

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 456 of 2019**

Tuesday, this the 21st day of December, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Service No. 2987083M Sep Shri Narain S/o Shri Bade Lal,
 Resident of Village – Udyampur, PO-Bakharia Auraiya, District-
 Auraiya.

..... Applicant

Learned counsel for the : **Shri Om Prakash Kushwaha**, Advocate.
 Applicant (Not present)

Versus

1. Union of India, through Secretary, Ministry of Defence, (Army), New Delhi-110011.
2. The Chief of Army. IHQ of MoD (Army), Sena Bhawan, New Delhi.
3. Defence Security Corps Records, PIN -901227, C/o 56 APO.
4. Commandant Defence Security Corps, Cannanure.
5. Commanding Officer, 60 DSC Platoon att to 25 Amn Coy PIN-9009425, C/O 56 APO.

.....Respondents

Learned counsel for the : **Dr. Gyan Singh**, Advocate
 Respondents. Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *To issue/pass an order or directions to Set aside/ quash the Discharge Order dated 26.07.2019 passed by respondent No.3 and order Nil dated passed by respondent No.5 for discharge of applicant from service on medical ground.*
- (b) *To issue/pass an order or directions to the respondents to continue the applicant in DSC services.*
- (c) *To issue/pass any other order or directions as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (d) *To allow this original application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant being an Army pensioner was re-enrolled in Defence Security Corps (DSC) on 26.03.2014. He was placed in low medical category A2 (P) w.e.f. 26.12.2017 for disability "Fracture Lateral Tibia Condyle with Post Traumatic Foot Drop (Rt) (S82.3)". His re-categorization medical board was due on 26.12.2019. On being placed in low medical category A2 (P) and sheltered appointment being not available in DSC, his discharge order was issued vide letter dated 26.07.2019 to be discharged from service w.e.f. 30.09.2019. Applicant is stated to have preferred a representation in September 2019 to DDG, DSC, GS Branch, IHQ of MoD (Army), reply of which is still

awaited. Applicant has filed this O.A. on 12.09.2019 to quash his discharge order dated 26.07.2019 and allow continuance in DSC service.

3. Learned counsel for the applicant submitted that on 26.09.2016 applicant sustained injury while proceeding to bank on his motor cycle. He further submitted that the applicant was treated in Base Hospital, Lucknow and on release from the hospital he was placed in low medical category A2 (P) w.e.f. 26.12.2017 for two years. His further submission is that since he was able to perform all duties assigned to him with full devotion, honesty and punctuality, therefore he should have been allowed to complete his terms of engagement in the DSC up to the period of 10 years. His other submission is that since his re-categorization medical board was due on 26.12.2019, he ought to have been permitted to continue in service till conduct of re-categorization medical board. He pleaded to quash discharge order dated 26.07.2019 and allow him to continue in service till completion of terms of engagement.

4. On the other hand, learned counsel for the respondents submitted that applicant was placed in low medical category P2 (P) w.e.f. 26.12.2017. He further submitted that on being placed in low medical category he was allowed to serve for another two years. He further submitted that policy letter dated 03.05.2018 was received from Army Headquarters which

disallowed continuance of service to the personnel placed in low medical category. Accordingly, Show Cause notice dated 01.04.2019 was served upon the applicant elaborating all details and on receipt of reply dated 06.04.2019, which was not considered as sufficient ground by the competent authority i.e. the Commanding Officer of the unit for his retention, discharge order dated 26.07.2019 was issued and he was discharged from service w.e.f. 30.09.2019. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the respondents and perused the material supplied by both the parties.

6. Applicant Shri Narain was enrolled in the Army (Rajput Regiment) on 29.04.1987. He was discharged from service on 30.04.2013 and is in receipt of service pension vide PPO No. S/063308/2012. He was re-enrolled in Defence Security Corps (DSC) on 26.03.2014 and opted not to count his former service towards DSC. He was placed in low medical category A (T-24) w.e.f. 19.02.2017 for the diagnosis "Fracture of Lower end Tibia" and continued in temporary low medical category by the subsequent medical board. Further, he was placed in low medical category A2 (P) w.e.f. 26.12.2017 for two years. The applicant was also placed in low medical category P3 (T-24) w.e.f. 29.10.2018 for the diagnosis "Chronic HBV Infection" and placed in P2 (T-24) w.e.f. 04.05.2019. The applicant was

serving in low medical category and consequent to receipt of policy letter dated 03.05.2018 a Show Cause Notice dated 01.04.2019 was issued to him and on receipt of reply from the applicant, which being considered insufficient, discharge order dated 26.07.2019 was issued to release the applicant from service w.e.f. 30.09.2019. Applicant was also placed in low medical category P2 (P) by the Release Medical Board (RMB) conducted prior to release from DSC on 16.08.2019.

7. A simple question that needs to be adjudicated is that whether DSC personnel placed in low medical category can be discharged from service?

8. In this regard we find that applicant was placed in low medical category A (T-24) w.e.f. 19.01.2017 and he was serving in low medical category since then. After issue of new policy dated 03.05.2018 and 20.11.2018, DSC personnel placed in low medical category (temporary or permanent) were made disqualified to continue in service. For convenience sake, relevant extract of policy on the subject is reproduced as under:-

"1. (c) Revised Medical Criteria

(i) & (ii) xx x x x x x x x

(iii) Permt LMC Pers- Permt LMC pers (irrespective of SHAPE factor) in DSC will be disch from service at any time during service in accordance with provisions of AR 13 (3) Item 1(ii) (a) (i) and 13 (3) Item III (a) (i) as no sheltered appt is available in DSC."

9. Thus, the aforesaid policy makes it clear that DSC personnel placed in low medical category either temporary or permanent are liable to be discharged from service. The applicant was placed in low medical category w.e.f. 19.01.2017 and has served in DSC till the policy was not in existence. He was discharged from service on implementation of new policy on the subject as no sheltered appointment is available in DSC.

10. A conspectus of above observation is that applicant was rightly discharged from service being placed in low medical category in terms of issuance of new policy on the subject and respondents have not committed any wrong in discharging the applicant.

11. In view of the above, O.A. is devoid of merit and is accordingly **dismissed**.

12. No order as to costs.

13. Pending miscellaneous application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 21st December, 2021
rathore

(Justice Umesh Chandra Srivastava)
Member (J)