

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

**ORIGINAL APPLICATION No. 285 of 2019**

Wednesday this the 13<sup>th</sup> Day of October, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Rakesh Singh (JC-479730X Ex Subedar), S/o Shri Gitam Singh,  
Resident of Village- Khiriya Pipar, Post – Lakhowara, District-  
Mainpuri-205265(UP).

..... Applicant

Ld. Counsel for the : **Shri R Chandra, Advocate.**  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence,  
Government of India, New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ Post Office,  
New Delhi-110011.
3. Officer–In-Charge Records, The Rajput Regiment, Pin  
900427, C/o 56 APO.
4. The Commanding Officer, 25 Battalion, The Rajput Regiment,  
Pin -912125, C/o 56 APO

.....Respondents

Ld. Counsel for the  
Respondents.

**Shri Amit Jaiswal,  
Central Govt. Counsel**

## ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

(i). The Hon’ble Tribunal may be pleased to quash the letter dated 30/09/2010 issued by respondent No. 1 ( Annexure –A/1) so far it directs to deprive LMC ( Permanent of sheltered appointment, order of discharge dated 30/08/2013 ( Annexure –A/2) and order dated 26/09/2017 ( Annexure No A-3) issued by respondent No.3.

(ii) The Hon’ble Tribunal be pleased to direct the respondents to reinstate the applicant in service with all consequential benefits.

(iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 27.09.1992. He was downgraded to Low Medical Category in the year 2008. He was granted sheltered appointment from time to time and finally he was discharged from service on 01.02.2014 due to onset of disease “**BRONCHIAL ASTHMA**”. Applicant filed petition in this Tribunal in July 2016 which was disposed of with the directions to the

respondents to furnish the copy of discharge order to the applicant with liberty to applicant to approach appropriate Forum. Applicant represented his case for reinstatement in service being Low Medical Category P2 (Permanent) which was denied. Being aggrieved applicant has filed instant Original Application for reinstatement him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the army on 27.09.1992. In due course of time he was promoted to the rank of Nb Sub and Sub. Applicant was downgraded to low medical category P2 (Permanent) on 28.07.2008 for the disease “**BRONCHIAL ASTHMA**”. Subsequently applicant underwent various medical boards from time to time and was placed in Low Medical Category P2 (Permanent). Applicant was provided sheltered appointment and was retained in service in public interest from 28.06.2009 to 27.06.2013. He was willing to serve in the army but Commanding Officer 25 Rajput exercised his power under Army Headquarters letter dated 30 September 2010 and withdrawn the sheltered appointment and passed impugned order dated 30.08.2013 to discharge the applicant from service with wef 01.02.2014 under Army Rule 13 (3) 1 (ii) a (i) of Army Rules, 1954. Commanding officer 25 Rajput withdrawn sheltered appointment without issuance of show cause notice.

4. Learned counsel for the applicant further submitted that as per provisions of Para 163 of the Regulations for the Army, 1987, a Subedar is entitled to serve up to 28 years of colour service which is extendable by further two years under the policy issued by the Ministry of Defence, Govt of India dated 03 September 1998 read with Army Headquarters letter dated 22 September 1998. Thus, a Subedar can serve up to 30 years of colour service but in the instant case service of the applicant was curtailed by 6 years. Physical standards for categorization of serving JCO's / Ors are provided in Appendix C to Army Order 1/2001 wherein it has been mentioned that an individual will be placed in medical category-2 who has only a moderate degree of disability which does not interfere with the performance of normal work and whose functional capacity assessed under the 5 factors confirm to the standard given in column- 1 of the table given in the Army Rule. In said Army Order, it is further provided that persons who are considered permanently unfit for further military service under any of the Shape Factor will be placed medical category-5. Thus it is seen from the Army Order 1/2001 that a person in medical category-2 permanent has only a moderate degree of disability and he is able to perform the normal duties with minor restriction. Learned counsel for the applicant submitted that since the applicant was in the medical category P2 (Permanent) and

was not declared medically unfit by any medical authority, he cannot be discharged from service on medical grounds. In addition, prior to discharge from service, no opportunity of hearing was provided to the applicant, hence impugned discharge order has been passed in utter disregard of the Rules on the subject. Learned counsel for the applicant prayed to direct the respondents to reinstate the applicant in service with all consequential benefits.

5. On the other hand, learned counsel for the respondents submitted that applicant was downgraded to low medical category P2 wef 28.07.2008. He was provided sheltered appointment and was retained in service in public interest against alternative appointment from 28 June 2009 to 27 June 2013. Further retention of the applicant was not found suitable in the public interest and therefore, he was discharged from service on medical grounds. Before release from service applicant was brought before Release medical Board on 07.10.2013. His disease was conceded as aggravated by military service. Applicant is getting 50% disability pension vide PPO dated 26.08.2014 in addition to service pension. Applicant filed representation for copy of discharge order and Release Medical Board. The same was provided to him vide letter dated 08 May 2016. Now the applicant has filed instant O.A. with the prayer to reinstate him in service.

6. Learned counsel for the respondents further submitted that the JCO was not performing his duties efficiently and as a result his sheltered appointment was withdrawn being not in public interest. He prayed that instant Original Applicant lacks substance and is liable to be dismissed.

7. We have heard learned counsel for the parties and perused the documents available on record.

8. The question before us for consideration is whether applicant can be reinstated in service or not?

9. In the instant case, it is not disputed that the applicant was placed under low medical category at the time of discharge. As per policy the PBOR placed in low medical category should be physically fit related to job content depending on trade or category. The term "Retention" due to medical category (Sheltered Appointment) is applicable in the cases where the individual is downgraded to permanent low medical category before completion of his terms of engagement of the rank being held at the time of downgraded to low medical category. In such cases, sheltered appointment, if available in the unit and not exceeding the sanctioned strength of the Corps, is provided to enable the individual to complete his prescribed terms of engagement of that particular rank provided the individual has to

perform his duties efficiently. In the instant case, the applicant was initially downgraded to permanent low medical category with effect from 28.06.2009 and was granted sheltered appointment twice i.e. for four years till the time he performed his duties in an efficient manner and he was not recommended for further retention in service with effect from 28.03.2013 since he was not performing his duties efficiently.

10. In order to maintain the operational capabilities/effectiveness of the unit, a substantive number of medically fit personnel is required. Physical fitness is necessary to enable a person to discharge his duty. Opinion of the Commanding Officer is based on opinion of the medical board, hence does not suffer from any illegality and arbitrariness. In case the Commanding Officer would have taken independent decision then the applicant may have a case for consideration.

11. On due consideration of the case, we find that denial of extension of service does not suffer from illegality. Learned counsel for the applicant argued that the applicant is fit to discharge his duty. Argument advanced by learned counsel for the applicant seems to be misconceived. It is for the respondents to assess who is fit and who is unfit for serving in the army keeping in view the opinion of the medical board. The nation wants young army and members of the Armed

Forces must be physically and mentally fit to meet out the challenges which army is likely to face during the course of discharge of duty. Any infirmity on any ground may be fatal to the collective discharge of duties by Armed Forces. Army cannot be a dumping ground of old persons and infirms and low medical categories to keep on working in spite of physical ailment. Original Application is bereft of any merit qua the relief for reinstatement into service is hereby rejected.

12. Resultantly, the O.A. is **dismissed**.
13. No order as to costs.
14. Pending applications, if any, stand disposed off.

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

Dated: 13 October, 2021  
Ukt/-