

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 51 of 2017

Friday, this the 11th day of March, 2022

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

Rajeshwar Ram
S/o Late Ram Janam Ram
R/o Village – Dhamar, PS – Ara (Muffasil),
District – Bhojpur (Ara)
At present posted at 56 Infantry Division Signal Regiment,
C/o 99 APO – Zakhama, Nagaland

.... **Petitioner**

Ld. Counsel for the Petitioner : **Shri Om Prakash**, Advocate

Versus

1. Union of India, through the Director General of Medical Services, New Delhi.
2. Signal Records Officer, Jabalpur.
3. Commanding Officer, 56 infantry Division, Signal Regiment, 56 A.P.O.
4. Commandant I.S.T.C.

... **Respondents**

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

ORDER

1. The petitioner, being aggrieved with discharge from service during extension period, preferred C.W.J.C. No. 6183 of 2011 before the Hon'ble High Court of Judicature at Patna, which has been transferred to this Tribunal and has been registered as T.A.

No. 51 of 2017. By means of this T.A. petitioner has prayed for the following :-

“It is, therefore prayed that your lordships may graciously be pleased to admit this application, issue notice to the respondents, call for the records and after hearing the parties be further pleased to set aside the order dated 02.02.2011 issued under the signature of respondent no. 3 as contained in annexure-4 to this writ application treating the petitioner in continuous service from the date the impugned order is issued with all legal and consequential benefits for the ends of justice and equality. And/or,

Pass such other order or orders as your lordships may deem fit and proper in the facts and circumstances of this case.

AND

Pending disposal of this application be further pleased to stay the further proceeding of order dated 02.02.2011 as contained in Annexure-4 to this writ application.”

2. Brief facts, as borne out from the Transferred Application is that the petitioner was enrolled in the Army on 31.03.1986 and was discharged from service with effect from 31.07.2011 (AN) in low medical category P2 (Permanent) during the extension period after rendering more than 24 years of service. A Show Cause Notice dated 01.02.2011 was issued by 96 Infantry Division Signal Regiment to the petitioner and without waiting for the reply to the Show Cause Notice and without properly considering the recommendation of the Medical Board, the petitioner has been discharged from service vide impugned order dated 02.02.2011. Being aggrieved with the

procedure/illegal discharge from service during extension period, the petitioner has filed the instant Original Application.

3. Learned counsel for the petitioner submitted that petitioner was enrolled in the Army on 31.03.1986 and was discharged from service with effect from 31.07.2011 (AN) in low medical category P2 (Permanent) during the extension period after rendering more than 24 years of service. A Show Cause Notice dated 01.02.2011 was issued by 96 Infantry Division Signal Regiment to the petitioner and without waiting for the reply to the Show Cause Notice and without properly considering the recommendation of the Medical Board, the petitioner has been discharged from service vide impugned order dated 02.02.2011 which is contrary to the principles of natural justice and as much as the Medical Board has not found the petitioner unfit to discharge the official duty. Therefore, impugned order dated 02.02.2011 is wholly arbitrary, illegal and contrary to the principle of nature justice and Articles 14, 16 and 21 of the Constitution of India, hence, it is liable to be quashed.

4. Learned counsel for the petitioner further submitted that petitioner has been discharged from service during extension period on the basis of IHQ of MOD (Army) policy letter dated 21.09.1998 whereas this policy has been superseded vide policy dated 20.09.2010 which was made effective w.e.f. 01.04.2011, therefore, petitioner's case of discharge during extension period in low medical category P2 (Permanent) does not come under the policy letter dated 21.09.1998. The petitioner was discharged from service w.e.f. 31.07.2011 whereas new policy letter dated 20.09.2010 was effective

w.e.f. 01.04.2011 and according to this policy, personnel placed in medical category 'BEE' will also be eligible for extension of service which will include both temporary and permanent low medical categories irrespective of whether or not the disease, sickness or injury is attributable/not attributable to or aggravated by service conditions. The petitioner was granted two years extension of service from 31.03.2010 to 30.03.2012 by the Screening Board, therefore, petitioner's discharge from service during extension period w.e.f. 31.07.2011 should be governed by new policy dated 20.09.2010 which was effective w.e.f. 01.04.2011 and not by the previous policy letter dated 21.09.1998 which has been superseded by new policy letter dated 20.09.2010. Hence, the petitioner is entitled for reinstatement in service from the date the impugned order is issued with all legal and consequential benefits.

5. Learned counsel for the respondents submitted that petitioner being a Havildar is eligible to service upto 24 years of service or 47 years of age limit, whichever is earlier. Further 2 years of service may be extended subject to fulfilling of certain conditions and medical criteria as per Appendix 'B' to IHQ of MoD (Army) letter dated 21.09.1998 (previous policy letter). The petitioner had completed 24 years of service on 30.03.2010 and was found eligible for further two years extension of service from 31.03.2010 to 30.03.2012 by the Screening Board held on 30.04.2008. During the extension period, the petitioner was downgraded to low medical category P2 (Permanent) w.e.f. 01.01.2011. As per existing policy (i.e. vide letter dated 21.09.1998), the petitioner is ineligible to serve for the

enhanced period of service, therefore, a recommendation for his discharge was issued under Army Rule 13 (3) III (i) and as per Para 1 (i) and 2 of Appendix 'B' to policy letter dated 21.09.1998.

6. Learned counsel for the respondents further submitted that letter dated 02.02.2011 (Transfer to Pension) is not a final order rather an exercise undertaken to enable the respondents to pay the pension. The petitioner submitted his reply to Show Cause Notice on 08.02.2011 which was not found satisfactory by the competent authority. The order of discharge was issued under relevant Army Rules granting a period of minimum six months after serving a 'Show Cause Notice' which is basically meant for discharge drill and preparation of pension papers.

7. Learned counsel for the respondents also submitted that revised policy letter dated 20.09.2010 was issued which was effective w.e.f. 01.04.2011 by which personnel placed in medical category 'BEE' were also eligible for extension of service which includes both temporary and permanent low medical categories. Since, the petitioner was downgraded to low medical category in P2 (P) during extension period and letter dated 02.02.2011 for transfer to pension establishment with due date of discharge from service on 31.07.2011 (AN) was issued before the effective date of 01.04.2011 of revised policy, petitioner's case cannot be treated to fall under revised policy letter dated 20.09.2010 which was effective w.e.f. 01.04.2011. The petitioner has been discharged from service in low medical category P2 (P) during extension period correctly as per rules and policy letter dated 21.09.1998 which was applicable at the time of issue of

discharge order dated 02.02.2011. Hence, the petitioner is not entitled for the reliefs claimed in the petition.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. In the instant case, we find that though the petitioner's extension for two years service in the rank of Havildar was granted for the period from 31.03.2010 to 30.03.2012 vide Screening Board dated 30.04.2008 but on being placed in low medical category P2 (Permanent), petitioner's balance enhanced period of service was cancelled and he was recommended to be discharged from service in low medical category as per Army Rule 13 and IHQ of MoD (Army) policy letter dated 21.09.1998 vide order dated 02.02.2011. Hence, the petitioner does not seem to be entitled to the benefit of revised policy dated 20.09.2010, which became effective w.e.f. 01.04.2011 only.

10. We also find that petitioner was discharged from service in low medical category P2 (Permanent) during the extension period. Though, the petitioner was actually discharged from service w.e.f. 31.07.2011 and though the revised policy dated 20.09.2010 issued by the Govt. became effective w.e.f. 01.04.2011, but the discharge order was dated 02.02.2011, i.e. minimum six months before actual date of discharge from service to allow for preparation of pension papers/discharge drill as per procedure being followed by the Record Offices. Therefore, the petitioner's case cannot be said to be covered

by policy letter dated 20.09.2010 which became effective only on 01.04.2011.

11. In view of the above, we do not find any irregularity or illegality neither in discharging the petitioner from service w.e.f. 31.07.2011 nor in effectiveness/applicability of policy letter dated 21.09.1998. Since, the order of discharge dated 02.02.2011 was issued before the date of effectiveness (01.04.2011) of revised policy letter, the discharge of the petitioner is procedurally correct as per policy dated 21.09.1998 and there is no violation of the principle of natural justice. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Applications, if any, shall be treated to have been disposed of.

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

Member (A)

Member (J)

Dated: March, 2022

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