

E –Court No 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 103 of 2018**

Thursday, this the 3rd day of March, 2022

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

No. 15102627A Ayodhya Prasad Singh S/o Sri Ram
Lautan Singh R/o H.No. 94 Pandey Colony, P.O. & Tehsil
–Jalalpur, District- Ambedkar Nagar.

..... Applicant

Learned counsel for the : **Shri SG Singh, Advocate**
Applicant

Versus

1. Union of India through, Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated Headquarter of Ministry of Defence (Army), South Block, New Delhi- 110011
3. Senior Record Officer, OIC Records.

.....Respondents

Learned counsel for the : **Yogesh Kesarwani**
Respondents. **Central Govt. Counsel**

ORDER**“Per Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

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

- a) *Issue /Pass an order or direction of appropriate nature whereby commanding the respondents to quash / set aside the illegal discharge order passed on 28.02.2015 and reinstate the applicant with immediate effect.*
- b) *Issue/ Pass another order or direction which may deem fit and proper of the case.*
- c) *Application the application with all consequential benefits with exemplary cost.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.03.1985 and was discharged from service in the year 2003 after rendering more than 17 years of service. Thereafter, he joined Defence Security Corps (DSC) service on 07.02.2005 in the rank of Sep for terms of 10 years. He was approved for extension of 5 years of service from 07.02.2015 to 06.02.2020. Before commencement of extended period, he was diagnosed to be suffering from “**PRIMARY HYPERTENSION**” and was placed in low medical category P2 permanent. Since the applicant was not fulfilling the medical criteria laid down in ROI 03/2003, his conditionally grant of extension was cancelled

and he was discharged from service wef 28.02.2015 under the provisions of Army Rule 13 III (iii) (i) as no sheltered appointment was available. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to quash his discharge order and to allow him to join duty till completion of his terms of engagement of service.

3. Learned counsel for the applicant submitted that applicant was enrolled in DSC on 07.02.2005 for the terms of 10 years and he was granted extension of service for five years. Before commencement of extension period, he was placed in low medical category P2 (Permanent) and his extension of service was cancelled in spite of his willingness. Applicant preferred representation for extension of service but no reply was given by the respondents. Learned counsel for the applicant submitted that as per Army Order 03 of 2001 a person placed in medical category 2 or 3 (temporary or permanent) cannot be discharged from service. He submitted that a mere perusal of Para 13 clearly indicates that the individual placed in the medical category P-2 would be retained in service and he shall be given the assignment commensurate to the restrictions imposed by the Medical Board. However, this was not done in the case of the applicant and he was prematurely discharged from service

which is arbitrary and illegal and against the provisions of law. Rule 13 as amended vide SRO 22 of 2010 specifically deals with the manner of discharge of permanent low medical category personnel when no sheltered appointment is available in the Unit and the same has not been followed by the respondents while discharging the applicant from service. He placed reliance on the judgments of the Hon^{ble} Apex Court in case of ***Union of India vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, Division Bench of Punjab and Haryana High Court in case of ***Subedar Manjit Singh vs. Union of India*** in CWP No. 988/2012, decided on 19.05.2014 and AFT (RB) Chandimandir in OA No. 2360 of 2013, ***Rakesh Kumar Singh vs. Union of India***, decided on 17.04.2015 and T.A. No. 27 of 2013, ***R.K. Patel vs.. Union of India and Ors***, decided on 02.11.2017 and pleaded that applicant's case is covered with aforesaid judgments, hence, his discharge order should be quashed and applicant should be allowed to serve upto extended period of service.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was diagnosed disability "**PRIMARY HYPERTENSION**" and was downgraded to low medical category P2 (Permanent). No sheltered appointment was available in the unit, thereafter the applicant was not

recommended for retention in service as sheltered appointment was not available and the individual was recommended to be discharged from service on medical grounds under the provisions of Army HQ letter No B/10185/DSC/MP-3 dated 03 Mar 2018 for the diagnosis "**PRIMARY HYPERTENSION**" and Army Headquarters letter No A/00585/LMC/Policy/DSC-1/57 dated 20 Nov 2018. As per this policy, all DSC (GD) persons who are in permanent Low Medical Category and persons even who are placed in temporary low medical category for 'Alcohol Dependency syndrome (ADS)' will be discharged from service during contract or extension period. Now the applicant by means of instant O.A. has prayed for reinstatement in service till completion of extended period of service. Applicant was granted service pension and all his retiral dues for his services rendered in the army. While discharging the applicant, all rules and policies were followed and as per current policy applicant is not entitled to be reinstated in service. In view of the facts, Original Application is devoid of merit and lacks substance and is liable to be dismissed.

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

6. The question before us to decide is where a DSC person placed in low medical category can be retained in service?

7. In the instant case applicant was placed in low medical category. Learned counsel for the applicant has placed reliance on various case laws and Army Order 46/1980 as well as Rule 13 as amended vide SRO 22 of 2010.

8. The latest policy issued on disposal of low medical category DSC personnel has been issued vide Army Headquarters, Min of Def letter dated 03.05.2018. Relevant paras of said policy letter are as under:

1. x x x

2. *Under the provisions of delegated powers to the AG vide Ser No 4 of Appx -1 to MoD letter No 7 (50)/200-D(AG) dt 14 Aug 2001, approval is hereby accorded for revision of terms & conditions for disch of JCOs/OR in the DSc as under:-*

(a) All DSC pers will serve in DSC till the period of their contract (10 yrs for Sep/Nk and 05 years for JCOs as the case may be) however subsequent extension will be accorded only to pers who are found in SHAPE-1 on screening.

(b) Services of all perrs declared ADS (S-Cat) after obsn of two months will be terminated while serving in DSC during contract or extension pd.

(c) Permt LMC p0ers in DSc will be disch from service at any time during service in accordance with provisions of AR-13 if no sheltered appt is available.

(d) xxxxx xxxxx

9. In the instant case, we find that applicant was downgraded to low medical category P2 (permanent) and was discharged from service in view of the policy letter quoted above which states that low medical personnel even if fit for all duties shall be discharged from service. In DSC, General Duty (GD) personnel are not only detailed for the task of guarding the vital sensitive defence installations in the country which are located at various part of the country including Field and High Altitude Area but also assigned with the responsibility of static guards, searching, quick reaction team, escorting and mobile patrolling round the clock. The DSC personnel are always armed to afford a higher degree of protection, which is a challenging task compared to many other services in the Armed Forces. In today's scenario, defence installations are facing threat from the anti-national elements and DSC Personnel are the prime targets being the first line defence, as happened in the Pathankot Air Force Station attack on 02 Jan 2016, where 01 JCO and 04 jawans of DSC had laid down their lives. As such physical and medical fitness of a DSC person plays a vital role in defending vital defence installations. Since, the authorization of man power for a DSC Platoon is as per the number of posts to be guarded, there was no sheltered appointment available. Moreover, with limited man power authorized and posted, if any person of the platoon strength

becomes medically unfit to perform his charger of duties, it leads to extra burden of additional duties on other fit personnel at the cost of their authorised rest/recoup time, which causes stress and strain on those fit individuals which has an adverse effect on operational efficiency and may endanger the defence installation itself. DSC persons, being first line of defence for vital defence installations, the security of the installation is more important than personal welfare. Considering all these aspects, Integrated Headquarters of MoD (Army) has revised the policy of terms and conditions for retention of JCOs/OR in DSC and directed that all DSC (GD) persons who are in permanent low medical category will be discharged from service during contract or extension period. There being no sheltered appointment available in the unit commensurate to his disability, applicant was discharged from service after due procedure as per Army Headquarters policy letters dated 03.05.2018 and 20.11.2018 and SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. Hence, the applicant is not entitled to the relief prayed in Original Application for quashing of his discharge order and to reinstate him in service till completion of extended period of service.

10. Rules and policies quoted by the applicant have been super ceded and latest policy regarding disposal of low medical

category personnel has been issued vide Army Headquarters policy letter dated 03 May 2018 and 20 Nov 2018 as quoted above. As per these letters first condition for retention in service for low medical category personnel is that sheltered appointment commensurate to disability of the applicant should be available. Such retention of low medical category personnel should not exceed the sanctioned strength of the unit/regiment. This sheltered appointment should be justifiable in the public interest. Further while giving sheltered appointment, priority for retention in service should be given to those nearing their minimum pensionable service. Under the provisions of Army Rule 13, based on the recommendations of an Invaliding Board, the commanding officer is the competent authority to sanction discharge to those who have been found medically unfit for further retention in service. To ensure better management, this authority has been enhanced to OIC Records for sanctioning discharge of JCOs/OR who have been found medically unfit for further service for low medical category (Non- Battle Casualties- Willing to serve). Sheltered appointment shall be formally withdrawn with effect from the date of approval of discharge by the competent authority. In the instant case, applicant was discharged only on recommendation of medical board. Though, the applicant was declared fit for all duties but as per policy, low

medical category personnel in DSC shall be discharged from service, hence, the applicant is not entitled for reinstatement in service as claimed. The case laws as well as policy letters quoted by the applicant have been super ceded.

11. We, therefore do not find any merit in the application to interfere with the impugned discharge order dated 28.02.2015 passed by the respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**.

12. Accordingly, Original Application is **dismissed**.

13. No order as to cost.

14. Pending applications, if any, stand disposed off.

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

Dated: 03 March, 2022

Ukt/-