

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 194 of 2017

Tuesday, this the 10th day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Hav Sushil Kumar No. 10314801H
R/o Village Matera, PO – Khandasa,
Tehsil – Milki Pur, District - Faizabad

.... **Applicant**

Ld. Counsel for the Applicant : **Col A.K. Srivastava (Retd)**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. OC Records, the SIKH Regiment, Ranchi.
4. The Commanding Officer, 157 Inf Bn (TA) The SIKH Regiment, BD Bari, Jammu.
5. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,
Central Govt Counsel

ORDER

1. The instant 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 direction of appropriate nature to quash/set-aside the defective IMB proceedings invalidating out the applicant from service.

- (b) Issue/pass an order or direction of appropriate nature to quash/set-aside Records the SIKH Regiment letter dated 13 Jan 2005 and other related letters to that affect and 157 Inf Bn (TA) SIKH letter dated 11 May 2005 threatening of financial implications for not invaliding out the applicant, being part of Territorial Army in permanent LMC (P3) within one month of his LMC as per AO 460/1973 because of which the concerned specialist and medical board recommended his invaliding out from service.
- (c) Issue/pass an order or direction of a appropriate nature to quash/set-aside the forced unwillingness certificate for denial for surgical treatment obtained from the applicant was unwilling till his mother's operation was done.
- (d) Issue/pass an order or direction of appropriate nature to reinstate the applicant w.e.f. 16 Jun 2005 will all consequential benefits including his promotions as per the decision of Hon'ble Apex Court in Civil appeal No. 6587/2008 in Union of India & Ors v. Rajpal Singh on 07.11.2008 as per this decision that concerned directed authorities to reinstate all LMC persons.
- (g) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (h) Allow this application with costs."

2. Brief facts of the case are that the applicant was enrolled in 124 Inf Bn (TA) SIKH on 05.04.1991. He was transferred to 157 Inf Bn (TA) SIKH and while serving with this Battalion, the applicant had sustained severe injury "**EXTRUDED DISC, L-5, S-1**" while doing PT on 26.05.2004. He was admitted to 166 Military Hospital on 19.10.2004 as a case of 'BACK ACHE WITH SCIATICA (RT)'. The applicant was downgraded to medical category P-3 (Permanent) on

18.11.2004 for the disability “**EXTRUDED DISC, L-5, S-1**”. As per Army Order 460/73, TA personnel downgraded to permanent low medical category will be invalided out of service within one month from the date of receipt of Medical Board Proceedings. After serving Show Cause Notice dated 23.12.2004, the applicant was brought before a duly constituted Release Medical Board held at 166 MH on 16.05.2005. As per RMB proceedings dated 16.05.2005, the applicant rendered his Unwillingness Certificate for his surgery operation duly witnessed by two NCOs and countersigned by the President of Medical Board. The RMB assessed his disability @ 30% for five years w.e.f. 26.05.2005 as attributable to military service. The applicant was discharged from TA service w.e.f. 17.06.2005 before fulfilling the terms and conditions of his enrolment under TA Rules 14 (b) (iii) of TA Regulations and AO 460/73. At the time of discharge from service, the applicant had 6 years and 299 days of embodied service. The disability pension consisting service element @ Rs. 1913/- per month w.e.f. 18.06.2005 for life and disability element @ Rs. 698/- p.m. w.e.f. 18.06.2005 to 15.05.2010 has been sanctioned in favour of the applicant vide PCDA (P) Allahabad PPO No. D/122/2008. The said PPO was forwarded to bankers of the applicant alongwith a copy to applicant vide SIKH Regiment letter dated 10.04.2008. The rates of disability element have further revised @ Rs. 1755/- p.m. w.e.f. 01.01.2006 to 15.05.2010 vide Corrigendum PPO No. D/Corr/1568/2009 dated 04.08.2009. The Corrigendum PPO was also forwarded to bankers and the applicant vide Sikh Regiment letter dated 26.09.2009. Before expiry of the existing disability element

period, RSMB documents were forwarded to MH Faizabad vide Records letter dated 05.11.2009 with a request to conduct RSMB of the applicant. The Military Hospital, Faizabad vide its letter dated 26.12.2009 advised the applicant to report to Military Hospital on any working day between 08.30 hours to 14.00 hrs for admission in connection with his RSMB. Thereafter, applicant was also requested to report MH Faizabad vide Records, The SIKH Regiment letter dated 09.01.2010 but applicant did not report to Military Hospital, Faizabad for his RSMB. Accordingly, MH Faizabad returned RSMB documents to Records The SIKH Regiment vide letter dated 05.05.2010 and case for holding RSMB was temporarily closed. However, the applicant thereafter did not request for his RSMB and therefore, grant of disability element could not be continued w.e.f. 16.05.2010 onwards. In the meantime, the applicant filed a Writ Petition No. 2710 (S/S) of 2009 in the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench Lucknow for various reliefs which was subsequently transferred to this Tribunal and was renumbered as TA No. 06/2015. Finally, the said TA No. 06/2015 was dismissed as withdrawn with liberty to file afresh. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant has rendered 13 ½ years of service at the time of invalid out from service due to injury in low backache (L-1, S-1) in High Altitude Area. The applicant was neither reinstated nor offered option letter by his Record Office to rejoin service pursuant to decision of the Hon'ble

Apex Court in Civil Appeal No. 6587/2008 in **Union of India & Ors v. Rajpal Singh** on 07.11.2008. As per this judgment, all persons who because of being in a permanent low medical category were released from service prematurely were to be offered option to rejoin duty and accordingly, they were reinstated in service. He further submitted that applicant was forced to sign on unwillingness that he refused for surgery which he did not sign. The applicant submitted a letter/representation to Commandant 166 MH but it was denied. Thereafter, applicant forwarded many representations to get review of his medical category which were disposed by CO of the unit and not by a competent authority of MoD. The applicant was also not served upon with a Show Cause Notice by concerned authorities for invaliding him out from service in an arbitrary manner without following AO 460/73. If the applicant would have not been invalided out from service illegally, he would have served upto 32 years of service and retired in the rank of Hony Captain in the year 2027. The applicant has not been credited the disability pension benefits entitled to him as per PPO and Corrigendum PPO No. D/Corr/1568/2009. He further said that applicant's disability was temporary but the respondents have arbitrarily held it permanent on account of the prejudices and bias of the Medical Officer concerned. Lastly, he pleaded that keeping in view the illegal invalidment from service, the IMB proceedings be quashed and applicant should be reinstated in service with all consequential benefits including promotions as per decision of **Rajpal Singh** case (supra).

4. On the other hand, learned counsel for the respondents submitted that the applicant had sustained severe injury “**EXTRUDED DISC, L-5, S-1**” while doing PT on 26.05.2004. He was admitted to 166 Military Hospital and was downgraded to medical category P-3 (Permanent) on 18.11.2004 for the disability “**EXTRUDED DISC, L-5, S-1**”. As per Army Order 460/73, TA personnel downgraded to permanent low medical category will be invalided out of service within one month from the date of receipt of Medical Board Proceedings. Therefore, after serving Show Cause Notice dated 23.12.2004, the applicant was brought before a duly constituted Release Medical Board held at 166 MH on 16.05.2005. As per RMB proceedings dated 16.05.2005, the applicant has rendered his Unwillingness Certificate for his surgery operation duly witnessed by two NCOs and countersigned by the President of Medical Board. The RMB assessed his disability @ 30% for five years w.e.f. 26.05.2005 as attributable to military service. The applicant was discharged from TA service w.e.f. 17.06.2005 before fulfilling the terms and conditions of his enrolment under TA Rules 14 (b) (iii) of TA Regulations and AO 460/73. At the time of discharge from service, the applicant had 6 years and 299 days of embodied service. The disability pension consisting service element @ Rs. 1913/- per month w.e.f. 18.06.2005 for life and disability element @ Rs. 698/- p.m. w.e.f. 18.06.2005 to 15.05.2010 has been sanctioned in favour of the applicant vide PCDA (P) Allahabad PPO No. D/122/2008. The said PPO was forwarded to bankers of the applicant alongwith a copy to applicant vide SIKH Regiment letter dated 10.04.2008. The rates of disability element

have further revised @ Rs. 1755/- p.m. w.e.f. 01.01.2006 to 15.05.2010 vide Corrigendum PPO No. D/Corr/1568/2009 dated 04.08.2009. The Corrigendum PPO was also forwarded to applicant's bankers and to the applicant also vide Sikh Regiment letter dated 26.09.2009. Before expiry of the existing disability element period, RSMB documents were forwarded to MH Faizabad vide Records letter dated 05.11.2009 to conduct RSMB of the applicant. The Military Hospital, Faizabad vide its letter dated 26.12.2009 advised the applicant to report to Military Hospital on any working day between 08.30 hours to 14.00 hrs for admission in connection with his RSMB. Thereafter, applicant was also requested to report MH Faizabad vide Records, The SIKH Regiment letter dated 09.01.2010 but applicant did not report to Military Hospital, Faizabad for his RSMB. Accordingly, MH Faizabad returned RSMB documents to Records, The SIKH Regiment vide letter dated 05.05.2010 and case for holding RSMB was temporarily closed. However, the applicant thereafter, did not request for his RSMB and therefore, grant of disability element could not be continued w.e.f. 16.05.2010 onwards.

5. Learned counsel for the respondents further submitted that it is relevant to mention that as per directions of IHQ of MOD (Army) letters dated 12.04.2007 and 27.06.2007, the JCOs/OR who have rendered service in excess of 20 years and 15 years respectively, were to be discharged from service on medical ground. Based on above policy, 43 JCOs and 207 ORs of the SIKH Regiment were discharged from service on medical grounds. Based on the judgment

of the Hon'ble Supreme Court in Civil Appeal No. 6587/2008 arising out of SLP (C) No. 6037 of 2007, **Union of India and others vs. Rajpal Singh**, JCOs/OR discharged from service in terms of IHQ of MoD (Army) letters dated 12.04.2007 and 27.06.2007 were to be reinstated with consequential benefits including continuity in service, seniority and pay and allowances within the period stipulated by the Hon'ble Supreme Court, subject to fulfillment of certain terms and conditions. Accordingly, option letter to all effected JCOs/OR were issued and who opted to reinstatement into service, they were reinstated in service. Since, the applicant was discharged from TA w.e.f. 17.06.2005, before issuance of policy letter dated 12.04.2007, the applicant's case does not come under the ambit of the order dated 20.11.2008 passed by the Hon'ble Delhi Court in the matter of Subedar Puttan Lal vs. Union of India & Others. Hence, option letter was rightly not issued to the applicant for his reinstatement into service. He pleaded for dismissal of O.A.

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

7. We find that applicant had rendered unwillingness certificate for surgery before Release Medical Board in presence of two NCOs and the certificate is countersigned by Incharge Medical Board. Therefore, he has been discharged from Territorial Army service in the rank of Havildar w.e.f. 17.06.2005 due to being placed in low medical category P3 (Permanent) under Territorial Army Rule 14 (b) (iii) of Regulations for the Territorial Army, 1948 read with AO 460/73 as

service no longer required. It has also not been proved that there was some prejudices and bias of the concerned Medical Officer to force the applicant to sign unwillingness certificate denying surgery. The applicant is also not covered with the benefit of **Rajpal Singh** case (supra) as he was discharged from service before issuance of policy letters of reinstatement and therefore, option letter was rightly not issued to the applicant for his reinstatement into service. Hence, the relief prayed in Original Application to reinstate applicant in service with all consequential benefits is hereby **dismissed**.

8. With regard to grant of disability element and RSMB, it is made clear that applicant has been issued Corrigendum PPO No. D/Corr/1568/2009 dated 04.08.2009 and disability element was revised @ Rs. 1755/- p.m. w.e.f. 01.01.2006 to 15.05.2010 and if no amount is credited in his bank account then respondents are directed to check and ensure payment of amount in his bank account for the disability element granted to him for a period of five years from 18.06.2005 to 15.05.2010 from the date of invalidment from service. It is evident from para 4 above that applicant was called for RSMB but he did not report for RSMB at Military Hospital, Faizabad. It is also apparent that applicant has deleted prayer clause No. (e) & (f) in his O.A. for grant of disability pension but in our view, the applicant being not reinstated in service, he should atleast be considered for the entitlement of disability element, if any, by way of holding RSMB as the applicant has been granted disability element for five years only from the date of his invalidation. Therefore, respondents are directed

