

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 67 of 2022

Tuesday, this the 10th day of December, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

14863462Y Sep/MT Maiyoor Singh
S/o Shivji Singh
R/o Bhadar, District Buxar
Bihar – 802126
Presently in New Delhi
C/o Mr. AK Gupta
H.No. 203, Anupam Apartments
Saket, New Delhi – 110068

.... Applicant

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

Versus

1. Union of India, Service through: The Secretary, Government of India, Ministry of Defence, South Block, New Delhi – 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. Col Neeraj Kotwal, SM, CO 536 ASC Bn (RAPID STRIKE), PIN 905536, c/o 56 APO.
4. Officer-in-Charge, ASC Records South, PIN-900493, C/o 56 APO.
5. Commanding Officer, 536 ASC Battalion (RAPID STRIKE), PIN – 905536, C/o 56 APO.

... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt. Standing Counsel

ORDER

1. The applicant filed Original Application No. 1768 of 2021 before the AFT (PB) New Delhi which has been transferred to this Tribunal and has been registered as T.A. No. 67 of 2022. By means of this application, the applicant has prayed for the following reliefs :-

- “(i) To declare the action of the respondents as unjust, arbitrary, biased and illegal; and
- (ii) To call for records from dealing with the issue of validity of Discharge Order; and
- (iii) To quash and set aside Discharge Order vide letter No. 2450/LMC(P)/DO/CA-3 (Disch) dated 19 Dec 2020.
- (iii-a) Issue/pass an order setting aside the order dated 28.11.2020 passed by the Commanding Officer, 536 ASC Battalion (RAPID STRIKE) withdrawing the shelter appointment of the applicant which resulted in pre-mature discharge of the applicant from service in lower medical category.
- (iii-b) Issue/pass an order setting aside the order dated 17.03.2021 passed on behalf of Officer-in-Charge Records, ASC (South) rejecting the appeal/representation of the applicant preferred against his discharge from service.
- (iv) To reinstate the applicant Maiyoor Singh back to his unit; and
- (v) To award exemplary costs in favour of the applicant.
- (vi) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 27.03.2012 and was discharged from service on 18.03.2021 after rendering approx 09 years of service under Rule 13

(3) of Army Rules, 1954 on being placed in permanent low medical category and not upto the prescribed physical standard and no sheltered appointment was available in the unit. The applicant was placed in low medical category A2 (P) due to disabilities (i) 'EXTENSOR HALLUCIUS LONGUS AND TIBIALIS ANTERIOR TENDON INJURY (RT) FOOT (OPTD)' w.e.f. 07.08.2018 and (ii) 'GUN SHOT WOUND (RT) HAND COMMUNED FRACTURE DISTAL PHALANX (RT) MIDDLE FINGER' w.e.f. 29.08.2019. The applicant was restricted for performance of his trade as well as basic military duties due to disabilities and being placed in low medical category. Due to these disabilities and restriction in performance of various kind of trade and basic military duties, a Show Cause Notice was issued to the applicant on 13.09.2019 for sheltered appointment being in low medical category and restriction on employment for his trade work and to perform basic military duties. The applicant expressed his willingness to perform duties like co-driver, runner, dispatcher and other duties not hampering his category but the Commanding Officer of the unit not recommended for sheltered appointment and after taking the approval of the competent authority, applicant was discharged from service on 18.03.2021.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 27.03.2012 and was discharged from service on 18.03.2021. The applicant sustained injury 'Extensor Hallucius Longus and Tibialis Anterior Tendon Injury (Rt) Foot (Optd)' w.e.f. 07.08.2018 and (ii) 'Gun Shot Wound (Rt) Hand Comminuted

Fracture Distal Phalanx (Rt) Middle Finger', due to which the applicant was placed in low medical category A2 (P). In the year 2019, applicant applied for B.Ed as per applications invited by AEC Centre and College Pachmarhi but instead of processing B.Ed. application of the applicant, the applicant was sent to MH Jhansi for psychiatrist evaluation but nothing adverse detected by the medical authorities. Being aggrieved by such humiliation and victimization, a statutory complaint was preferred by the applicant for which a charge sheet was prepared by the Commanding Officer of the unit in violation of chain of command which was later cancelled on 20.06.2020. The applicant was issued another tentative charge sheet alleging violation in chain of command which was too cancelled on 09.07.2020 without citing any reasons. However, on 10.07.2020, in pursuant to the above-mentioned charge sheet, the applicant was awarded punishment of 07 days RI. In pursuance to above 7 days RI punishment, applicant sent an application dated 20.07.2020 to the GOC HQ 36 RAPID(S). On 18.07.2020, another tentative charge sheet was prepared alleging violation in chain of command and applicant was again awarded punishment of 7 days RI. On 13.08.2020, the applicant was served a Show Cause Notice seeking reasons as to why the applicant being a low medical category should be allowed to continue in service and be given sheltered appointment which was replied by the applicant on 15.08.2020 requesting his willingness to continue in service. On 15.08.2020, applicant submitted an application to GOC 36 RAPID for review of summary punishments awarded to him twice for the same offence including violation of the

principle of 'Double Jeopardy' but no relief was granted to the applicant. The discharge order dated 19.12.2020 was issued by the Record Office for which applicant sent a representation dated 02.02.2021 for cancellation of the discharge order but instead of cancelling the discharge order, applicant was locally discharged from service w.e.f. 18.03.2021.

4. Learned counsel for the applicant further submitted that as per Army Order 46 of 1980, ordinarily permanent low medical category personnel will be retained in service till completion of 15 years of service. The Hon'ble Delhi High Court in the case of **Subedar Puttan Lal and Others vs. Union of India & Others**, decided on 20.11.2008 quashed the order passed by the Chief of the Army Staff for discharging the personnel without holding IMB and reinstated all such personnel with all consequential benefits. The Hon'ble Delhi High Court while reiterating the principle laid down by the Hon'ble Supreme Court in **Union of India & Ors vs. Rajpal Singh**, S.L.P. (C) No. 6037 of 2007 added that same principle is applicable not only to JCOs but also to PBORs. Therefore, withdrawing sheltered appointment and ordering discharge from service is illegal, unreasonable and violation of fundamental rights granted under Articles 14, 15, 16 and 21 of the Constitution of India. It is also against the decision of the Hon'ble Supreme Court in the case of **Rajpal Singh** (supra) and the Hon'ble Delhi High Court in the case of **Puttan Lal** (supra), Army Order 46/1980 and Regulations for the Army, 1987 and therefore, discharge order of the applicant should be quashed and applicant be reinstated

into service till completion of his prescribed terms of engagement of the rank.

5. On the other hand, Ld. Counsel for the respondents submitted that the applicant was placed in low medical category A2 (P) due to disabilities (i) 'EXTENSOR HALLUCIUS LONGUS AND TIBIALIS ANTERIOR TENDON INJURY (RT) FOOT (OPTD)' w.e.f. 07.08.2018 and (ii) 'GUN SHOT WOUND (RT) HAND COMMINUTED FRACTURE DISTAL PHALANX (RT) MIDDLE FINGER' w.e.f. 29.08.2019. The applicant was restricted for PPG, PPT, BPET, lifting heavy weights, rope climbing, handling fire arms, night duties and driving, games, prolonged standing duties, combat duties and boot due to disabilities and being placed in low medical category. Due to these disabilities and restriction in performance of various kind of trade and basic military duties, a Show Cause Notice was issued to the applicant on 13.09.2019 asking the applicant reason as to why he should not be disallowed to continue in service and be given sheltered appointment as his medical category has restricted his employment for his trade work and to perform basic military duties. The applicant expressed his willingness to perform duties like co-driver, runner, dispatcher and other duties not hampering his category vide his letter dated 17.09.2019 and accordingly he was allowed to perform the task/duties.

6. Learned counsel for the respondents further submitted that the applicant submitted an application for pursuing B.Ed. course at AEC Centre Pachmarhi, which was not recommended based on merit for

which minimum 45% marks in BA/BSC/BCA were required. However, approval for pursuing the said course by distance learning was accorded. The applicant processed his B.Ed application directly to the IHQ of MoD (Army) New Delhi which was returned unactioned to his unit and applicant was awarded punishment of 07 days Rigorous Imprisonment for violating the chain of command in processing his application. The applicant also processed his case for study leave which was denied being not applicable to JCOs/OR of the Army. The applicant was interviewed by the Company Commander/Commanding Officer on various occasions to improve his behaviour and conduct, despite of such consideration, the applicant did not take anything seriously, hence, keeping in view the psychological health of the applicant, he was sent to the Military Hospital for psycho check-up. The applicant submitted a statutory complaint dated 18.02.2020 which was rejected by the Chief of the Army Staff vide CAB note dated 19.07.2021. The applicant also submitted an application dated 15.01.2020 directly to GOC, 36 RAPID as a complaint against previous Commanding Officer of the unit for not processing B.Ed. application and harassment in the unit. The complaint of the applicant was found baseless and incorrect for which he was counselled vide letter dated 14.02.2020 and in the direction of the GOC 36 RAPID, it was stated that, '(1) applicant is a poorly disciplined soldier, (2) he is aggressive and defiant by nature and his conduct has been erratic, (3) he has consistently avoided mil duties citing medical reasons, (4) He has disregard for military authority and is poor example in the unit'. Since, the applicant forwarded applications directly to the IHQ of

MoD (Army) on two different occasions without processing through a chain of command, therefore, applicant was issued warning letter and he was awarded two summary punishments of Rigorous Imprisonment on different occasions which were sustained by the Reviewing Authority. It is also submitted by the respondents that during an Exercise (EWT), applicant reported sick and obtained excuse for PPG and other duties for seven days and thereafter reported in exercise area without complete personal kit to avoid EWT for which he was served with Show Cause Notice. While returning back from exercise area, applicant was detailed as Co-driver but amidst the same he got admitted in MH Babina for loose motion without informing to his seniors. Such a lackadaisical attitude and negligence towards his assigned duties and military discipline shows that applicant is not fit for the Army Organisation where discipline is backbone.

7. Learned counsel for the respondents further submitted that as per procedure, ASC Records (South) Bangalore asked for sheltered appointment certificate from the Commanding Officer of the unit in respect of the applicant vide letter dated 19.05.2020 and considering the conduct and performance of the applicant and feedback from appointment in the chain of command, sheltered appointment was withdrawn and certificate of withdrawal of sheltered appointment was forwarded accordingly. The competent authority issued a discharge order dated 19.12.2020 in reference of permanent low medical category. The RMB of the applicant was conducted in 336 Field

Hospital which was finally completed on 11.03.2021 in MH Sagour and confirmed by the HQ 21 Corps (Medical). Since, the conduct, behaviour and discipline of the applicant was not upto the standard of the Indian Army and so many restrictions were also imposed on employment/performance of trade and other routine basic military duties, sheltered appointment was withdrawn by the Commanding Officer of the unit as per rules and accordingly, applicant was discharged from service on 18.03.2021 as per policy on the subject. Hence, there is nothing unjust and illegal in discharging the applicant from service. He pleaded for dismissal of Transferred Application.

8. We have heard learned counsel for the respondents and perused the material placed on record.

9. We find that applicant was downgraded to low medical category A2 (Permanent) for his disabilities, (i) **'EXTENSOR HALLUCIUS LONGUS AND TIBIALIS ANTERIOR TENDON INJURY (RT) FOOT (OPTD)'** and (ii) **'GUN SHOT WOUND (RT) HAND COMMINUTED FRACTURE DISTAL PHALANX (RT) MIDDLE FINGER'** and retained in the service w.e.f. 29.08.2019 in low medical category A2 (P). As per procedure, sheltered appointment certificate was asked from the Commanding Officer of the unit vide ASC Records letter dated 19.05.2020 and considering inadequate behaviour, misconduct and bad discipline of the applicant and also being unable to perform his trade work and other basic military duties, sheltered appointment was withdrawn by the Commanding Officer of the unit and accordingly, discharge order dated 19.12.2020 was issued by the

Record Office. The applicant was discharged from service on 18.03.2021 on being placed in permanent low medical category and not upto the prescribed physical standard and there being no sheltered appointment available in the unit commensuration to his disabilities.

10. With regard to complaints of the applicant for not processing his B.Ed application and non grant of Study Leave have been dealt procedurally and rejected/denied based on the rules/policies on the subject. The submission of applicant's with regard to his forceful reference/admission to MH Jhansi for psychiatric examination was done by the Commanding Officer of the unit as per observation of indifferent conduct, mental health and stress, however medical authority found nothing adverse in the applicant.

11. We also find that punishment of Rigorous Imprisonment was awarded to the applicant on two occasions for violating channel of command which was not found to be illegal. The conduct, behaviour and discipline of the applicant during his approx. 9 years of service was not upto the mark/standard of the Indian Army where discipline is the backbone and besides this he was in low medical category due to which so many restrictions were also imposed on employment/performance of trade and other routine basic military duties and there being no suitable sheltered appointment available in the unit, sheltered appointment was withdrawn by the Commanding Officer of the unit as per instructions laid down in Army Order 46/80 and ROI ASC 2012 and accordingly, discharge order was issued by the ASC

Records (South) Bangalore and applicant was discharged from service after taking approval from the competent authority in terms of IHQ of MoD (Army) letter dated 30.09.2010. Hence, there seems no illegality or injustice in withdrawing sheltered appointment of the applicant and discharge from service. Hence, we are of the view that the applicant is not entitled to the reliefs prayed in the Original Application.

12. Resultantly, we do not find any illegality or injustice in withdrawing sheltered appointment and discharging the applicant from service in permanent low medical category. The Transferred Application deserves to be dismissed and is accordingly **dismissed**.

13. No order as to costs.

14. Misc. Application(s), pending if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain)

Member (A)

Dated: December, 2024

SB

(Justice Anil Kumar)

Member (J)