

RESERVED
E-Court

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

Original Application No. 188 of 2016

Tuesday, this the 02nd day of March, 2021

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

JC-698234P Subedar Durga Singh son of late Lal Singh, resident of House No. 588A/655, Murain Kheda, Bhathia Bangla Bazar, Lucknow.

..... Applicant

Ld. Counsel for the: **Shri Manoj Kumar Singh**, Advocate
Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence, Civil Secretariat, New Delhi.
2. Chief of Army Staff, New Delhi.
3. Commandant (166 Sainik Hospital) 166 Military Hospital, C/O 56 APO.
4. Sena Chikitsa Corps Abhilekh Karyalaya, Army Medical Corps Record Office, Lucknow.

..... Respondents

Ld. Counsel for the :**Shri Yogesh Kesarwani**
Respondents Standing Central Govt Counsel.

ORDER**Per Hon'ble Mr. Justice Umesh Chandra Srivastava**

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

- "(i) Issue an order or direction in the nature of certiorari for quashing the impugned order dated 30.05.2016 passed by the opposite part No. 2 as contained in Annexure No. 1 to this O.A. and the impugned order/letter dated 17.06.2014 passed by the opposite party No. 4 as contained in Annexure in Annexure No. 2 to this O.A. may also be quashed.*
- (ii) To issue an appropriate order or directions for commanding the opposite parties to examine the petitioner by constituting another medical board and he may be allowed in service and pay him all the salary regularly by promoting the petitioner to the post of Sub-Major.*
- (iii) Issue any other order or directions which this Hon'ble Tribunal may deem fit just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.*
- (iv) To award the cost of this petition to the petitioner against the opposite parties".*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 02.01.1986. The applicant has served with different army organizations and having promoted to the rank of Sub, he was discharged from service w.e.f. 01.11.2014 (FN). In the year 2012, while posted at 166 Military Hospital, applicant has alleged that he was maltreated by Commandant and other subordinate staff on trivial issues. Applicant's wife had written a letter dated 05.06.2014 to respondent No. 2 demanding protection of her husband from alleged officials (Annexure No. 3 to O.A.).

3. Prior to initiation of Annual Confidential Report, applicant's medical board was carried out on 23.05.2014 wherein he was found to be suffering from (i) Obesity (ii) Dyslipdemia & (iii) Diabetes

Mellitus Type-II, which the applicant apprehended that the aforementioned disabilities were falsely implicated under the influence of Centre Commandant, who was always biased towards him. After having been placed in low medical category, applicant's discharge order was issued by respondents on 17.06.2014 directing applicant to retire w.e.f. 01.11.2014 (FN). Being aggrieved for issuance of discharge order, the applicant submitted statutory representation dated 19.09.2014 to respondent No. 2. Thereafter, having not received response of respondent No. 2, the applicant filed O.A. No. 216 of 2014 in this Tribunal and vide its order dated 26.02.2015, respondents have decided the representation and rejected it vide speaking and reasoned order dated 30.05.2016. Prior to discharge from service, a show cause notice was served upon the applicant on 11.07.2014 in terms of policy letter dated 21.09.1998 and applicant submitted reply on 18.07.2014. Grievance of the applicant is that he was discharged from service in low medical category on account of malafide intention on the part of the respondents thus, depriving him to complete his terms of engagements and further promotion to higher rank of Sub Maj. It is also alleged by the applicant that prior to discharge from service, his Release Medical Board was not carried out to ascertain percentage of disability and he was discharged from service based on medical board held on 23.05.2014 prior to initiation of Annual Confidential Report.

4. Learned counsel for the applicant pleaded that applicant was not suffering from any disability prior to initiation of Annual Confidential Report for the year 2014. His further submission is that the respondents, while carrying out his annual medical board, required for endorsement of confidential report, have downgraded

his medical category with ulterior motive just to prevent him to continue in service and get further promotion. His further submission is that based on medical report dated 12.09.2014 issued by Lt Col Abhishek Pathak, Graded Specialist (Medicine), show cause notice dated 18.07.2014 was issued and discharge order dated 17.06.2014 was sanctioned to be SOS w.e.f. 01.11.2014 (FN). He pleaded that applicant be medically re-examined by conducting Re-survey Medical Board afresh and he be allowed to continue in service with further promotion to higher rank of Sub Maj.

5. On the other hand, learned counsel for the respondents submitted that as per para 4 of Army Order 03/2001, annual medical examination of JCOs/Ors is conducted yearly two months prior to initiation of Annual Confidential Report. Accordingly, applicant's said medical examination was conducted on 12.05.2014 wherein he was medically found unfit for Obesity, Dyslipdemia and Diabetes Mellitus Type-II. Respondents' counsel further submitted that as per opinion of Graded Medical Specialist dated 12.09.2014, Release Medical Board (RMB) of applicant was conducted on 22.09.2014 and based on recommendations of RMB, he was discharged from service in terms of para 2 of IHQ of MoD (Army) letter No B/33513/AG/PS2(c) (i) dated 22.02.2001. Learned counsel for the respondents further submitted that the applicant was awarded punishment on 20.10.1991 under Section 39(a) of Army Act, 1950 for his misconduct while serving with Military Hospital, Secunderabad and to veil the same he has labelled allegations against the respondents. He further submitted that being 20% overweight, applicant was advised and counselled time and again to reduce his weight but he did not try to do so. Further

submission of learned counsel for the respondents is that on being placed in low medical category for aforesaid disabilities, AMC Records issued letter dated 17.06.2014 for transfer of applicant to pension establishment as applicant was serving in extended tenure and he was not eligible to serve further being not in acceptable medical category. Further contention of learned counsel for the respondents is that since applicant was discharged from service by following due procedure, no injustice has been done to him. He thus pleaded for dismissal of O.A.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. It is not disputed that applicant was enrolled on 01.02.1986 and discharged from service after completion of 28 years and 09 months of service. It is also not disputed that as per Army Order 3/2001, applicant's annual confidential report was due in the year 2014 for which medical examination was mandatory prior to initiation of confidential report. Applicant's medical examination was carried out on 23.05.2014 in which he was detected to have obesity beyond permissible limits. Applicant was reviewed by Graded Medical Specialist who has clearly mentioned in his opinion that applicant was overweight by 20% and according to respondents, frequent advice and counselling provided to applicant to reduce weight became futile. He was placed in low medical category while serving in extended tenure. Since applicant was serving in extended tenure, he was discharged from service by issuing show cause notice dated 18.07.2014 in accordance with policy of Ministry of Defence letter dated 20.09.2010, which envisages that personnel placed in low medical category shall be discharged from service within six months after issuing show cause

notice. For convenience sake, policy letter dated 20.09.2010 is reproduced as under:-

*“Addl Dte Gen Pers Services
Adjutant Generals Branch
Integrated HQs of MoD(Army)
New Delhi – 110011*

B/33098/AG/PS-2(c)

20 September 2010

**PROCEDURE AND CRITERIA FOR SCREENING OF PERSONNEL
BELOW OFFICER RANK (PBOR) FOR GRANT OF
EXTENSION OF SERVICE BY TWO YEARS**

1. *Reference Govt of India, Min of Def letter No 14(3)/98/D(AG) dated 30 May 98, No F 14(3)/98/D(AG) dated 03 Sep 1998, even number dated 18 Sep 98 and No. 14(3)/98/D(AG) dated 29 Apr 2002.*
2. *The revised terms of enhanced service/tenure and age limits for retirement in respect of PBOR were issued vide Govt of India, Min of Def letters under reference. These limits are subject to screening board.*
3. *The procedure and criteria for screening of PBOR will be regulated vide the guidelines as explained in the succeeding paragraphs.*
4. *Screening. All PBOR will be screened for extension by two years by the Screening Board to be held on Unit/Regiment/Corps/Records Office basis, as applicable to assess their suitability for extension. The procedure and criteria for screening is laid down in Appx A to this letter.*
5. *Retention of a PBOR during Extended Tenure. The retention of a PBOR during the extended tenure will be governed by the considerations as per Appx B to this letter.*
6. *Format. Format for screening is given in Appendix „C to this letter.*
7. *Applicability. The revised policy will be made applicable with effect from 01 Apr 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dtes. This HQ letter No B/33098/AG/PS-2(c) dated 21 Sep 1998 on the subject as time will stand superseded by the instructions/provisions contained in this point”.*

8. As discussed above, it is clear that the applicant was serving in extended tenure of two years after completion of his normal tenure of service. The Annual Medical Board held on 23.05.2014, prior to initiation of confidential report, had categorized the applicant in Medical Category P2 (permanent). A show cause notice dated 11.7.2014 was, thereafter issued by

the Officer Commanding Troops, which for better appreciation is quoted below in its entirety:

*"166 Military Hospital
PIN-900277
C/O 56 APO*

306/Coy/2014

11 Jul 2014

*JC-698234P Sub (Chef Hosp)
Durga Singh
166 MH, C/O 56 APO*

SHOW CAUSE NOTICE

1. *Refer to Appx 'B' to Army HQ letter dated 33098/AG/PS2 (c) dated 21 Sep 1998.*

2. *In accordance with the above policy, personnel below officers rank are granted enhancement of service for two years by screening board for enhancement beyond their normal service limit/terms of engagement on being willing to service as well as fulfilling eligibility conditions as formulated in the ibid letter. However, due to the following reasons enhancement so granted to the indl is required to be cancelled and he will be discharged from the service within a period of maximum 06 months from the affected date if:-*

- (a) Placed in low medical category (temporary) P3 (T-24) for disability (i) Obesity (ii) Dyslipdemia (iii) DM Type-II.*
- (b) Awarded red ink entry punishment or recordable censure (in case of JCOs only) during extended tenure-Not applicable.*
- (c) Earn below average report in the ACR during enhanced period-Not applicable.*

3. *Since you have been placed in PLMC/SHAPE-3 factor (temporary) on 23 May 2014, your further retention in service is not considered in the public interest.*

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4. *In view of the above, you have been found ineligible for enhancement of service. Please state why you should not be discharged from service within a period of 6 months under the provisions of Army Rules 13 as mentioned in para 2 ibid letter.*

5. *Your reply should reach the undersigned by 21 Jul 2014".*

9. It is evident from the said communication that the applicant has been issued the show cause notice to prepare himself for discharge from the Army within six months from the date of issue of the said notice, as stipulated in para 4 of the said communication asking him to show cause as to why he

should not be discharged from service for being placed in low medical category.

10. Policy letter dated 20.09.2010 has been issued laying down the procedure and criteria for screening Personnel Below the Officer Rank (PBOR) for grant of extension of service by two years, which also includes consideration of PBOR for continued retention during extended tenure in case there is drop in any criteria as stipulated in Appendix 'B' to the said policy letter. Appendix 'B' relates to the retention of the PBOR during extended tenure. It provides that such retention during extended tenure would be subject to two criteria, namely, (a) Medical standard and (b) Discipline. It requires that the individual should remain in acceptable medical category as applicable during the pre-extended tenure, i.e. S1H1A1P1E1. Para 2 of Appendix 'B', however, provides that if there is drop in any of the aforesaid two criteria at any time during the extended tenure, the PBOR will be discharged under relevant Army Rules within a period of maximum six months after serving the JCO/NCO a show cause notice.

11. Rule 13 of the Army Rules, 1954, provides that the competent authority to discharge a Junior Commissioned Officer (JCO) is the Commanding Officer or any other authority superior to it. The applicant has been discharged from service after holding of the Review Medical Board Proceeding dated 22.09.2014. Admittedly he is out of service w.e.f. 1.11.2014 as he has been discharged from service vide discharge order dated 17.06.2014.

12. Applicant has stated that he was downgraded to low medical category by foul play of medical officers to send him on discharge prior to completion of extended tenure. This seems to be not justified as his RMB is stated to have been carried out on 22.09.2014 prior to discharge from service on 01.11.2014 (FN). The RMB proceedings as stated above have not been placed on record by any of the parties.

13. Record Office Instructions No. 14 of 2014 dated 01.01.2014 issued by Officer-in-Charge Records (Annexure CA-6) stipulates that incumbents, who are placed in permanent low medical category, may be discharged from service by issuing show cause notice within six months from the date he/she is placed in permanent low medical category.

14. From the above it has emerged that applicant's annual medical board was held on 23.05.2014. He was found to be in low medical category P3 (T-24) especially in obesity (above 20%). Accordingly, discharge order was issued vide order dated 17.06.2014 and show cause notice dated 18.07.2014 was issued to applicant in terms of para 4 of the aforesaid discharge order. Prior to discharge, applicant's RMB was carried out on 22.09.2014 and he was discharged from service w.e.f. 01.11.2014 (FN).

15. The other contention of applicant is that vide medical board dated 23.05.2014 (page 51 of O.A.), his next medical board was due to be held on 11.11.2014 but before it could be held, he was discharged from service w.e.f. 01.11.2014 (FN). On this issue it is submitted that since RMB dated 22.09.2014 was conducted on applicant prior to discharge from service, therefore this RMB will prevail.

16. Thus, considering all aspects in view, we find that the medical categorization of applicant and final RMB was done as per norms without any bias or prejudice. No institutional injustice seems to have been done to applicant on this account.

17. Since all procedures have been followed correctly by the respondents, therefore, applicant's prayer for Re-survey Medical Board is not agreed to. Further, since the applicant has retired from service about one year and three months prior to his extended terms of engagement, he cannot be re-instated into service at this stage as he was discharged from service w.e.f. 01.11.2014 (FN) being in low medical category during extended tenure of service.

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

19. No order as to costs.

20. Pending applications, if any, are disposed off.

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

Dated : March, 2021
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