

Court No.3

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

ORIGINAL APPLICATION NO 161 of 2015

Wednesday, this the 09th day of December 2015

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

Subedar Pawan Kumar (JC-490370M), S/o Shri Mange Ram, 18
Jat, C/o 56 APO.

.....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, DHQ Post Office, New Delhi.
3. The Officer-in-Charge, Records The Jat Regiment, Bareilly (U.P.).
4. The Commanding Officer, 18 Jat, C/o 56 APO.

...Respondents

Ld. Counsel for the : **Mrs Deepti Prasad Bajpai, Central**
Respondents. **Govt Counsel assisted by**
Capt Priti Tyagi, OIC, Legal Cell.

ORDER (ORAL)

1. Heard Ld. Counsel for the parties and perused the record.
2. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by the impugned order of discharge on account of Low Medical Category P-2 (Permanent).
3. The applicant was enrolled in the Indian Army in Infantry (The Jat Regiment) on 18.02.1987 as Sepoy. On 01.10.2008 he was promoted on the post of Nb Subedar and later on with effect from 01.09.2011 he was promoted to the post of Subedar. In April 2010 the Medical Board diagnosed that the applicant is suffering from PRIMARY HYPERTENSION and was placed in Low Medical Category P-2 (Temporary) and later on in September 2010 he was placed in Low Medical Category P-2 (Permanent).
4. On 20.11.2014 the applicant was served with a show cause notice by respondent no. 4 whereby it has been stated that Army Headquarter has issued letter dated 30.09.2010 to the effect that all permanent Low Medical Category personnel (except battle casualties) who have completed 15 years of service should be deprived of sheltered appointment and discharged from service. The applicant was asked to show cause why he may not be

deprived of the sheltered appointment. The applicant reply to the show cause notice and requested Respondent No 4 to permit him to continue in service till completion of 30 years of colour service. However rejecting applicant's contention, by order dated 27.02.2015 Respondent No 3 directed to discharge the applicant from service in pursuance to Army Rule 13 (3) I (i) (a) of Army Rules.

5. Submission of Ld. Counsel for the applicant is that under the said rule as amended, it was incumbent on the part of the competent authority to hold Release Medical Board and only after obtaining the opinion of the Release Medical Board, decision should have been taken for discharging applicant from service. In the present case, a decision has been taken for discharging the applicant from service by impugned order dated 27.02.2015 though Release Medical Board was held on 24.04.2015. On the face of record decision for discharge from service was taken prior to convening Release Medical Board. Army Rule 13 (3) 1 (i) (a) of 1954 as amended under SRO 22 dated 13.05.2010 is reproduced as under:-

“13. Authorities empowered to authorise discharge.- (1) Each of the authorities specified in column 3 of the Table before, shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(3)

<i>Category</i>	<i>Grounds of discharge</i>	<i>Competent authority to authorize discharge</i>	<i>Manner of discharge</i>
	<i>(iii) Having been found medically unfit for further service.</i>	<i>Commanding Officer</i>	<i>To be carried out only on the recommendation of an Invaliding Board</i>
	<i>(iii)(a) Having been found to be in permanent low medical category SHAPE 2/3 by a medical board and when :- (i) no sheltered appointment is available in the unit, or (ii) is surplus to the organization.</i>	<i>Commanding Officer</i>	<i>The individual will be discharged from service on the recommendations of Release Medical Board.</i>

6. Plain reading of the aforesaid rule shows that any person found in Low Medical Category P2/P3 by Medical Board can be discharged in case no sheltered appointment is available in the unit or is surplus in the organization. Such individual may be discharged from service subject to recommendation of Release Medical Board. While filing counter affidavit, the respondents have not brought on record any opinion of the Release Medical Board in terms of Rules (supra) for discharge of the applicant. It seems to be a condition precedent to take decision for release from Army. Subsequently, the opinion of the Release Medical

Board obtained by the respondents seems to fulfill the lacuna.

7. It is well settled proposition of law that the authorities while taking a decision with regard to punishment affecting civil rights, the procedure provided by the Act, Rules or Regulations, as the case may be, should be adhere to and strictly followed. Where an authority is mandated under a statute to do certain thing, then it has to be done in the manner provided by the statute and not otherwise, vide ***Nazir Ahmed Vs. King Emperor***, AIR 1936 PC 253; ***Deep Chand Versus State of Rajasthan***, AIR 1961 SC 1527, ***Patna Improvement Trust Vs. Smt. Lakshmi Devi and others***, AIR 1963 SC 1077; ***State of U.P. Vs. Singhara Singh and other***, AIR 1964 SC 358; ***Barium Chemicals Ltd. Vs. Company Law Board*** AIR 1967 SC 295, (Para 34) ***Chandra Kishore Jha Vs. Mahavir Prasad and others***, 1999 (8) SCC 266, ***Delhi Administration Vs. Gurdip Singh Uban and others***, 2000 (7) SCC 296; ***Dhanajay Reddy Vs. State of Karnataka***, AIR 2001 SC 1512, ***Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and others***, 2002 (1) SCC 633; ***Prabha Shankar Dubey Vs. State of M.P.***, AIR 2004 SC 486 ***Ramphal Kundu Vs. Kamal Sharma***, AIR 2004 SC 1657, ***Taylor Vs. Taylor***, (1876) 1 Ch.D. 426; ***Nika Ram Vs. State of Himachal Pradesh***, AIR 1972 .

In view of settled proposition of law, since the procedure has not been followed, the impugned order of discharge of the applicant from Army service seems to be vitiated.

8. Attention has been invited to show case notice dated 20.11.2014 which shows that the Government of took a decision that all persons who have exceeded 15 years of service shall be released from Army and sheltered appointment given to such persons shall be withdrawn. The decision of the Government referred to in the impugned notice seems to be based on administrative decision taken by the Union of India. Such decisions seems to be directory in nature and lacks binding effect in view of decision in the case of ***Union of India and others vs. Rajpal Singh***, [2008(5) ESC 718(SC)]. In the case of Rajpal Pal Singh (supra), the Hon'ble Apex Court has held that Army personnel placed in Medical Category P-2/P-3 should not be discharged compulsorily and opportunity should be given to him to serve the country by change of trade or sheltered appointment. The judgment of Hon'ble Apex Court cannot be modified or changed by Union of India since the judgment of Hon'ble Apex Court is given under Article 141 of the Constitution of India. The judgment of Hon'ble Apex Court may be modified only by legislative overruling and not by administrative instructions or decision taken by the Government.

9. In the present case, Rule (supra) has been modified only to the extent that instead of Invalidating Medical Board, Release Medical Board shall beheld as a condition precedent for discharge of Army personnel in Low Medical Category since the Rule does not deprive Army personnel for continuance of service or change of trade for continuance in service falling in Shape2/Shape3. The

judgment of the Hon'ble Apex Court in the case of **Rajpal Singh** (supra) still covers the field.

10. It has been vehemently argued by Smt. Deepti Prasad Bajpai, Ld. Counsel for the respondents that decision was taken and communicated vide letter dated 27.02.2015 but the applicant was supposed to discharge from service with effect from 31.07.2015. Accordingly, Release Medical Board was held on 24.04.2015, thus the order of discharge does not suffer from any impropriety or illegality. Argument advanced by Ld. Counsel for the respondents seems to be misconceived. The Rule in question (supra) categorically provides that decision to discharge shall be taken on the recommendation of Release Medical Board. It seems that before taking decision or making up mind to discharge Army personnel from service, opinion of the Release Medical Board is must. It is the opinion of the Release Medical Board which shall be the foundation to take decision for discharge Army personnel. In the absence of any opinion of the Release Medical Board, at the ministerial level the authority concerned was not entitled to take decision to discharge the applicant and issue the impugned order.

11. Nothing has been brought on record by Ld. Counsel for the respondents that some statutory rule has been framed in contravention of observation made in the case of **Rajpal Singh** (supra).

12. It may be observed that by interim order passed by this Tribunal, the applicant has been permitted to continue in service and he is continuing in service.

13. In view of the above, the O.A. deserves to be allowed, hence is allowed. Impugned order of discharge dated 27.02.2015 is set aside. The applicant shall be entitled to all consequential benefits. The applicant shall be permitted to continue in service. However, in case contingency so requires and law permits, the respondents may proceed afresh in accordance with law.

14. Let a free copy of this order be supplied to Ld. Counsel for the parties.

(Air Marshal Anil Chopra)
Member (A)

anb

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