

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 579 of 2019**Monday, this the 11th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 1492101F Sep/GD Jiut Prasad
294 'B' DSC Plt.
Attached to HQ Central Command, Lucknow**.... Applicant**Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ PO, New Delhi – 110011.
2. The Chief of Army Staff, IHQ of MoD (Army), New Delhi – 110011.
3. The Officer in Charge, Records DSC Centre, Cannanoor.
4. The Commanding Officer 294 'B' DSC PI Attached to HQ Central Command, C/o 56 APO.

... RespondentsLd. Counsel for the Respondents : **Shri R.C. Shukla**,
Central Govt Counsel**ORDER (Oral)**

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

- “(a) Issue/pass an order or directions of appropriate nature, quashing the DSC Records letter No. CA-1/1612/LMC/DO/Ser-198/2019 dated 24.08.2019

(Annexure No. A-1) and applicant be reinstated into service alongwith the all service and monetary benefits.

- (b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.
- (c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (d) Allow this application with costs.”

2. Brief facts of the case are that the applicant was initially enrolled in the Indian Army on 01.06.1994 and was discharged from service on 31.10.2011 (AN) after rendering more than 17 years of service for which he was granted service pension for life. Thereafter, applicant was enrolled in DSC on 29.01.2014 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 low medical category S3 (Temporary) w.e.f. 07.07.2018 and thereafter in low medical category S3 (T-24) w.e.f. 08.01.2019 and S2 (T-24) w.e.f. 01.07.2019 for the diagnosis (i) '**Alcohol Dependency Syndrome**' and (ii) '**Primary Hypertension**' respectively. As per policy laid down in AG's Branch, Army HQ letter dated 03.05.2018 and IHQ of MOD (Army) letter dated 20.11.2018 by which 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**' will be discharged from service during contract or extension period, in accordance with provisions of Army Rule 13 (3)

III (iii) (a) (i) 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 in presence of two witnesses vide 204 B DSC Platoon letter dated 08.05.2019 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 dated 13.05.2019 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 dated 18.06.2019 elaborating his ineligibility for further retention in service due to non availability of sheltered appointment. Thereafter, his discharged order notifying the date of discharge as 30.11.2019 (AN) dated 27.07.2019 was issued vide DSC Records letter dated 24.08.2019. There being no sheltered appointment available in the unit, applicant was discharged from service w.e.f. 30.11.2019 (AN). 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.

3. Learned counsel for the applicant submitted that applicant was re-enrolled into DSC on 29.01.2014 in medical category SHAPE-1 for a period of 10 years. The applicant being in low medical category was issued a vague show cause notice dated 08.05.2019 with a predetermined and capricious approach to be considered for discharge due to non performance of charter of duties and further

there is no sheltered appointment available in DSC. The applicant has been discharged from service for disability 'Alcohol Dependency Syndrome' and 'Primary Hypertension' without assessing the disablement and re-categorisation of medical category of the applicant. The act of respondents to discharge the applicant without complying their own set of principle as reflected in medical board proceedings shows the arbitrariness and malafide and capricious approach which is totally illegal and the same cannot be validated in the eyes of law. The applicant has also not been served with discharge certificate which is mandatory requirement as per Section 23 of Army Act, 1950.

4. Learned counsel for the applicant further submitted that other similarly situated personnel of DSC has approached against the illegal discharge from service in other Benches of AFT and the same has been stayed including AFT (PB), New Delhi order dated 11.09.2019 in OA No. 1399 of 2019, **Nk Nanak Chand vs. Union of India and others**. Hence, applicant's discharge order should be quashed and applicant be reinstated into service alongwith all service and monetary benefits.

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 low medical category S3 (Temporary) w.e.f. 07.07.2018 and thereafter in low medical category S3 (T-24) w.e.f. 08.01.2019

and S2 (T-24) w.e.f. 01.07.2019 for the diagnosis (i) '**Alcohol Dependency Syndrome**' and (ii) '**Primary Hypertension**' respectively. 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 commensurating 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. We find that applicant was downgraded to low medical category low medical category S3 (T-24) w.e.f. 08.01.2019 and S2 (T-24) w.e.f. 01.07.2019 for the diagnosis (i) '**Alcohol Dependency Syndrome**' and (ii) '**Primary Hypertension**' respectively. In DSC, General Duty (GD) personnel are meant for sentry/guard duties and there being no sheltered appointment available for a GD soldiers except a sentry/guard duties, low medical category personnel may not be provided any other type of duties/sheltered appointment, therefore, respondents have rightly taken the decision to discharge the applicant

in low medical category as per policy on the subject. There being no sheltered appointment available in the unit commensurating to his disabilities, 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 is available in DSC. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

8. It is pertinent to mention that AFT (PB), New Delhi order dated 11.09.2019 relied upon by the applicant is not relevant in the present case as it was stayed because legal Cell was not in position to assist the court due to short of instructions.

9. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

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

Dated: 11th October, 2021

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