Supreme Court

held that before discharging armed forces personnel, Invalidating Medical Board must be convened and only thereafter, keeping in view of the Board, armed forces personnel can be discharged. Relevant portion of the judgment of Hon'ble Supreme Court is quoted hereunder:

*“18. The afore-extracted Rule 13 (1) clearly enumerates the authorities competent to discharge from service, the specified person; the grounds of discharge and the manner of discharge. It is manifest that when in terms of this Rule an army personnel is discharged on completion of service or tenure or at the request of the person concerned, no specific manner of discharge is prescribed. Naturally, the Regulations or Army Orders will take care of the field not covered by the Rules. However, for discharge on other grounds, specified in Column (2) of the Table, appended to the Rule, the manner of discharge is clearly laid out. It is plain that a discharge on the ground of having been found “medically unfit for further service” is specifically dealt within Column (1) (ii) of the Table, which stipulates that discharge in such a case is to be carried out only on the recommendation of the Invalidating Board. It is a cardinal principle of interpretation of a Statute that only those cases or situations can be covered under a residual head, which are not covered under a specific head. It is, therefore, clear that only those cases of discharge would fall within the ambit of the residual, viz. 1(ii) which are not covered under the preceding specific heads. In other words, if a JCO is to be discharged from the service on the ground of “medically unfit for further service”, irrespective of the fact whether he is or was in a low medical category, his order of discharge can be made only on the recommendation of an Invalidating Board. The said rule being clear and unambiguous is capable of only this interpretation and no other.*

*19. Having reached the said conclusion, we feel that the appellants were bound to follow Rule 13 (3) (1) (ii), more so having placed the respondent in low medical category (Permanent) for a period of two years from October, 2001 he*

*was discharged from service on 31<sup>st</sup> August, 2002, relying on the recommendation of the Re-categorization Board held on 24<sup>th</sup> October, 2001. As noted in the show cause notice, extracted above, the said Board had placed the respondent in “permanent low medical category”. Be that as it may, the main ground of discharge being medical unfitness for further service, the appellants were bound to follow the prescribed rule.*

*22. In view of the foregoing interpretation of the relevant rule, we are in complete agreement with the High Court that where a JCO is sought to be discharged on the ground of medical unfitness for further service, his case has to be dealt with strictly in accordance with the procedure contemplated in Clause 1(ii) in Column 2 of the Table appended to Rule 13. The Rule prescribes a particular procedure for discharge of a JCO on account of medical unfitness, which must be followed and, therefore, any order of discharge passed without subjecting him to Invalidating Board would fall foul of the said statutory rule”.*

6. In view of the aforesaid settled proposition of law, there appears no reason to further elaborate and consider other arguments advanced by Ld. Counsel for the applicant. The O.A. deserves to be allowed for the reason that no Invaliding Medical Board was held while passing the impugned order of discharge.

7. Accordingly, we allow the O.A. and set aside the order of discharge based on the opinion of the Release Medical Board dated 30.05.2006 with all consequential benefits. Let all consequential benefits be provided to the applicant expeditiously, say, within for months from the date of production

of a certified copy of this order. We have been informed that the impugned order was passed when only five months service was left for the applicant to continue in service to which the applicant shall be entitled since the O.A. preferred by the applicant has been allowed.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

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