

**BEFORE THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW.**

Court No - 3

ORIGINAL APPLICATION NO. 216 of 2012

Thursday, this the 27th August, 2015

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

Ex Sep . 4574495’N’ Arvind Singh
Son of Sri Rajender Singh
Resident of village : Bishunpura Post Office: Jamalpur
Tehsil : Chunar District: Mirzapur

.....Applicant

Ld. Counsel for the : Shri V. P. Pandey
Applicant

Versus

1. The Union of India Through the,
Secretary, Ministry of Defence
New Delhi
2. Chief of the Army Staff, Integrated Head Quarters
Ministry of Defence South Block New Delhi
3. Officer Incharge, Mahar Regiment Abhilekh Karyalaya
Records The Mahar Regiment PIN 900127 c/o 56 APO
4. Commanding Officer, 13 MAHAR PIN 911513 C/O 56 APO

Ld. Counsel for the : Lt Col Subodh Verma, Departmental
Respondents Representative for the Respondents

....Respondents

ORDER**(PASSED IN COURT)**

1. This Original Application has been filed under section 14 of the Armed Forces Tribunal Act, 2007, whereby the Applicant has sought following reliefs:-

(i) To issue order or direction to Respondent No 3 to quash the discharge order dated 21st Sept, 2011 and discharge order dated 31st March 2012 as contained in Annexure No A-1 and A-2 to this original Application.

(ii) To issue order or direction to Respondent No 3 and 4 to reconsider the case of the applicant for retention in service.

(iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the application be awarded to the applicant.

2. Heard Ld. Counsels for the parties on admission.

3. It is a fit case for adjudication hence admitted.

4. With the consent of Ld. Counsels for both the parties, we decide the Original Application at this stage.

5. The applicant was enrolled in the Army on 03.01.2002. The instant Original Application has been preferred by the applicant being aggrieved by the discharge order passed on account of being placed under Low Medical Category P3 (Permanent) for PROLAPSED INTER VERTE BRAL DISC L4-L5 (OPTD). He was discharged from service on 31.03.20012 and has completed 10 years and 28 days of service. Medical Board has opined that his disability is attributable

service conditions and has assessed his disability of 20% for life. The impugned order of discharge dated 21.09.2011 has been filed as Annexure A-1 to the Original Application. It is not disputed that disability is 20% for life.

6. Submission of the Ld. Counsel for the Applicant is that the applicant submitted his willingness to serve in the sheltered appointment till completion of terms of engagement as per rule laid down in AO 13/77. As per provision of Army Order 03 of 2001, person may be given shelter appointment which do not involve stress and strain and should be retained in service till completion of his mandatory service for pension. Instead of giving sheltered appointment, Respondents have discharged the applicant from service which accordingly to applicant violate Army Order 03 of 2001.

7. On the other hand, Ld. Counsel for the Respondents submitted that since the applicant could not recovered from disease after a prolonged treatment, he was placed in Low Medical Category for disability PIVDL4L5 (OPTD) M.51) hence was not entitled to continue in service and was discharged under Army Rule 13 (3) III (a). Employment of permanent low medical category person is subject of availability of suitable alternate sheltered appointment commensurate with his medical category and the retention will not exceed the sanctioned strength of the Regiment. When sheltered appointment is not available or when retention is either not considered necessary in the interest of the service or it exceeds the sanctioned strength of the Regiment, or candidate is placed to low medical category, the candidate will be discharged irrespective of the service put in by them. The disease from which the applicant was suffering does not make the applicant fit even for sheltered appointment. In view of the legal position the Respondents have rightly discharged the applicant from service.

8. It is not disputed that the applicant suffers from aforesaid disease during army service and the same has aggravated because of military service conditions. It is also not disputed that his disease aggravated due to service and he was sanctioned 20% disability for life. Relevant portion of Impugned order of discharge is reproduced as under:-

Ser No	Army No Rank & Name	Med cat & date	Unit
(a) To
(b)			
(c)	4574495N Sep Arvind Singh	P3 (P) 08 May 2011	13 MAHAR
(d)

9. From perusal of material on record, it appears that the applicant has been suffering from disability "PROLAPSED INTER VERTEBRAL DISC L4-L5 (OPTD)". Since he could not recovered from disease, he was discharged from service. The applicant seems to suffered from disability because of army service hence he seems to be entitled for disability pension which may be looked into by the competent authority.

10. Since the applicant is suffering from disability, the rejection of his candidature for sheltered appointment seems to be correct. However, disability being out come of army service and followed by aggravation, there seems to be entitlement for disability pension.

11. Accordingly we mould the relief and permit the applicant to represent his case for disability pension before the appropriate authority within a period of one month. In case such representation is submitted, the respondents shall consider the representation for payment of disability pension in accordance with the rules expeditiously say within a period of three months from the date of receive of representation alongwith certified copy of this order.

12. Original Application is disposed of accordingly.

There is no order as to cost.

(Air Marshal Anil Chopra)
Member (A)
ukt/-

(Justice D.P Singh)
Member (J)