

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 322 of 2022**Friday, this the 23rd day of September, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Abhinanjay Yadav, Ex. Sep. No. 10183166K
S/o Shri Surya Nath Yadav
R/o Vill : Manjhariya, PO : Rampur Manjha, PS : Karanda,
Teh: Saidpur, District : Ghazipur (UP) – 233306**.... Applicant**Ld. Counsel for the Applicant : **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi – 110011.
2. OIC Records, Record KUMAON Regiment, Ranikhet.
3. 111 Inf Bn (TA) KUMAON, PIN – 934311, C/o 56 APO.
4. TA Group Headquarters, Central Command, PIN -900450, C/o 56 APO.
5. Military Hospital, Allahabad, PIN – 900479, C/o 56 APO.
6. 150 G.H., C/o 56 APO.
7. 115 Base Hospital, PIN - 901213, C/o 99 APO.
8. Commander, TA Group Headquarters, Central Command, PIN- 900450, C/o 56 APO.
9. Commanding Officer, 111 Inf Bn (TA) KUMAON, PIN – 934311, C/o 56 APO.
10. PCDA (P), Draupadighat, Allahabad (UP) – 14.

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel

ORDER (Oral)

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

- “(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned discharge order dated 15.04.2021 & Show Cause Notice dated 05.03.2021, passed by the opposite party no. 3, as contained in annexure No. 1 & 2 to this original application, and respondents may kindly be directed to reinstate the applicant in service with all consequential benefits including promotion, with all service consequences with retrospective effect with interest to the applicant.
- (ii) That this Hon’ble Tribunal may kindly be awarded the cost Rs. 20,20,000/- (Rs. Twenty Lac and Twenty Thousand only) to the applicant against the opposite parties.
- (iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army in KUMAON Regiment on 21.03.2012 and was discharged from on 15.04.2021 after about 09 years of service in low medical category. The applicant gave his willingness to serve/continue in service which was accepted by the respondents and approved by the higher authorities to be retained in service till completion of 15 years of pensionable service or till completion of terms and engagement of service on 31.03.2019. However, later on due to change in policy for retention of low medical category

personnel, the applicant has been discharged from service without completing his 15 years pensionable service. The applicant preferred an appeal dated 04.01.2022 for not following the prescribed procedure but nothing has been done by the respondents. 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 complete his pensionable service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army in KUMAON Regiment on 21.03.2012 and was discharged from on 15.04.2021 after about 09 years of service in very illegal and arbitrary manner ignoring the facts and circumstances of the case. The applicant got injured during BPET on 10.11.2015 for which he was treated in Military Hospital, Allahabad and was downgraded to low medical category P3 (T-24) w.e.f. 12.12.2015 for 'EXTRA HEPATIC PORTAL VENOUS OBSTRUCTION/PORTAL HYPERTENSION (EXTRA HEPATIC PORTAL VEIN OBSTRUCTION). Later on, in review medical board, the applicant was placed in low medical category P2 (Permanent) w.e.f. 18.06.2016 and disability was considered as neither attributable to military service nor aggravated by military service (NANA) being a constitutional disorder. The applicant gave his willingness to serve/continue in service on 03.09.2016 which was accepted by the respondents and approved by the higher authorities to retain in service till completion of 15 years of pensionable service or till completion of terms and engagement of service on 31.03.2019. However, the applicant has

been discharged from service without completing his 15 years pensionable service which is violation of Articles 14, 16, 19 & 21 and Fundamental Rights as guaranteed by the Constitution of India. The applicant preferred an appeal dated 04.01.2022 for not following the prescribed procedure while discharging the applicant from service but nothing has been done by the respondents till date.

4. Learned counsel for the applicant placed reliance on the Hon'ble Supreme Court judgments in the case of **Daya Shakar Tiwari vs. Chief of the Army Staff, New Delhi** 2002 (3) AWC 2142, **Union of India & Ors vs. Jai Prakash Singh & Anr**, AIR 2007 SC 1363, **Nazir Ahmad vs. King Emperor**, AIR 1936 PC 253(2) followed in **State of UP vs. Singhara Singh**, AIR 1964 SC 358, **Tata Cellula vs. Union of India**, (1994) 6 SCC 651 and **Om Prakash Chautala vs. Kanwar Bhan and Others** (2014) 5 SCC 417 and AFT (RB), Kolkata in OA No. 117 of 2013, **Sub Tuhin Kanti Biswas vs. Union of India and Ors**, decided on 18.08.2014 and pleaded that discharge order of the applicant being illegal and arbitrary should be quashed and applicant be allowed to retain in service till completion of his pensionable service/terms of engagement.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was placed in permanent (P2) low medical category w.e.f 18.06.2016 for disability "EXTRA HEPATIC PORTAL VENOUS OBSTRUCTION (PORTAL HYPERTENSION)". As per Dte Gen of Territorial Army (TA), IHQ of MoD (Army) letter dated 24.10.2008, case for retention of applicant in service till completion of 15 years

pensionable service was accorded vide TA Group HQ, Central Command letter dated 16.09.2016. In the meantime, policy letters for retention of permanent low medical category personnel in service till completion of pensionable service vide TA Directorate letter dated 24.10.2008, 17.01.2011 and 29.07.2013, were superseded/cancelled by DG TA, IHQ of MoD (Army) and only, Govt. of India, Ministry of Defence letter dated 05.05.2008 was to be considered as the sole policy letter on the subject vide TA Directorate letter dated 27.03.2018 and dated 10.04.2018.

6. Learned counsel for the respondents further submitted that as per policy letter dated 05.05.2008, applicant's disability does not cover within the activities sustained due to, (i) *Battle casualties*, (ii) *Training/Exercise/Operational Alerts*, (iii) *Field Firing/Battle Inoculation/Range Accidents*, (iv) *Aid to civil authorities*, (v) *Assistance in natural calamity* & (vi) *Performance of bonafide military duty*, therefore, his disability being NANA, applicant was liable to be discharged from service in low medical category. Accordingly, a Show Cause Notice dated 05.03.2021 was served. Based on reply received from the applicant which being not sufficient, discharge of the applicant was approved by the competent authority and discharge order dated 10.05.2021 was issued. Accordingly, applicant was discharged from TA service w.e.f. 20.11.2021 under the TA Act Rule 14(b) (iv) of TA Regulations, 1948 (Re-print 1976) on being medically unfit for further service.

7. Learned counsel for the respondents further submitted that applicant has been discharged from service as per order in vogue and due procedure was followed as per policy on the subject and hence, no illegal, arbitrary or malafide intention carried out against the applicant while discharging the applicant in low medical category. He pleaded for dismissal of Original Application being devoid of merit.

8. We have heard learned counsel for the respondents and perused the material placed on record.

9. It is pertinent to mention here that judgments relied up by the applicant in Para 4 above are not relevant in this case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgments.

10. We find that applicant was downgraded to low medical category (Permanent) for his disability "EXTRA HEPATIC PORTAL VENOUS OBSTRUCTION (PORTAL HYPERTENSION)" w.e.f. 18.06.2016. As per TA Directorate letter dated 24.10.2008, applicant's case for retention in service till completion of 15 years pensionable service was accorded vide order dated 16.09.2016. Thereafter, policy letters for retention of permanent low medical category personnel in service till completion of pensionable service vide TA Directorate letters dated 24.10.2008, 17.01.2011 and 29.07.2013, were superseded/cancelled by TA Directorate and only Govt. of India, Ministry of Defence letter dated 05.05.2008 was to be considered as the sole policy letter on the subject. Since, the applicant was not falling within the affected disabilities, to be retained under this policy letter, his case for

discharge from service was initiated and after due procedure, applicant was discharged from service in low medical category as per Rule 14(b) (iv) of TA Regulations, 1948 being unfit for further retention. Hence, as per rules and policy letter on the subject, applicant has been discharged from service and therefore, he is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to retain in service till completion of his pensionable service/terms of engagement.

11. In the result, we do not find any illegality or illogicality in discharging the applicant from service. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: September, 2022

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