

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

O.A. No. 476 of 2021

Ex Sep Suneel Chaudhree

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.01.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Rejoinder affidavit filed by the applicant is taken on record.</p> <p>2. Heard Shri Ashok Singh and Shri Vikas Singh Chauhan, Ld. Counsel for the applicant and Shri Devesh Kumar Mishra, Ld. Counsel for the respondents.</p> <p>3. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p style="padding-left: 40px;">“8.1 To quash/set aside the basic order dated 26 Jul 2017, 08 Apr 2018 passed by the OIC, Records the JAT Regiment and upon which affirming the impugned order dated 19 Sep 2018, passed by the appellate authority which is annexed with compilation No.-I as Annexure No. A-1 to this present application and passed the appropriate order to the authority concerned for treating the services of the applicant minimum 15 years as a pensionable along with permission for re-instate the applicant as an Ex-Serviceman to the respective unit for clearance of their release medical board for grant of disability pension benefits along with all consequential service benefits to the applicant as applicable under the provisions of Rules and Regulations.</p> <p style="padding-left: 40px;">8.2 Issue an appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the demand of justice.</p> <p style="padding-left: 40px;">8.3 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicants.”</p> <p>4. Brief facts of the case are that applicant was enrolled in the army on 05.08.2009. The applicant sustained severe injury 02.12.2012 when he was on patrol duty at Counter Insurgency Training School (CITS), Tejpur during night training and injury sustained by the applicant was considered as attributable to military service. The applicant was downgraded to LMC P3 (T-24) for six months w.e.f. 08.04.2013 and later he was placed in LMC P2 (Permanent) w.e.f 08.03.2014. The applicant sustained another injury on 25.04.2016 and was downgraded to LMC A2 (T-24) w.e.f. 14.02.2016. The Commanding Officer recommended his discharge due to non availability of sheltered</p>

appointment in the unit and therefore, a discharge order dated 26.07.2017 was passed fixing date of discharge 31.12.2017 under Rule 13 (3) III (iii) (a) of Army Rules, 1954. In the meantime, the applicant filed OA No. 683/2017 before this Tribunal in which it was directed vide order dated 20.12.2017 that "discharge of the applicant shall be subject to final outcome of the O.A." The Tribunal's order dated 20.12.2017 was interpreted as Stay Order, accordingly, the applicant was allowed to continue his service in Army and pay and allowances were continued. Later, JAT Records taken up a case with IHQ of MoD (Army) for obtaining necessary directions with regard to discharge of the applicant. IHQ of MoD (Army) vide its letter dated 31.03.2021 observed that there was no stay order by this Tribunal and passed directions to discharge the applicant immediately. Accordingly, applicant was discharged from service w.e.f 08.04.2021 without holding Release Medical Board. Being aggrieved, the applicant has filed the present Original Application.

5. Learned counsel for the applicant submitted that applicant was enrolled in JAT Regiment on 05.08.2009. On 02.12.2012, applicant sustained severe injury "FRACTURE COCCYX WITH CONTUSION LUMBOSACRAL SPINE" when he was on patrol duty at Counter Insurgency Training School (CITS), Tejpur during night training and injury sustained by the applicant was considered as attributable to military service vide injury report dated 12.05.2013 and applicant was downgraded to LMC P3 (T-24) for six months w.e.f. 08.04.2013. Later, applicant was placed in LMC P2 (Permanent) w.e.f 08.03.2014. The applicant sustained another injury "CHONDROMALACIA PATELIA (LT)" on 25.04.2016 and was downgraded to LMC A2 (T-24) w.e.f. 14.02.2016 and A2 (Permanent) w.e.f. 01.08.2017. The Commanding Officer of the unit raised the adverse report dated May 2017 by revoking the earlier shelter appointment by recommending the applicant not fit for further retention in service without declaring the valid rhyme and reasons in an illegal and arbitrary manner. In pursuance of revocation and adverse report drawn by the CO 9 JAT against the applicant, a discharge order dated 26.07.2017 was passed fixing date of discharge 31.12.2017 under Rule 13 (3) III (iii) (a) of Army Rules, 1954. The applicant filed complaint dated 03.10.2017 and another complaint dated 03.10.2017 against the order of discharge dated 26.07.2017. During pendency of appeal before COAS, CO served a Show Cause Notice to the applicant vide letter dated 06.05.2017 which was replied by the applicant on 08.05.2017 requesting to complete 15 years of pensionable service but CO 9 JAT not considered it in an illegal and arbitrary manner.

6. Learned counsel for the applicant further submitted that applicant filed OA No. 683/2017 before this Tribunal in which it was directed vide order dated 20.12.2017 that "discharge of the applicant shall be subject to final outcome of the O.A." In pursuance to interim relief granted by this Tribunal, applicant was again permitted to discharge his services continuously but in the mean time respondents decided statutory appeal dated 12.10.2017 of the applicant

rejecting the same on 19.09.2018 and based on the rejection of appeal, this Tribunal disposed of OA No. 683/2017 on 05.04.2021 with an direction to the respondents to furnish copy of decision which was proved by the respondent on 07.06.2021 and hence, the present O.A. is filed.

7. Learned counsel for the applicant further submitted that applicant was willing to serve but CO exercised the power to revoke sheltered appointment of the applicant in accordance with AO 46/80 and Army HQ policy letter dated 30.09.2010 without completion of minimum 15 years of pensionable service. The act of CO is not sustainable in the eye of law and may be set aside by this Tribunal under the provisions of policy letter dated 30.09.2010 and Army Order 46/80. He pleaded to quash discharge order dated 26.07.2017 treating the services of the applicant minimum 15 years pensionable service and reinstate the applicant and grant disability pension to the applicant.

8. On the other hand, learned counsel for the respondents submitted that applicant sustained severe injury "FRACTURE COCCYX WITH CONTUSION LUMBOSACRAL SPINE" when he was on patrol duty at Counter Insurgency Training School (CITS), Tejpur and injury sustained by the applicant was considered as attributable to military service vide injury report dated 12.05.2013 and applicant was downgraded to LMC P3 (T-24) for six months w.e.f. 08.04.2013. On review, applicant was placed in LMC P2 (Permanent) w.e.f. 08.03.2014. The applicant sustained another injury "CHONDROMALACIA PATELIA (LT)" on 25.04.2016 at Abohar (Punjab) and was downgraded to LMC A2 (T-24) w.e.f. 14.02.2016 and A2 (Permanent) w.e.f. 01.08.2017. As per Army Order 46/80, Commanding Officer (CO) of the unit is competent authority to sanction discharge in respect of permanent Low Medical Category (LMC) personnel after assessing the working efficiency in LMC and his suitability for retention in service under sheltered appointment. Therefore, a preliminary inquiry was conducted at unit on 10.12.2016 in which it was found that applicant has himself accepted that due to his medical problem, he is unable to complete his duties. Hence, a Show Cause Notice dated 06.05.2017 was served by the Commanding Officer of 9 JAT which was replied by the applicant on 08.05.2017 in his own handwriting praying to retain him in service to enable him to earn livelihood for his family. The reply of the applicant was not found sufficient, therefore, CO 9 JAT withdrew sheltered appointment of the applicant and processed his case to JAT Records for approval of discharge from service in LMC due to non availability of alternative suitable sheltered appointment in the unit under Rule 13 (3) III (iii) (a) of Army Rules, 1954. Discharge order of the applicant was approved vide order dated 26.07.2017 by giving date of discharge w.e.f. 31.12.2017 under the provisions of Army Order 46/80 and IHQ of MOD (Army) letter dated 30.09.2010.

9. He further submitted that applicant served a statutory complaint dated 12.10.2017 against his order of discharge and also filed OA No. 683/2017 before this Tribunal. The OA was heard on 20.12.2017 and it was directed that

“the discharge of the applicant shall be subject to outcome of this O.A.” The Tribunal’s order dated 20.12.2017 was interpreted as Stay Order, accordingly, the applicant was allowed to continue his service in Army and pay and allowances were continued. In the meantime, statutory complaint of the applicant was disposed off by the Chief of the Army Staff on 27.08.2018. Since OA No. 683/2017 was subjudice with this Tribunal and discharge order issued by JAT Records dated 26.07.2017 was held up for execution due to this Tribunal’s order dated 20.12.2017 being interpreted as Stay Order. Therefore, JAT Records taken up a case with IHQ of MoD (Army) vide letter dated 10.03.2021 for obtaining necessary directions. IHQ of MoD (Army) vide its letter dated 31.03.2021 observed that there was no stay order by this Tribunal and passed directions that the applicant be discharged immediately following due procedure and course of law. Accordingly, applicant was discharged from service w.e.f 08.04.2021 without holding Release Medical Board. The unit of the applicant, i.e. 9 JAT has been asked to forward complete pension documents alongwith relevant documents for conducting of post discharge Release Medical Board vide JAT Regiment letter dated 18.06.2021 for grant of disability pension, if any. Since the applicant has already been paid all terminal benefits and necessary action for disability pension is under process, therefore, his re-instatement into service is neither permissible nor justified being contrary to the rules/policy on the subject and the present O.A. is liable to be dismissed.

10. We have perused the records and we find that applicant was in low medical category A2 (T-24) and P2 (Permanent) for his two disabilities when Commanding Officer of the unit who is competent authority to recommend discharge in respect of permanent Low Medical Category (LMC) personnel of the unit after assessing the working efficiency in LMC and his suitability for retention in service under sheltered appointment, recommended his case for discharge from service in low medical category due to non availability of sheltered appointment and accordingly, his discharge order dated 26.07.2017 was issued by JAT Records fixing his date of discharge w.e.f. 31.12.2017. Hence, discharge order of the applicant was issued as per rules and there is no infirmity in the order of discharge being applicant in permanent low medical category. We also observe that no stay order was passed by this Tribunal with regard to discharge of the applicant as interpreted by the respondents which resulted that applicant could not be discharged from service on his due date i.e. 31.12.2017 and later on discharged from service on 08.04.2021.

11. In view of above, we are of the view that since Release Medical Board of the applicant was not conducted before his discharge from service on 08.04.2021, it is necessary to conduct Release Medical Board of the applicant to assess medical condition for his both disabilities which were considered as attributable to military service. Other reliefs prayed by the applicant in present O.A. are illogical and hereby rejected being contrary to the rules/policy on the subject.

12. In view of aforesaid, Original Application is **partly allowed**. The respondents are directed to conduct a Release Medical Board for the applicant to assess his medical condition recommending the percentage of both disabilities and grant disability pension (including service element) to the applicant according to his percentage and duration being both the disabilities were considered as attributable to military service. The respondents are directed to inform applicant the place and date where RMB is to be conducted and give effect to this order positively within a period of three months from the date of receipt of certified copy of the order.

13. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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