

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 45 of 2022****Monday, this the 11th day of July, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-285786W Nb Sub (TA) Anil Kumar Tewari
S/o Shri Ram Kalap Tewari
R/o 283 Khajuraht, District – Faizabad (UP)

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD (Army), DHQ PO, New Delhi – 110011.
3. Commanding Officer 143 Medium Regiment, C/o 56 APO.
4. Officer Incharge Records, ARTY Records (ACNRC), Arty Centre, Nashik Road, Nashik, Maharashtra, 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Pushendra Mishra**,
Central Govt Counsel**ORDER (Oral)**

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

- “i) To quash or set aside the DISCHARGE ORDER dt 30/09/2021 being illegal .
- ii) To pass an suitable direction to respondents to reinstate applicant back to service at par with his batch mates in terms of service seniority and subsequent promotion and also to re-imburse all his monetary dues.

- iii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- iv) Allow this appeal with cost exemplary cost of Five lakh rupees for harassment, and suffering of an innocent combatant.”

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 24.12.1996 and was discharged from service on 30.09.2021(AN) in low medical category A2 (Permanent) due to non availability of sheltered appointment after serving more than 24 years of service. The applicant was placed in low medical category and his next categorisation medical board was due on 20.08.2021 for disability “FRACTURE DISTAL END OF (LT) RADIUS”. The Commanding Officer of 143 Medium Regiment issued a Show Cause Notice to the applicant to be discharged from service being in low medical category due to non availability of sheltered appointment. Discharge order dated 22.04.2021 was issued by the Records to the applicant to be released from service w.e.f. 30.09.2021. The applicant’s re-categorisation medical board was held at 153 General Hospital before his discharge from service and he was upgraded to SHAPE-1 w.e.f. 21.08.2021. The applicant was referred to Release Medical Board on 30.09.2021 and was also discharged from service on 30.09.2021(AN). Since the applicant was upgraded to SHAPE-1 medical category before his discharge from service, therefore, he is entitled to be reinstated into service. The applicant has filed the present Original Application to re-instate him in service.

3. Learned Counsel for the applicant submitted that applicant was discharged from service on 30.09.2021(AN) treating him in low medical category A2 (Permanent) due to non availability of sheltered appointment after serving more than 24 years of service. The applicant was in low medical category and his next categorisation medical board was due on 20.08.2021 for disability "FRACTURE DISTAL END OF (LT) RADIUS". The Commanding Officer of 143 Medium Regiment issued a Show Cause Notice to the applicant to be discharged from service being in low medical category A2 (Permanent) due to non availability of sheltered appointment. Discharge order dated 22.04.2021 was issued by the Artillery Records to be released from service w.e.f. 30.09.2021 under the provisions of IHQ of MoD (Army) letter dated 22.09.2016 and in terms of Army Rule 13 (3).

4. Learned Counsel for the applicant further submitted that applicant was also due for his re-categorisation board and he was hopeful to attain SHAPE-1. Therefore, applicant filed a Writ Petition No. 9308/2021 before the Hon'ble High Court of Judicature at Allahabad which was dismissed lacking jurisdiction vide order dated 05.08.2021. The applicant's re-categorisation medical board was held at 153 General Hospital before his discharge from service and he was upgraded to SHAPE-1 w.e.f. 21.08.2021 for his disability "FRACTURE DISTAL END OF (LT) RADIUS". In this regard, a Part II Order dated 09.09.2021 was also published by the unit of the applicant, i.e. 143 Medium Regiment, regarding upgradation of medical category of applicant to SHAPE-1. The applicant was

referred to Release Medical Board on 30.09.2021 and was also discharged from service on 30.09.2021 and thus, he was SOS on 01.10.2021. Since the applicant was upgraded to SHAPE-1 medical category, his discharge from service on medical grounds is illegal, arbitrary and bad in law, therefore, applicant is entitled to be reinstated into service with subsequent promotion and monetary dues.

5. Learned counsel for the applicant has drawn attention to Regulation 143 of the Defence Service Regulations, 1987, which reads as under :-

“143. Re-enrolment of Ex-Servicemen Medically Boarded Out. –

(a) Ex-Servicemen, who are in receipt of disability pension, will not be accepted for re-enrolment in the Army.

(b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-enrolment, either in combatant or non-combatant (enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman applied for re-enrolment and claims that he is entirely free from the disability for which he was invalided, he will be medically examined by the Rtg MO and if he considers him fit, the applicant will be advised to apply to officer-in-charge, Records Office concerned, through the recruiting officer for getting himself re-medically boarded. The officer-in-charge, Records office concerned, on receipt of the application, will arrange for his medical examination at a Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including that on accommodation and journey to and from the place of medical examination.

If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service, subject to the following conditions:-

(i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the colours and his previous colour service will count towards the minimum service required for transfer to the reserve.

(ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve”.

6. On the other hand, Ld. Counsel for the respondents submitted that Para 2(b) of Army Order (AO) 46/80 says that a permanent low medical category person (JCO) can be discharged from service on completion of 15 years pensionable service. Hence, Commanding Officer of 143 medium Regiment exercised his powers vested upon him vide AO 46/80 and IHQ of MoD (Army) letter dated 30.09.3010. Since, applicant has completed pensionable service and there being no sheltered appointment available in the unit, applicant's case was recommended to be discharged from service after serving a Show Cause Notice. The reply of Show Cause Notice submitted by the applicant was not considered sufficient, therefore, OIC Artillery Records being competent authority approved discharge of the applicant to be discharged from service w.e.f. 30.09.2021 vide Records letter dated 22.04.2021.

7. Learned counsel for the respondents further submitted that applicant was referred to Release Medical Board on 30.09.2021, however, he failed to produce desired documents to Artillery Records on time. He also submitted that applicant has been awarded one black ink entry and two red ink entries in the year 2010 and 2012. Since, discharge of the applicant was sanctioned by the competent authority in accordance with relevant Army Order, policy and guidelines on the subject, relief sought by the applicant cannot be accepted and Original Application is liable to be dismissed.

8. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and perused the record.

9. We find that as per Artillery Records discharge order dated 22.04.2021, applicant was to be discharged from service w.e.f. 30.09.2021 being in permanent low medical category, however, before due date of discharge from service, applicant was upgraded to SHAPE-1 w.e.f. 21.08.2021 by re-categorisation Medical Board held at 153 General Hospital but this aspect of upgradation to SHAPE-1 was not taken into consideration by Artillery Records who is competent authority to issue/cancel discharge order of JCOs/ORs. Since, the applicant was in medical category SHAPE-1 at the time of discharge from service, his discharge order showing him in low medical category is no longer valid and thus, discharge of the applicant became illegal and against the rules and policy on the subject. Therefore, applicant needs to be reinstated into service forthwith under the provisions of Para 143 of Defence Service Regulations, 1987.

10. In the result, Original Application is **allowed**. The discharge order dated 22.04.2021 issued by Records is hereby set aside. The respondents are directed to reinstate the applicant back in service in the same rank in which he was discharged from service w.e.f. 01.10.2021 to serve till completion of his terms of engagement/service. However, applicant shall be entitled for 50% back wages only for the period from struck of strength, i.e. w.e.f. 01.10.2021 till the date he is reinstated into service and thereafter, his further promotion to next rank/extension of service may be considered by the respondents as per rules and policy on the subject. The

respondents are further directed to comply with the order preferably within two months from the date of production of a certified copy of this order. Delay shall invite interest @ 8% per annum on the back wages due from the date of this order till actual payment.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: July, 2022
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