

Reserved

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 423 of 2020

Wednesday, this the 04th day of October, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)

Hon’ble Maj Gen Sanjay Singh, Member (A)”

Ex. Subedar Sarvesh Singh (JC-278841Y) S/o Chob Singh,
Residence of Village – Kathingra, Post Office – Rupdhani, Tehsil –
Alignag, District – Etah (Uttar Pradesh), Pin -207248.

..... Applicant

Ld. Counsel for the : **Wg Cdr S.N. Dwivedi (Retd), Advocate.**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarter of the
Ministry of Defence (Army), South Block, New Delhi -110011.
3. Director General Artillery (Personal), IHQ of MoD (Army),
DHQPO, New Delhi -110011.
4. Officer –in-Charge Records, Artillery Records, Nasik Camp
(MH).
5. Col. Angad Reyar (IC-59410N) Commanding Officer 328
Medium Regiment, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the : **Dr Gyan Singh,**
Respondents. **Central Govt. Counsel**

ORDER**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- (a) *Issue/pass an order or direction of appropriate nature to the respondents to cancel/quash the discharge order dated 31-01-2018 (Annexure No.A-1) and order dated 05-02-2019 being per se illegal, arbitrary and capricious in nature.*
- (b) *Issue/pass an order or direction to the respondents to allow him to serve for 30 years till 28-02-2026 as per Para 163 of the Regulations for the Army, 1987.*
- (c) *Issue/pass an order or direction to the respondents to consider the applicant to the rank of Subedar major for which the possess all qualitative requirements and age criteria.*
- (d) *Issue pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with costs.*

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 24.02.1996. He was promoted to the rank of Subedar (Sub) on 01.03.2014. He was placed in Low Medical Category A-2 (Permanent) on 18.09.2015. His Medical Board was held on 27.09.2017 and he was again placed in Low

Medical Category A-2 (P). His discharge order was issued and applicant was discharged from service on 31.01.2018. Applicant submitted representation dated 14.12.2017 stating that he has recovered from injury, hence he may be permitted to compete 30 years of service which was rejected. Being aggrieved, the applicant has filed instant O.A.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 24.02.1996. By dint of professionalism and hard work he was promoted to various ranks from Naik to ultimately Subedar on 01.03.2014. Applicant was on duty in Operational Area (OP RHINO) on 21.07.2014 when he slipped and fell down. The applicant got injury in right knee. He was admitted in Military Hospital and was granted sick leave. He was placed in low medical category A-2 (Permanent) on 18.09.2015 for the diagnosis '**IDK RIGHT KNEE**'. He was due for re-categorization on 18.09.2017 for which he was admitted in Military Hospital Palampur where he was upgraded from Medical Category A-2 (Permanent) to A-1 (Permanent) by a constituted Medical Board. This fact has been mentioned in Hospital Discharge Slip dated 27.09.2017. Thereafter, instead of cancellation of discharge order, his Medical Board was cancelled and the applicant was again placed in Medical Category A-2 (P) due to wrong approach by the Commanding Officer. Para 13 of Army Rule has been amended

which states that ***'The individual will be discharged from service in cases where the individual is placed in permanent Low Medical Category SHAPE 2/3 by a Medical Board when No sheltered appointment is available in the unit or when individual is surplus in the organization'***. While giving manner of discharge, a provision has been made that the individual will be discharged from service on the recommendations of Release Medical Boards. Prior to implementing the above mentioned discharge order, applicant made representation dated 14.12.2017 against illegally discharging the applicant from service by the Commanding Officer. Respondent No 4 vide his letter dated 05.02.2019 replied his representation. The provisions about sheltered appointment contained in Army order 45/1980 have been re-shaped by the Hon'ble Apex Court judgment and could not be reinvigorated in improper and illegal fashion. The applicant gave his willing certificate dated 08.06.2017 and on the same day he was not recommended by the Commanding officer. Learned counsel for the applicant prayed that since the applicant was upgraded to Medical Category SHAPE-1 on 26.09.2017 hence, his discharge with effect from 31.01.2018 be cancelled in terms of Army Order 3/2001 and the applicant be allowed to serve till 30 years of service in the rank of Subedar will all consequential benefits.

4. On the other hand, learned counsel for the respondents submitted that applicant sustained injury while he was on leave and he was downgraded to Low Medical Category A-3 with effect from 17.10.2014 due to disability '**IDK Right Knee**'. Applicant in his certificate dated 14.12.2017 has accepted that he sustained injury while on leave, hence the averment that he sustained injury in operation RHINO is baseless and misleading. Applicant was downgraded to low medical category A2 (P) with effect from 18.09.2015 and remained in same medical category. As per paragraph 2 of Army Order 46/1980, the employment of permanent low medical category personnel at all times is subject to availability of suitable alternative appointments commensurate to his medical category and also to the provisions that this can be justified in the public interest. The retention will not exceed the sanctioned strength of the regiment/Corps. When such appointments are not available or when their retention is either not considered necessary in the interest of service or it exceeds the sanctioned strength of the regiment/corps, such low medical category personnel will be discharged irrespective of the service put in by them. In this case, sheltered appointment was not available, hence Artillery Records issued discharge order of the applicant vide letter dated 04.08.2017 and applicant was discharged from service with effect from 31.01.2018.

5. Learned counsel for the respondents further submitted that as per paragraph 4 (a) of Integrated Headquarters of Ministry of Defence (Army) dated 28.01.2016, when a JCO/OR, who is in permanent low medical category '2' or '3' in any SHAPE factor, reports to hospital for medical board, consequent to issue of orders for his discharge/release from service, the medical board will ensure that the individual is examined for release purpose only and his existing medical category is not changed. Further paragraph 6 of Integrated Headquarters of Min of Def (Army) letter dated 02.11.2017 states that in Release Medical Board individual will not be upgraded into SHAPE-1 under any circumstances once the release order has been issued. Further as per Gazette Notification of India dated 13.05.2010 and instructions issued vide Integrated Headquarter of Ministry of Def (Army) dated 30.09.2010, persons who have been placed in low medical category, which is unsuitable for further retention in service will be discharged from service on the recommendation of RMB. The applicant was brought before RMB before discharge on 30.10.2017 at Military Hospital, Palampur. On the basis of Artillery Records letter dated 04.08.2017, the applicant was discharged from service with effect from 01.02.2018 due to medical category lower than SHAPE-1 as no sheltered appointment was available. Applicant was issued a Show Cause Notice vide letter dated 21.08.2017. On receipt of reply his further retention in service

was not considered due to non availability of sheltered appointment and applicant was discharged from service with effect from 01.02.2018. Applicant submitted representation before respondents to allow him to service upto 30 years which was suitably replied by the respondents. Applicant is not entitled for re-instatement in service and grant of promotion to the rank of Sub Maj. Learned counsel for the respondents pleaded that instant O.A. has no substance and deserves to be dismissed.

6. We have heard learned counsel of both the parties and perused the policy letter available on record. The moot question before us to decide is whether the applicant is entitled for re-instatement in service.

7. It is seen that vide Appx 'A' to policy letter dated 20.09.2010, procedure and criteria for screening of PBOR in the Army, the following is the eligibility for grant of extension in respect of personnel in medical category BEE:-

Appx 'A'

"2(b)(ii). Eligible upto Medical Category 'BEE'. Personnel placed in category 'BEE' will be eligible for extension in service. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable / non-attributable to or aggravated by service conditions. However, cases of medical category 'BEE' (both temporary and permanent) due to

psychological causes, misconduct or self inflicted will not be eligible for extension in service.

(iii). (aa) *Eligibility at (i) and (ii) above is subject to proficiency of the affected personnel being of a specially high standard and suitable appointments being found for them within the Regiment/Corps.*

(ab) The above yardsticks will apply uniformly to all categories of JCOs/ NCOs and no consideration will be given to categories like Clerks, Storemen etc on the ground that a particular disability (hearing, eye-sight and so on) does not interfere in the performance on their duties.”

8. The President of the Medical Board in response to a query has given the following answer vide MH Jalandhar Cantt letter dated 31.03.2017:-

“Court Case : MA No 01(J) of 2016 in OA No Nil/2016 filed by No 15371259L Ex Hav NJK Dahya Lal Vs Uol & Ors in the Hon’ble AFT(RB) at Jabalpur.

1. Ref your letter No P/15371259/LC/T-2/PC-352 dated 16 Mar 2017.

2. In this regard, it is stated that when recategorisation Medical Board of No 15371259L Hav JD Nayak was done on 26 Mar 2013, he was placed in LMC P3(T-24) w.e.f. 26 Mar 2017 (copy att) for disability Impaired Glucose Tolerance with Obesity as he was found to have body weight of 79 Kgs which is much more than 10% range of his ideal body weight hence the category was given, he was also continued in low medical classification P2(P) for Tubercular Plural Effusion w.e.f. 21 Mar 2013. His Release Medical Board was held on 11 Apr 2014 on the basis of Signal Records signal No A-6890 dated 09 Nov 2013. As per Para 13 of Appx ‘C’ to AO 03/2001/DGMS (Army), indl was

examined for release purpose only and his existing medical category cannot be changed.”

Sd/-xxx.
(K Pathania)
Lt Col
President Medical Board

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9. We hereby reproduce para 13 of A003/2001/DGMS:-

“13. When a JCO/OR, who is in permanent low medical category ‘2’ or ‘3’, in any SHAPE factor, reports to hospital for medical board, consequent to issue of orders for his discharge/release from service, in accordance with the prescribed policy, the medical board will ensure that the individual is examined for release purpose only and his existing medical category is not changed.”

10. The Presiding Officer of the Medical Board has clearly brought out that in accordance with Para 13 of Army Order 03/2001/DGMS (Army) when the individual is being examined for release purpose the medical category cannot be upgraded. It is also seen that the same Army Order at Para 19 (b) has mentioned the following:-

19(b). The medical Category of those placed in permanent medical category is reassessed every two years except in case where the AMA considered that the existing medical category of any individual has to be downgraded. In all such cases the individual should be brought before the duly constituted medical board.

11. It is, therefore, evident that the individual's category could not have been re-assessed at the time of the RMB as per the extant

policy. During the course of the RMB the applicant has been again placed in low medical category A-2 (P).

12. Applicant has given a certificate dated 14.12.2017 to the effect that 'Sub Sarvesh Singh of 283 Fd Regt certify that I got injury in my right knee while working at home during Annual leave at Village-Kathingra, District- Etah (U.P.) on 16 July 2014 which resulted in my disability '**IDK Right Knee**'. The same was certified by the Commanding officer on 14.12.2017 stating that Sub Sarvesh Singh got '**IDK Right Knee**' injury while working at home during Annual leave at Village Kathingra, Distt- Etah (U.P.). Contention of the applicant that he sustained injury during performance of duty has no substance.

13. Applicant himself has given an application dated 06 September 2017 to Commanding Officer stating that he is unable to perform military duties and he may be granted discharge. Letter dated 06 September 2017 is reproduced as under:-

*JC-278841Y Sub (Gnr)
Sarvesh Singh*

*2832/283 Fd Regt
PIN- 926283
C/o 56 APO*

*323802/QB/X/A
Commanding Officer
283 Fd Regt
PIN- 926283
C/o 56 APO*

06 Sep 17

SHOW CAUSE NOTICE DISCH PERMT LMC: JCO/OR

1. *Pl ref your letter No 323802/X/A dt 21 Aug 17 and Arty Records letter No. 1379/LMC/226/Disc/W/NR/20/RA-6 dt 04 Aug 17.*
2. *I have been completed 21 yrs and 06 months of service with full dedication and satisfaction of my superiors and almost completed all tasks assigned to me. I have been placed in low med cat A2(P) for diagnosis 'IDK RIGHT KNEE' wef 22 Sep 15. On being placed in low med cat and due to medical restrictions of army employment, I am unable to do my basic military duties as well duties towards sheltered appointment to the entire satisfaction of my superiors.*
3. *In view of the above, may I kindly request you to discharge me from Army service as ordered vide Arty Records letter cited at para 1 above.*

*Yours faithfully,
Sd x x x x x
(JC-278841Y Sub (Gnr)
Sarvesh Singh*

Submission of the applicant that has been wrongly discharged from service is not agreed too.

14. As far as upgradation of the applicant to Medical Category SHAPE-1 vide Review Medical Board held on 18.09.2017 is concerned, applicant was wrongly upgraded to SHAPE-1. Policy states that when a JCO/OR, who is in permanent low medical category '2' or '3' in any SHAPE factor, reports to hospital for medical board, consequent to issue of orders for his discharge/release from service, the medical board will ensure that the individual is examined for release purpose only and his existing

medical category is not changed. As such, at this stage, submission of the applicant that he was wrongly downgraded to low medical category upgrade to A-2 is not justified. We find that due process was followed while discharging the applicant. Case law referred by the applicant is based of different facts, hence not applicable in the instant case.

15. We are therefore, of the opinion that no injustice has been done to the applicant and the decision of retiring the applicant from service with effect from 01.02.2018 was correctly taken based on extant rules. The fact remains that at the time of his discharge he was in Low Medical Category C A-2 (P). His discharge was as per extant rule position, and no arbitrariness or malafide stands established.

16. We find no basis for grant of any relief to the applicant. The OA is **dismissed**.

17. No order as to costs.

(Maj Gen Sanjay Singh)
(Member (A))

(Justice Ravindra Nath Kakkar)
(Member (J))

Date : 04 October, 2023
Ukt/-