

Court No.3

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

ORIGINAL APPLICATION NO 65 of 2014

Thursday, this the 10th day of December 2015

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

Ram Sagar Maurya (JC-372473N Subedar) son of Late Shri Ram Lakhan Maurya, permanent resident of Village and Post Office Barauna Dih, Tehsil Kadipur, District Sultanpur (lastly posted at Northern Command Signal Regiment, C/O 56 APO).

.....Applicant

Ld. Counsel for the: **Shri Yashpal Singh, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Commandant, Northern Command, Signal Regiment C/O 56 APO PIN 918397.
3. Officer-in-Charge, Records, Signals, Jabalpur C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension), Allahabad.

...Respondents

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

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the record.
2. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred being aggrieved with the impugned order of discharge passed during extended period of service.
3. The applicant was enrolled in the Indian Army on 05.04.1983 in the Signal Corps as Signalman. In the year 2009, the applicant was charged under Section 63 of the Army Act, 1950 and after summary trial, the applicant was punished with 'severe reprimand'. Later on the applicant was sent to Command Hospital, Southern Command, Pune for psychiatric evaluation and was placed in Low Medical Category on 15.03.2010. On 15.10.2010, the applicant's health was found to be within normal limits. Applicant completed his tenure of the rank of Subedar in May 2011. After completion of regular term, he was granted two years' extension of service in the rank of Subedar which was to complete in the month of April, 2013. Prior to completion of aforesaid extended period, the applicant was discharged on 30.10.2012 prematurely without serving any show cause notice though six months' service was left. The order of discharge was passed in pursuance of Release Medical Board held on 14.09.2012 placing the applicant in medical category S2(P)H1A1P1E1.

4. Solitary argument advanced by the Ld. Counsel for the applicant is that the impugned order of discharge has been passed in pursuance to provisions contained in Army Rule 13 (3) 1 (iii) (c) of the Army Rules, 1954. It is submitted that under aforesaid Army Rule (supra), the order of discharge should have been passed by the Chief of the Army Staff. However, Ld. Counsel for the respondents submitted that the order has been corrected later on and subsequently it was passed on account of low medical category in pursuance of Army Rule 13 (3) 1 (i)(a) of the Army Rules (supra), as averred in para-8 of the Counter Affidavit. It is submitted that under the aforesaid provisions, the Commanding Officer is empowered to pass order of discharge.

5. Emphasis of submission of Ld. Counsel for the applicant is that since the order has been passed under different provisions, as such, it suffers from vice of arbitrariness and is not sustainable in the eyes of law.

6. So far as the factual position involved in the present case is concerned, it is not denied that the Commanding Officer is empowered under Section 13 (3) 1 (i)(a) of the Army Rules (supra) to pass order of discharge in the event of low medical category. Since power was vested with the Commanding Officer, even if incorrect Section of the Army Rules (supra) was mentioned, the factual matrix on record was same. It is well settled that in case some authority has got power to pass an

order, then it shall not be invalid because incorrect provision is cited while passing the order. In view of the settled proposition of law the order of discharge is not vitiated. Accordingly, argument advanced by Ld. Counsel for the applicant cannot be sustained.

7. Admittedly, applicant was discharged during the extended period of service in pursuance of recommendation of the Release Medical Board which seems to be in tune with the aforesaid Rule (supra). Otherwise also in view of Army Order dated 21.09.1998, which provides that during extended period of service, in case a army personnel falls in low medical category, then such personnel shall be discharged under existing rules. In the present case, since the applicant does not fulfill the requirement and his medical category lowered down, he was rightly discharged in pursuance of Army Rule (supra). Even if for argument sake it be held that the provision of the Army Rules (supra) were not complied with, the Army Headquarter letter dated 21.09.1998 shall cover the field empowering the Commanding Officer to take a decision to discharge army personnel on account of low medical category during extended period of service.

8. The Original Application lacks merit and is rejected accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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