

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 437 of 2020**Tuesday, this the 26th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Lalan Ji Mishra (No.14594821-K Ex Sepoy) S/o Late Jagnath Mishra, Resident of Village – Sonwani, Post- Sonwani District-Ballia-277402 (U.P.).

..... 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-110011.
2. Chief of the Army Staff, Army Headquarters DHQ Post office New Delhi-110011.
3. The Officer- In-Charge, EME Records PIN -900453 C/o 56 APO.
4. The Commanding Officer, 73 Armed Wksp (631 EME Bn) Pin-9066316 C/o 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.**Dr. Shailendra Sharma Atal**,
Central Govt. Standing Counsel

ORDER

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 summon the discharge order No. 1530/CA-2(MP)/9/104 dated 25/06/2001 from custody of respondent and set aside the same.*

(ii) *The Hon'ble Tribunal may be pleased to set aside the order dated 28/08/2019 (Annexure No.A-1).*

(iii) *The Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant in service notionally with all consequential benefits as per his batchmates and juniors. Granted with interest of 18% per annum.*

(iv) *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 are that the applicant was enrolled in the Army on 16.04.1986 and was discharged from service on 30.11.2001 (AN) on being placed in low medical category due to 'Primary Hypertension' in terms of sub clause 2A of Army Rule 13(3). Since his disability was regarded as attributable to military service, he was granted service element as well as disability element w.e.f. 01.12.2001 which he is in receipt of vide PPO Nos S/Corr/6th CPC/228369/2013 and D/RA/2587/2006 respectively. After 18 (eighteen) years of his discharge from service, applicant preferred an appeal dated 23.04.2019 for his illegal discharge in P2 medical category followed by a legal notice dated 05.07.2019 (Annexure A-9 of

O.A.) reply of which was forwarded by the respondents on 28.08.2019 (Annexure A-1 of O.A.) explaining reasons of his discharge. Applicant has filed this O.A. for setting aside of his discharge order dated 25.06.2001, order dated 28.08.2019 and re-instatement in service notionally with all consequential benefits.

3. Learned counsel for the applicant pleaded that applicant was discharged from service in low medical category P2 but nowhere was it mentioned that he was placed in P2 permanent medical category. His further contention is that discharge of applicant was not recommended by the medical board and even the specialist opinion was obtained after issue of discharge order which is contrary to rules on the subject. His further submission is that applicant being a technical Sepoy was eligible to serve up to 20 years but he was discharged from service on medical grounds prior to completion of terms of engagement without providing him sheltered appointment contrary to rules on the subject. He pleaded for setting aside of discharge order dated 25.06.2001 and order dated 28.08.2019 i.e. reply to legal notice dated 05.07.2019.

4. Per contra, submission of learned counsel for the respondents is that on being placed in P2 (Permanent) medical category, applicant was issued show cause notice dated 22.03.2001 to which applicant submitted reply dated

23.03.2001 mentioning therein to serve further in low medical category, which was not recommended by the Officer Commanding due to non availability of sheltered appointment. His further submission is that since sheltered appointment was not available in the unit, his discharge order was issued vide letter dated 25.06.2001 to be discharged from service w.e.f. 30.11.2001. He concluded for dismissal of O.A. on the strength of the Hon'ble Apex Court judgment reported in (2008) 10 SCC 115, ***C Jacob vs Director of Geology and Mining and Anr.***

5. Heard learned counsel for both the sides and perused the material placed on record.

6. Considering the fact that the O.A. has been filed 20 years after discharge from service claiming certain benefits, the issue regarding which could be raised after his discharge from service, the petition at this stage deserves to be dismissed on account of delay and laches only. Though delay on account of filing of O.A. has been condoned yet the issue regarding slumbering over his rights for a considerable period cannot be ignored.

7. It is undisputed fact of the parties that applicant suffered Primary Hypertension w.e.f. 07.03.2000 and he was placed in low medical category. The Invaliding Medical Board (IMB) dated 08.08.2001 had recommended applicant to be released from service in P2 (Permanent) medical category. For

convenience sake, endorsement made on page 4 of IMB are reproduced as under:-

"Recommended fit to be released from service in LMC S1H1A1P2E1 permanent for above disability subject to the approval of higher authorities."

8. Thus, the contention of applicant, as pleaded in para 5.1 of O.A., that he was not placed in P2 (permanent) medical category is incorrect. The aforesaid endorsement makes it clear that applicant was placed in P2 (permanent) medical category by the IMB held on 08.08.2001 at Military Hospital, Babina.

9. Averment made by learned counsel for the applicant in para 5.4 of O.A. that the medical board has not recommended applicant's discharge. In this regard, it is submitted that applicant was discharged from service on the recommendation of medical board (page 7 of O.A.) in which it has been clearly been mentioned by Maj R Pakhetral, Graded Specialist (Medicine) that applicant be released from service in existing category P2. Thus, the submission made by the applicant has no substance.

10. In the case of **Government of West Bengal v. Tarun K. Roy**, reported in (2004) 1 SCC 347, the Hon'ble Apex Court has opined that the persons who approach the court at a belated stage placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of

delay and laches. Relevant paragraph of the aforesaid judgment is extracted below:

"5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?"

11. It was further held that relief claimed after stipulated period cannot be granted as a matter of right.

12. Applicant's contention that he was granted disability element of pension in the year 2006 i.e. five years after his discharge and he challenged the medical board proceedings in the year 2019, cannot be a ground to challenge the discharge order at this belated stage. In this regard the Hon'ble Supreme Court in the case of **State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others**, reported in 2013 (6) SLR 629, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the

authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which could have been granted had he come forward earlier. It was held that Article 14 of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. It was further held that anyone who sleeps over his rights is bound to suffer.

13. Delay brings in hazard and causes injury to the lis. In the case at hand, applicant has approached this Tribunal after approx 20 years of his discharge which cannot be justified at this belated stage. In our view the applicant was discharged from service in P2 (Permanent) medical category on the recommendation of duly constituted medical board by following due process.

14. In our view case law cited by learned counsel for the applicant (Annexure R-1) is not helpful to applicant as in that

case applicant had filed the O.A. before this Tribunal to challenge his proposed discharge while he was in service.

15. In view of the above authoritative enunciation of law by the Hon'ble Supreme Court, the present O.A. filed by the applicant nearly after 20 years of his discharge to claim certain benefits to which he claimed to be entitled to at the time of his discharge from service, certainly deserves to be dismissed more so when due process was followed for his discharge in low medical category and non availability of sheltered appointment.

16. The O.A. is **dismissed**.

17. No order as to costs.

18. Pending miscellaneous applications, if any, shall stand disposed off.

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

Dated: 26.10.2021
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