

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No 141 of 2023**Friday, this the 02<sup>nd</sup> day of June, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

JC- 352940Y, Sub / SKT Manoj Kumar Singh, S/o Late Ramayan Singh, R/o: House No. SB/KN, 1552, Shaheed Nagar, Lucknow (UP) - 226025.

-----Applicant

Ld. Counsel for:  
the Applicant**Shri Vijay Kumar Pandey,  
Shri Girish Tiwari,  
Shri Dheerendra Kumar Agnihotri,  
Shri Sandeep Tripathi,  
Shri Vishnu Kant Awasthi, Advocates**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi - 110011.
2. COAS, Room No. B- 30, ADG Strat Comn, South Block IHQ of MoD (Army), New Delhi - 110011.
3. OIC Records, Record Bombay Engineer Group, PIN - 908796, C/o 56 APO.
4. 269 Engr Regt PIN - 914269.
5. Company Commander, 403 Field Park Company.
6. PCDA (P), Draupadhighat, Prayagraj (U.P.) -14
7. Col. Abhyudaya Pant, Commanding Officer, 269 Engr Regt PIN - 914269.
8. Lt Col LK Chahali, Coy Cdr, 403 Field Park Company.

..... Respondents

Ld. Counsel for the Respondents :**Shri JN Mishra,**  
**Central Govt. Counsel.**

**ORDER**

**“Per Hon’ble Mr.JusticeRavindra Nath Kakkar, Member (J)”**

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) That this Hon’ble Tribunal may kindly be pleased to quash the impugned discharge order dated 09.01.2023 & Show Cause Notice dated 07.11.2022, passed by the opposite party No. 3 & 4, as contained in annexure No. 1 &2 to this original application, and respondents may kindly be directed to complete his 28 years of service as per the discharge order dated 02.08.2022 in the interest of justice.*
- (ii) That this Hon’ble Tribunal may kindly be awarded the cost Rs. 20,000/- (Rs. Twenty Thousand Only) to the applicant against the opposite parties.*
- (iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.”*

2. The factual matrix of the case is that the applicant was enrolled in the Army on 27.10.1995. During course of time, he was promoted as Subedar (Sub). He was placed in Low Medical Category A2 (P) on 17.01.2022. Respondents had issued discharge order of the applicant dated 02.08.2022 by which the applicant was directed to report Depot Bn, BEG & Centre, Kirkee on 03.10.2023 and Struck of Strength wef 01.11.2023. Respondents has again issued another discharge order dated 09.01.2023 rejecting shelter appointment and discharging applicant from service on 30.06.2023 on the ground of non availability of sheltered appointment after issuing Show Cause Notice dated 07.11.2022. Applicant preferred application for cancelling discharge order dated 09.01.2023 which was rejected. Being aggrieved, the applicant has preferred the present O.A.

3. Learned counsel for the applicant pleaded that the applicant was enrolled in the Army on 27.10.1995. The applicant developed spontaneous pain and swelling left leg associated with dull ache on prolonged standing and walking after running PPET. While serving as Sub, he was downgraded to Low Medical Category A-2 (P) on 17.01.2022 for the disease "**DVT BAL LOWER LIMB HA INDUCED**" and he remained low medical category upto his retirement. He gave his willingness to serve continue in Army till

completion of 28 years of service but the respondents have issued discharge order before completion of 28 years of service which is clear violation of Fundamental Rights as guaranteed by Constitution of India. He pleaded that since the JCOs are primarily required to perform the supervisory duties in their unit, therefore, there is no significant restriction on their employment and posting due to Low Medical Category of A2 (Permanent). As per Regulation 163 of Regulations for the Army, the applicant as a Subis entitled for 28 years of service. As per earlier discharge order dated 02.08.2022, applicant was required to report Depot Bn, BEG & Centre, Kirkee on 03.10.2023 and Struck of Strength wef 30.10.2023 but he has been issued a fresh discharge order dated 09.01.2023 stating that applicant has to report Depot Bn, BEG & Centre, Kirkee on 03.06.2023 and Struck of Strength wef 30.06.2023. Retiring the applicant before completion of 28 years of service as applicable to Sub is a mandatory condition precedent for passing the discharge order of a candidate under Rule 13 of The Army Rules 1954. Respondents have passed the discharge order without getting opinion of the IMB or RMB which is illegal and ultra-vires of the statutory rules. He pleaded that while issuing discharge order, the respondents have not followed provisions of Regulation 163 of the Regulations for the Army 1987 which provides that retirement of Sub is compulsory on completion of 28

years of pensionable service or 52 years of age, whichever is earlier. Under Para 1217 (c) of ROI 2013 states that Commanding Officer of the unit shall ensure that sheltered appointment of the applicant is necessary commensuration with his medical category and applicant can be employed in the interest of service but, without any valid and solid reason, respondents have issued discharge order against the applicant which is not sustainable in the eyes of law. Learned counsel for the applicant pleaded that various Armed Forces Tribunals have granted relief in the same matter and pleaded that the impugned order of discharge dated 09.01.2023 issued by the respondents be quashed and applicant be allowed to complete 28 years of service.

**4. Per contra**, learned counsel for the respondents refuting the submissions of the learned counsel for the applicant vehemently pleaded that the applicant was enrolled in the Army on 27.10.1995. He was placed in low medical category on 11.01.2021 (T) and remained in Low Medical Category A-2 (P) till his retirement for the disability **“DVT BAL LOWER LIMB HA INDUCED”**. The applicant had already completed minimum pensionable service of 15 years and he shall be discharge from service on 30.06.2023 after completion of 27 years and 08 months of service being Low Medical Category as no sheltered

appointment was available in the unit. The applicant was willing to continue in service but it was not recommended by Commandant as sheltered appointment was not available in the Regiment. A show cause notice was issued to the applicant to show cause as to why he should not be discharged from service in terms of Army Headquarters letter dated 30.09.2010 applicable to personnel who are in SHAPE 2/3. In reply to Show Cause Notice he expressed his willingness to continue his service. The competent authority informed the applicant that regiment is not in a position to provide sheltered appointment or further retention in service being a fighting arms and prevailing circumstances in the unit.

5. Learned counsel for the respondents pleaded that “under the provisions contained in the amended Army Rule 13, if no sheltered appointment is available in the unit or the individual is surplus to the organization, he may be discharged from service”. In the instant case, the discharge of the applicant was recommended by the Commanding Officer as no suitable sheltered appointment commensurate to his disability was available, hence discharge of the applicant is in order.

6. Learned counsel for the respondents pleaded that it is compulsory for every Low Medical Category personnel to undergo Release Medical Board before release/discharge from service.

Para 6 of Army Headquarters letter dated 30.09.2010 states that “all endeavour should be made to allow Low Medical Personnel to complete their minimum pensionable service in their present rank”. The Minimum period of qualifying service for earning pension is 15 years. In the instant case, the applicant was placed in Low Medical Category in wef 11.01.2021 (T). He was given sheltered appointment upto his discharge, hence his discharge due to non availability of sheltered appointment is in order.

7. Learned counsel for the respondents further pleaded that under the provisions of para 2 of Army Order 46/1980, The employment of permanent Low Medical category personnel, at all time is subject to the availability of suitable alternative appointment commensurate with their medical category and also to the proviso that this can be justified in the public interest and that their retention will not exceed the sanctioned strength of the regiment/corps. When such an appointment is not available or when their retention is either not considered necessary in the interest of the service or it exceeds the sanctioned strength of the regiment/corps, they will be discharged irrespective of the service put in by them. In the instant case, there is no sheltered appointment available in the Regiment/Corps. Keeping in view of war efficiency of the Regiment, non availability of sheltered

appointment commensurate with applicant's disability, he has been ordered for discharge from service. He pleaded that the applicant was discharged from service as per stipulated rules and no illegality was done hence this Original Application deserves to be dismissed being infructuous and devoid of merit.

8. Heard learned counsel for the parties and perused the pleadings, the relevant records leading to the decision of discharge from service.

9. In the instant case, the question to be considered is whether the decision to terminate the service of the applicant as a JCO in Low Medical Category A-2(permanent) has been taken with due application of mind or in an arbitrary and mechanical manner?'

10. After hearing the counsels and perusing the records, we find that the applicant was initially placed in a Low Medical Category on 11.01.2021(T) and thereafter he remained in Low Medical Category SHAPE 2 (permanent) until his discharge from service. It needs little emphasis that fitness of the personnel of Armed Forces at all levels is of paramount consideration and there cannot be any compromise on that score. It is with this object in view, the Legislature has enacted the Army Act, 1950, the Armed Forces Medical Services Act, 1983 and framed the Rules. Army Orders are also issued from time to time in order to give effect to those

statutory provisions in letter and spirit. Annual or periodic medical examination of the army personnel is done on certain specific norms. The medical status SHAPE is characterized in five components known as:- SHAPE-1- Physically fit for all purposes. SHAPE-II & SHAPE-III- Not fit for certain duties and are required not to undertake strain. SHAPE-IV- Those who are in hospital for certain ailments and SHAPE-V- Unfit for further service of the Army. Army personnel who are in medical category SHAPE-2 or in SHAPE-III, are not totally unfit but at the same time they are not fit for all the army duties and, therefore, they are retained for 15 years or 20 years, as the case may be on the sheltered post mandatorily.

11. We find that as per AO 46/80, disposal of permanent Low Medical Category personnel is very clearly defined. Sub Para (a) and (b) of para 2 of AO 46/80 reads as under:-

*(a) The 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 proviso that this can be justified in the public interest, and that their retention will not exceed the sanctioned strength of the regiment/corps. When such an appointment is not available or when their retention is either not*

*considered necessary in the interest of the service or it exceeds the sanctioned strength of the regiment/corps, they will be discharged irrespective of the service put in by them.*

*(b) Ordinarily, permanent low medical category personnel will be retained in service till completion of 15 years service in the case of JCOs and 10 years in the case of OR (including NCOs). However, such personnel may continue to be retained in service beyond the above period until they become due for discharge in the normal manner subject to their willingness and the fulfillment of the stipulation laid in Sub Para (a) above.”*

12. Having decided to retain a Low Medical Category personal in sheltered appointment, the AO 46/80 elaborately specifies their further retention in service and discharge as under:-

3. *“(a) NCOs will be discharged on completion of the retiring service limits appropriate to ranks as opposed to the extended limits laid down in AO 13/77. However, their retention beyond the contractual period of engagement will be regulated under the provisions of Paras 144 to 147 of Regulations for the Army 1962.*

*(b) JCOs will be discharged on completion of the normal retiring service limits as opposed to the extended limits laid down in AO 13/77.*

13. Now coming to question ‘Has the decision to terminate the service of applicant as a JCO in Low Medical Category SHAPE 2 (Permanent) been taken with due application of mind or it is a case of mechanical decision making?’

14. Considering all the issues involved in this particular case we feel 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 proviso that this can be justified in the public interest, and that their retention will not exceed the sanctioned strength of the regiment/corps. When such an appointment is not available or when their retention is either not considered necessary in the interest of service or it exceeds the sanctioned strength of the regiment/corps, they will be discharged irrespective of the service put in by them.

15. Hon'ble Principal Bench, New Delhi in O.A. No 870 of 2021 with M.A. No 911 of 2021, ***Rfn Ravi Kumar Vs Union of India & Ors decided*** on 10.06.2021 has held that the unit is justified in seeking discharge of the applicant who is a permanent LMC and since a suitable sheltered appointment is no longer available. Applicant was issued a Show Cause Notice as to why he should not be discharged being a permanent LMC and the fact that no sheltered appointment was available. Being a non-battle casualty case who was willing to serve, the Commanding Officer obtained sanction of OIC Record as prescribed in Para 7 (c) of the policy letter dated 30.09.2010. In the case in hand, it has been observed

that after being placed in Low Medical Category, the applicant was admitted in Command Hospital Pune on number of occasions i.e. 08.01.2022 to 17.01.2022, 08.03.2022 to 26.04.2022 and 08.06.2022 to 08.07.2022. Discharge Sanctioning authority has mentioned in discharge order that while the individual is willing to continue in service, the sheltered appointment given earlier has been withdrawn and that suitable alternative sheltered appointment commensurate with the applicant's LMC is not available in the unit. Considering organizational interest and medical conditions of the JCO in performing his bonafide military duties in an efficient manner, JCO has been rightly discharged from service. In such cases, sheltered appointment, if available in the unit and not exceeding the sanctioned strength of the Corps, is provided to enable the individual to complete his prescribed terms of engagement of that particular rank provided the individual has to perform his duties efficiently.

16. On due consideration of the case, we find that denial of extension of service does not suffer from illegality. Learned counsel for the applicant argued that the applicant is fit to discharge his duty. Argument advanced by learned counsel for the applicant seems to be misconceived. It is for the respondents to assess who is fit and who is unfit for serving in the army. The nation wants young army and members of the Armed Forces must

be physically and mentally fit to meet out the challenges which army is likely to face during the course of discharge of duty. Any infirmity on any ground may be fatal to the collective discharge of duties by Armed Forces.

17. In view of the above, we are of the considered opinion that due procedure was adopted for discharge of the applicant with effect from 30.06.2023 which needs no interference and O.A. is liable to be dismissed.

18. Accordingly, O.A. is **dismissed** on merit.

19. No order as to costs.

20. Learned counsel for the applicant orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case, the plea is rejected.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 02June, 2023

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