

**RESERVED**  
**Court No.1**

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

**Transferred Application No. 1295 of 2010**

Wednesday, this the 25<sup>th</sup> day of January 2017

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

No: JC-754235-M Sub Tech (Gun) Chandra Dev Ram, S/o Late Phuleswar Ram, Vill-Akhiyarpur, PO-Lawa, District-Ghazipur (U.P.).

.....Petitioner

Ld. Counsel for the : **Shri Rohit Kumar, Advocate**  
Petitioner

Versus

1. Chief of Army Staff, New Delhi-110011.
2. Commandant-CUM-CRO EME Centre and Record, Secunderabad.
3. Commanding Officer, 75 Armd Regt, C/o 56 APO.
4. Union of India Through Secretary, Ministry of Defence, New Delhi.
5. JC-239459-M Risaldar Shaitan Singh, C/o 75 Armd Regt, C/o 56 APO.
6. JC-240478-K Naib Risaldar Prasannan, C/o 75 Armd Regt, C/o 56 APO.
7. PCDA (P), Draupadighat, Allahabad.

...Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Central**  
Respondents. **Govt Counsel assisted by**  
**Col Kamal Singh, OIC, Legal Cell.**

**ORDER****“Per Air Marshal Anil Chopra, Member (A)”**

1. The petitioner being aggrieved with the order dated 15.06.2004 discharging him from Army service with effect from 31.10.2004 preferred Writ Petition No 58031 of 2005 in the High Court of Judicature at Allahabad. On constitution of the Armed Forces Tribunal the petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T. A. No 1295 of 2010.
2. Heard Shri Rohit Kumar, Ld. Counsel for the petitioner and Shri D.K. Pandey, Ld. Counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell and perused the records.
3. Briefly stated, the facts of the case are that the petitioner joined the Indian Army in the Electrical Mechanical Engineering Corps (EME) and underwent training at 3 EME Centre Bhopal. The petitioner served in various EME units and was promoted to the rank of Lance Naik in the year 1986 and ultimately to the rank of Subedar (Tech-Gun) in LMC A-2 (P) on 18.12.2003 with seniority with effect from 01.11.2003. The petitioner was posted at Station Workshop Jabalpur when he received ‘Splinter injury left hand with fracture proximal phalanx left little finger’ injury on the left palm. He was given treatment at Military Hospital, Jabalpur and was placed in Low Medical Category (LMC) as noted below:

(i)	BEE (T)	15.09.1998	MH Jabalpur
(ii)	BEE (T)	15.03.1999	MH Jabalpur
(iii)	BEE (P)	15.09.1999	MH Dehradun
(iv)	AYE-2 (P)	15,09.2001	176 NG Sri Ganganagar

4. The petitioner continued in Medical Category SHAPE-A2 (P) till Oct, 2003. On issue of direction, the petitioner furnished willingness certificate to continue in service. Since the petitioner was willing to serve in Permanent Low Medical Category, the Commanding Officer of 102 Medium Regiment recommended his retention in service and his services were extended up to 14.09.2003. The petitioner was subjected to Medical Board which placed him in Medical Category A-2 for two years with effect from 15.09.2003 to 14.09.2005 and was declared with 20% disability. The Medical Board directed for review of petitioner's medical category after two years. On 14.10.2003, a show cause notice was issued to the petitioner by Capt, OIC LRW to show cause as to why he be not discharged from service. Thereafter Commanding Officer, 75 Armed Regiment on the ground that further retention of petitioner will not be in public interest, discharged the petitioner from Army service.

5. The petitioner preferred statutory complaint to Chief of the Army Staff under Section 26 of the Army Act, 1950. Since the statutory complaint remained indisposed of, he preferred Writ

Petition which has been transferred to this Tribunal (supra) and has come up before us for adjudication. During pendency of the petition, the statutory complaint has been rejected by order dated 14.02.2006 by Director General, Electrical and Mechanical Engineering, a copy of which has been filed as SA-1 to the Rejoinder Affidavit.

6. Submission of Ld. Counsel for the petitioner is that the show cause notice (Annexure-3) was issued by officer of the rank of Captain on 14.10.2003 and the petitioner was directed to reply the show cause notice by the very next date, i.e. 15.10.2003. His submission is that principles of natural justice have been infringed by not allowing sufficient time to the petitioner to submit reply to the show cause notice.

7. The second limb of argument of Ld. Counsel for the petitioner is that show cause notice was not issued by the competent authority. He submitted that in view of the statutory provision of Army Rule 13 (3) (III) (v), discharge from Army service is to be preceded by a show cause notice to be signed by Brigade Commander/Sub-Area Commander.

8. The other limb of arguments of Ld. Counsel for the petitioner is that the petitioner was discharged illegally in violation of Para-163 of the Defence Service Regulations which provides that in the case of Risaldar/Subedar, the maximum permissible colour service is 28 years/completing 52 years of age, whichever

is earlier. For convenience sake, Para-163 of the Defence Service Regulation is reproduced as under:

**“163. Retirement.-JCOs.-** (a) *Retirement of JCOs of all Arms of the Services, who opted for revised terms operative from 01 Dec 76, is compulsory on completion of the following service, tenure or age limits :-*

- |       |                        |  |
|-------|------------------------|--|
| (i)   | <i>Nb Ris/Nb Sub</i>   | <i>-26 years pensionable service or 50 years of age, whichever is earlier.</i>                 |
| (ii)  | <i>Ris/Sub</i>         | <i>-28 years pensionable service or 50 years of age, whichever is earlier.</i>                 |
| (iii) | <i>Ris Maj/Sub Maj</i> | <i>-32 years pensionable service, 4 years tenure or 52 years of age, whichever is earlier.</i> |

#### NOTE

*Ris/Sub, Nb Ris/Sub Clerks GD, GD (SD) and Store, Nb Ris/Nb Sub Storeman Technical, Nb Ris/Nb Sub Ammunition Examiner, Nb Sub Personal Assistant ASC, Nb Sub Instructor AEC and Nb Ris/Nb Sub Bandmaster who did not opt for the new terms and still governed by old terms will be retired on completion of 28 years pensionable service or 55 years of age, whichever is earlier.*

(b) *The JCOs enrolled prior to 25 Jan 65 still serving on old terms will be retired on completion of following service or age limits:-*

- |       |   |  |
|-------|---|--|
| (i)   | <i>Nb Ris/Nb Sub</i>  | <i>-24 years pensionable service or 55 years of age, whichever is earlier.</i> |
| (ii)  | <i>Ris/Sub</i>  | <i>-28 years pensionable Service or 55 years of Age, whichever is earlier.</i> |
| (iii) | <i>Ris/Sub, Nb Ris/Nb Sub Storeman Technical, Nb Ris/Sub Ammunition Examiner, Nb Sub Personal Assistant</i> | <i>-28 years pensionable service or 55 years of age, whichever is earlier.</i> |

*ASC, Nb Sub  
Instructor AEC and  
Nb Ris/Nb Sub  
Bandmaster.*

- (iv) *Ris Maj/Sub Maj* -32 years pensionable service, 5 years tenure or 55 years of age, whichever is earlier.

(c) *The JCOs enrolled on or after 25 Jan 65 still serving on old terms will be retired on completion of following service or age limits:-*

- (i) *Nb Ris/Nb Sub* -24 years pensionable service or 50 years of age, whichever is earlier.

- (ii) *Ris/Sub* -28 years pensionable service or 50 years of age, whichever is earlier.

- (iii) *Ris/Sub, Nb Ris/Nb Sub Clerks GD, GD (SD) and Store, Nb Ris/Nb Sub Storeman Technical, Nb Ris/Nb Sub Ammunition Examiner, Nb Sub Personal Assistant ASC, Nb Sub Instructor AEC and Nb Ris/Nb Sub Bandmaster.* -28 years pensionable service or 50 years of age, whichever is earlier.

- (iv) *Ris Maj/Sub Maj* -32 years pensionable service, 4 years tenure or 50 years of age, whichever is earliest.

#### NOTE 1

*Extension beyond the specified service limits in respect of above categories of JCOs (except Ris Maj/Sub Maj) may be sanctioned by the Chief of the Army Staff in very exceptional circumstances and that too if these are in the interest of service. The cases of Ris Maj/Sub Maj will require Govt. sanction. Such extension will in no case exceed two years.*

## NOTE 2

*For the purpose of this rule, pensionable service will include all former pension or gratuity earning service regardless of the capacity in which it was rendered, but provided the pension or gratuity was payable from Indian Revenues.”*

9. Ld Counsel for the petitioner further argued that the petitioner could have been discharged on the opinion of Invaliding Medical Board whereas in the present case the petitioner's Medical Board was held and he was discharged from service.

10. It was further argued that the Commanding Officer recommended retention/extension of services of similarly situated Army personnel, i.e. Risaldar Shaitan Singh and Naib Risaldar Prasannan of 75 Armed Regiment, thus, the order of discharge with regard to the petitioner suffers from hostile discrimination and is in violation of Article 14 of the Constitution of India.

11. Per contra, Submission of the Ld. Counsel for the respondents is that petitioner has been discharged in Low Medical Category after complying the relevant statutory provisions of the Army Act, Rules and Regulations and no exception can be taken to it. He further submitted that the petitioner suffered Splinter Injury in hand with Fracture Phalanx Left Finger on 04.06.1998 and was placed in Low Medical Category EEE (T) with effect from 15.09.1998 and continued in the same medical category up to 15.09.1999. His medical category was reviewed

and he was placed in Low Medical Category EEE (P). However, his retention in service was extended up to 14.09.2003.

12. Ld. Counsel for the respondents submitted that Army Order (AO) 46 / 80 (Annexure CA-4 to the counter affidavit) states that employment of permanent Low Medical Category personnel at all times is subject to the availability of suitable alternative appointments commensurate with their medical category and also to the provision that this can be justified in the public interest. When such appointment is not available or when retention of such Army personnel is either not considered necessary in the interest of service or it exceeds the sanctioned strength of the Regiment/Corps, he will be discharged irrespective of the service put in. Ld. Counsel for the respondents argued that since further retention of petitioner in service was not in the public interest, as such, the Commanding Officer was well within his authority to order for discharge of the petitioner on account of permanent Low Medical Category. Further submission is that with a view to make petitioner eligible for grant of pensionary benefits of the rank of Subedar, his date of discharge was extended up to 31.10.2004.

13. So far as argument of Ld. Counsel for the petitioner is that the petitioner was not provided reasonable opportunity to submit reply to the show cause notice and thus, principles of natural justice have been infringed is concerned, the petitioner, keeping the high standards of discipline of the Army complied with the direction to show cause by the very next date. However, we



refrain from recording any finding on this issue for the reason that the petitioner had replied the show cause notice within the stipulated period and also for the reason that in our opinion, in cases of discharge on the ground of Low Medical Category, there was no requirement to issue show cause notice by the respondents. Show cause notice is a mandatory requirement to be complied with in disciplinary cases as provided under Rule 13 (3) (III) (v) of the Army Rules, 1954.

14. So far as argument advanced by Ld. Counsel for the petitioner is that show cause notice (supra) was not signed by the competent authority, suffice to mention that the petitioner has been discharged on medical ground and not on 'other ground' whereby it is incumbent upon the Brigade Commander/Sub Area Commander, if circumstances of the case permit, to give notice to the person whose discharge is contemplated as provided under Rule 13 (3) (III) (v) of the Army Rules, 1954.

15. Coming to next submission of Ld. Counsel for the petitioner that Risaldar Shaitan Singh and Naib Risaldar Prasannan, who were also in the same medical category, have been given benefit of extension of service by the Commanding Officer ignoring the claim of the petitioner, is not sustainable and entail rejection on the ground that it does not extend any parity as enshrined in Article, 14 of the Constitution of India. It is well settled law that parity or equality is a positive concept and not a negative one. A wrong committed by the respondents for any reason whatsoever

does not mean that it may be perpetuated by the Courts or the Tribunal for other person(s).

16. While advancing arguments Ld. Counsel for the petitioner has drawn our attention to Hon'ble Apex Court judgment in the case of Civil Appeal No 6587 of 2008 arising out of SLP (C) No 6037 of 2007 **Union of India vs. Rajpal Singh**. As per decision of the Hon'ble Apex Court, personnel falling in Medical Category-BEE cannot be discharged from service. Submission of Ld. counsel for the petitioner is that before discharge from service, no opinion of Invaliding Medical Board was obtained as per provisions contained in Rule 13 (3) (iii) of the Army Rules, 1954. For convenience sake Rule 13 (3) (iii) as was applicable at the relevant time when petitioner was discharged, i.e. in the year 2004, is reproduced as under: is reproduced as under:-

<u>"Ground of discharge</u>	<u>Competent Authority to Authorize Discharge</u>	<u>Manner of Discharge</u>
<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>

17. Rule 13 of the Army Rules 1954 was amended by SRO 22 dated 13.05.2010. The amended Rule may also be excerpted below:-

<u>"Ground of discharge</u>	<u>Competent Authority to Authorize Discharge</u>	<u>Manner of Discharge</u>
<i>"(iii) Having been found</i>	<i>Commanding</i>	<i>To be carried out</i>

<i>medically unfit for further service</i>	<i>Officer</i>	<i>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> <i>(i) no sheltered appointment is available in the unit, or;</i> <i>(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>

18. It is not disputed by Ld. Counsel for the respondents that the petitioner was discharged from Army service under Section 13 (3) (iii) of Army Rules, 1954.

19. A plain reading of above Rule shows that persons whose Invaliding Medical Board has been conducted, can be discharged from service on recommendation of the Invaliding Medical Board. Thus, service of the petitioner could be terminated by the Commanding Officer only on recommendation of Invaliding Medical Board. It is not disputed by Ld. Counsel for the respondents that opinion of Invalidating Medical Board with regard to unsuitability of the petitioner to be retained in the Army was not obtained. The opinion of the Invaliding Medical Board goes to the very root of the service career of the Army personnel and that is why the Rule provides that release shall be carried out on account of medical unfitness only in pursuance to the recommendation of the Invaliding Medical Board. Discharge of petitioner without obtaining opinion of Invaliding Medical Board

does not stand at the touch stone of Article, 14 of the Constitution of India and order of discharge seems to be *per se* bad in the eyes of law. This also affects right to livelihood guaranteed by Article, 21 of the Constitution of India. Even the Army authorities have no right to deprive any person from employment in violation to statutory provisions. .

20. Provision contained in Army Rule 13 (supra) being statutory in nature has got binding effect. The procedure adopted by the respondents could not validate the action of the respondents while assessing the petitioner's invalidity to release him from Army. It is condition precedent to obtain opinion of the Invaliding Medical Board and only thereafter an order of discharge could have been passed releasing the petitioner from Army.

21. According to the 'Maxwell on The Interpretation of Statutes (12<sup>th</sup> Edition Page 36), to quote:-

*“A construction which would leave without effect any part of the language of a statute will normally be rejected.”*

22. Thus while interpreting statutory provision every word as well as punctuation should be read and no line should be made redundant. Hon'ble Supreme Court from time to time repeatedly reiterated interpretative jurisprudence and observed that while considering statutory provision, the provision should be considered by section by section, word by word, line by line and phrase by phrase along with punctuation in reference to context for which it has been used.

23. In a recent judgment reported in **Vipulbhai M. Chaudhary vs. Gujarat Coop. Milk Mktg. Federation Ltd.** (2015) 8 SCC 1, the Hon'ble Supreme Court has held:-

*“In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts.”*

24. In the same judgment Hon'ble Supreme Court, while applying interpretative jurisprudence, further emphasized to implement constitutional mandate in the following words:-

*‘When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements of the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly.’*

25. Further it is the settled law that *causus omissus* (Principle of reading down) may be applied in case there is any ambiguity or absurdity in the statutory provisions, vide **Gujrat Urja Vikash Nigam Ltd vs. Essar Power Ltd**, 2008 (4) SCC 755.

23. In view of above, the impugned order suffers from substantial illegality and is not sustainable being not in consonance with the procedure prescribed by law.

26. The result of discussions made hereinabove is that the T.A. deserves to be allowed; hence **allowed**. Impugned order dated 15.06.2004 discharging the petitioner from Army service with effect from 31.10.2004 and order dated 14.02.2006 rejecting

statutory complaint of the petitioner are set aside with all consequential benefits. The petitioner shall be deemed to be continuing in service for the purpose of other service benefits till end of his tenure in the rank he was holding at the time of discharge. He will be entitled to back wages for the remaining period of service and pension for the full length of service. Let consequential benefits be provided to the petitioner in terms of the present order expeditiously, say, within four months from the date of presentation of a certified copy of this order.

No order as to cost.

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

anb

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