

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

O.A. No. 532 of 2012

This Monday the 5th day of October 2015

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Ram Deo son of Shri Dewta Deen, resident of
village Derwa Haribanspur, post Office Shiv Daha,
District Bahraich

.....Applicant

Ld. Counsel for **Shri R. Chaubey, Advocate**
for applicant

Versus

1. Union of India through its Secretary Ministry
Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter
of the Ministry of Defence (Army), South Block,
New Delhi-110011
3. Engineer-in-Chief, Integrated Headquarter of
Ministry of Defence (Army), Kashmir House,
Rajaji Marg, New Delhi-110011
4. Commandant and Officer-in-Charge Records,
Bengal Engineer Group and Centre, Roorkee,
PIN-908779, c/o 56 APO
5. Commanding Officer 55 Engineer Regiment,
c/o 56 APO

.....Respondent

By Legal Practitioner **Shri Dileep Singh**
Ld. counsel for the
respondents, assisted by
OIC, Legal Cell

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the record. With the consent of Ld. Counsel for the parties, we proceed to dispose of this O.A. at this stage.

2. The applicant, who was enrolled in the Army on 24.10.1986 as Sapper, has approached this Tribunal on account of impugned order of discharge based on low medical category. According to the applicant, the order was passed on unfounded facts.

3. Submission of Ld. Counsel for the applicant is that the applicant while serving in the army has discharged his duties to the entire satisfaction of the superiors. On 16.07.2011 during course of training on account of chest pain he was admitted in Military Hospital on 16.07.2011 and was discharged on 26.07.2011. The doctor in the Military Hospital placed him in medical category S1 H1 A1 P3 (24) on account of CORONARY ARTERY DISEASE. He was reviewed in March, 2012 at BHDC 2DECO and was upgraded to LMC P2 (T-24) and again reported to 179 Military Hospital for review. In the medical review conducted by Medical Specialist, all routine hematological and biochemical profile was found normal. ECG and X-ray was WNL and he was put in low medical category P-2 (Permanent). According to Ld. Counsel for the applicant, the applicant was placed in P-2 category without following provisions of Section 15 A (2) of the Army Rules, 1954. He was neither given any written

notice indicating the reasons for discharge on medical ground nor was he provided any information of the decision of the Medical Board.

4. Further submission of learned counsel for the applicant is that vide release order of Record Officer dated Sep 2012, the applicant was transferred to Pension Establishment with effect from 31.10.2012. In pursuance to the release order, he reported for Review Medical Board on 28.09.2012. He was admitted and later on transferred to CH (EC) for Cardiologist Consultant, Medicine and Cardiology and was upgraded to SHAPE-1. Submission of learned counsel for the applicant is that since the earlier examination was not based on proper medical check-up. It has further been submitted by Ld. Counsel for the applicant that release on the ground of low medical category P-2 is based on unfounded grounds and opinion given by Cardiologist Expert on 10.10.2012 should be given primacy over the opinion given by person who has no expertise. The applicant was given extension of service for two years from 24.10.2012 to 23.10.2014 and his medical category was upgraded to SHAPE-1. It is submitted that the applicant did not suffer from any physical problem and the opinion given as SHAPE-2 is not supported by any expert opinion.

5. Though ordinarily it is not for the Tribunal to interfere with the opinion of the release medical board or the Doctors, but in the present case, it appears that some error has been committed by the respondents for reevaluating the applicant for the purpose

of discharge. Opinion of the Cardiologist, which has been endorsed in the Hospital Discharge Slip is reproduced as under:

“However his release order was issued by his record vide BEG letter No 11909/PLML/Vol 01/CA3 dated Sep 2012 (Xerox attached) stating that he is to be tfr to pension est wef 31 Oct 2012. Consequent to release order he reported for RMB to this hospital on 28 Sep 2012. He was admitted and later transferred to CH (EC) for opinion of Cardiologist Consultant Medicine and Cardiology CH(EC) endorsed opinion on 10 Oct 2012 and upgraded him to SHAPE-I.

However as per Para ‘13’ of Appendix ‘C’ to AO 3/2001 his release medical category can not be changed as he is in LMC P2 (Perm) (Xerox attached). The above mentioned AO infers that the individual be released in existing perm. Low med category. Case is once again transferred to CH (EC) for reconciling of opinion of Cardiologist”.

6. The aforesaid opinion of the Cardiologist shows that he was found the applicant in SHAPE-1 category, but because of earlier opinion expressed by the release medical Board, he reaffirmed the earlier low medical category P-2. We are of the view that the medical opinion should be independent one and should not be frustrated by any technicality. If the applicant’s medical category was SHAPE-1, then decision with regard to continuance in army service should have been taken.

7. Attention has been further invited by Ld. Counsel for the applicant to the medical board proceedings dated 10.10.2012 which is attached with the O.A. which shows that the applicant has been placed under SHAPE-1 category.

8. In view of the above, there appears no room of doubt that while assigning medical status to the applicant, the respondents have committed some mistake while taking final decision for the purpose of discharge.

9. The respondents should have taken into account the opinion of the Cardiologist, which according to applicant's counsel, had done thorough diagnosis of the applicant's disease. It is submitted that earlier opinion given by doctor was given without any check-up by required machines like T.M.T and Eco Cardiogram etc.

10. In case allegations of the applicant are correct, it is unethical and unjust on the part of the respondents while taking a decision for discharge of applicant from army.

11. Otherwise also, in case the applicant was discharged on account of low medical category, then simultaneously decision should have been taken in accordance with Army Headquarter Circular dated 30.09.2010 which contains detailed procedure where army personnel is discharged in low medical category, then he should be given Sheltered Appointment. The Circular further provides that the Delhi High Court in its Judgment dated 20.11.2008 in the case of **Sub (SKT) Puttan Lal vs. Union of India and others** held that low medical category personnel in

SHAPE-5 only be discharged from service on the recommendation of invalidating medical board. In compliance of said Circular, admittedly, there appears major lapse on the part of the respondents by not taking any decision with regard to Shelter Appointment in terms of Delhi High Court decision.

12. In view of the above, we allow the O.A. and set aside the impugned order dated 03.09.2012 and direct the respondents to convene a fresh release medical board consisting of experts in different fields and shall take fresh decision whether the applicant is to be continued with the army or not, keeping in view the medical opinion prepared after thorough check-up by medical gadgets. Let decision be taken expeditiously, say, within two months from the date of presentation of a certified copy of this order. Applicant's continuance in army shall be subject to decision of fresh medical board. If aggrieved by the decision so taken, the applicant may approach this Tribunal again.

13. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)