

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No - 1****ORIGINAL APPLICATION No. 324 of 2020****Thursday, this the 28th Day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 13960827-W Ex –L/NK, Madhu Mishra S/o Laxmi Prasad Mishra R/o Vill Vidhya Nagar, Po- Nilmatha, Tehsil & District-Lucknow.

..... Applicant

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate.**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi -110011.
2. Chief of the Army Staff, Army Headquarter Ministry of Defence, Government of India , South Block New Delhi - 110011.
3. Senior Record Officer, Defence Security Corps Records, Mill Road, Buenachery, Post -Kannur (Kerala) Pin 670013.
4. The Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava,**
Respondents. **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). To set aside of Discharge order dated 24.09.2019 being in violation of Rule 13 III(iii)(a)(i) of Army rule 1954 and in violation of Law laid down by various AFT.

(II). To and reinstate him in service immediately and pay regular salary till his engagement of service i.e 28.09.2021.

(III). To pay arrears of salary along with 12% interest W.e.f. 28.09.2021 till it is actually paid.

(IV). Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.

2. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.

3. Brief facts of the case are that the applicant was initially enrolled in the Indian Army on 29.11.1984 and was discharged from service on 30.11.2010 (AN) after rendering more than 26 years of service for which he was granted service pension for life. Thereafter, applicant was enrolled in DSC on 29.09.2011 for 10 years upto 28.09.2011 and did not opt to count his former service towards DSC service. During the service of initial terms of

engagement for 10 years, applicant was placed in permanent low medical category P2 (Permanent) for two years w.e.f. 03.10.2018 for the diagnosis “**PRIMARY HYPERTENSION (OLD)**”. As per policy laid down vide Army Headquarters letter dated 03.05.2018 and letter dated 20.11.2018, 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 in accordance with the statutory provision of Army Rule 13 (3) III (iii) (a) (i), issued vide Gazette Notification SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. The applicant being in low medical category was issued a Show Cause Notice dated 01.04.2019 by OC/CO Unit DSC of 10 Wing Air Force to show cause as to why he should not be discharged from service being placed in permanent low medical category. The reply given by the applicant was not considered a sufficient ground by the competent authority for his retention in service, a reasoned speaking order was issued to him by the Commanding Officer elaborating his ineligibility for further retention in service due to non availability of sheltered appointment. Thereafter, his discharge order dated 24.09.2019 was issued by which, the applicant was to be discharged from service as on 31.10.2019. Before discharge, applicant was sent for RMB at 5

Air Force Hospital, Jorhat, Assam on 09.10.2019 where his Release Medical Board was held. There being no sheltered appointment available in the unit, applicant was discharged from service w.e.f. 31.10.2019. 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 initial terms of engagement of service i.e. up to 28.09.2021.

4. Learned counsel for the applicant submitted that applicant has been discharged from service illegally and arbitrarily. 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 join duty till completion of his terms of engagement i.e. up to 28.09.2021.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in DSC for an initial terms of engagement of 10 years service. During the initial terms of engagement, applicant was placed in permanent low medical category P2 (Permanent) w.e.f. 03.10.2018 for the diagnosis "**PRIMARY HYPERTENSION (OLD)**". As per policy laid down vide Army Headquarters letter dated 03.05.2018 and letter dated 20.11.2018, 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 in accordance with the statutory provision of Army Rule 13 (3) III (iii) (a) (i), issued vide Gazette Notification SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC. There being no sheltered appointment available in the unit commensurate to his disabilities, he was discharged from service. He pleaded that O.A. may be dismissed.

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

7. The question before us to decide is whether a DSC person placed in low medical category but fit for all duties can be retained in service?

8. In the instant case applicant was placed in low medical category but was found fit for all duties in DSC. 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.

9. 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

10. 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 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 which included 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 ante-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 the 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 gets

medically unfit to perform his charger of duties, it leads to extra burden of performance additional duties by other fit personnel on 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 the 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 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 was available in DSC. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to join duty till completion of his initial terms of engagement of service.

11. 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 conditions 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 to retain 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.

12. We, therefore do not find any merit in the application to interfere with the impugned discharge order dated 24.09.2019 passed by the respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**.

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

14. No order as to cost.

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

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

Dated: 28 October, 2021

Ukt/-