

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 224 of 2016****Monday this the 06nd day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Nk Shivjeet Singh (Army No 4170931-P), of 27 Rajput,
C/o 56 APO, Son of Shri Raghuraj Singh, Resident of Village
& Post Office- Nagla Ram Sunder, Tehsil- Jasvant Nagar,
District- Etawah (U.P.), Pincode- 206245

.....Applicant

Ld. Counsel for the : **Shri KK Singh Bisht, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer In Charge Records, The Rajput Regiment, PIN 900427, C/o 56 APO
4. Commanding Officer, 27 Rajput, C/o 56 APO.
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)- 211014.

..... Respondents

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

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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:-

- (a) Issue/ pass an order or direction to the respondents to quash/ set aside the arbitrary, capricious and illegal premature discharge of the applicant on 30.04.2014 (AN) (Annexure No A-1 (i) in medical category P2 (P) and the rejection of claim for reinstatement of the applicant by OIC Records, respondent No. 3 vide letter No. 2996297/SR/Wel-I/NE dated 20.03.2015 (Annexure No A-1) being arbitrary and illegal and against the established position of law.*
- (b) Issue/ pass an order or direction of appropriate nature to the respondents to reinstate him with effect from 30.04.2014 i.e. from the date of discharge and he be given further promotions available to him as a matter of right and also commensurate service and monetary benefits.*
- (c) Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) Allow this application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 27.02.1997 and was discharged from service on 01.05.2014 after rendering more than 17 years of service under Army Rule 13 (3) Item III (iii) (a) (i) in low medical category P-2 (Permanent) due to non availability of sheltered appointment in the unit. During the service applicant was placed in low medical category for the disease “DIABETES MELLITUS TYPE-II” and his disability was assessed 20% for life. Applicant

was granted service pension for his services rendered in the army as well as disability pension. Applicant represented his case for reinstate in service but his prayer was rejected by the respondents vide letter dated 20.03.2015. 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 join duty till completion of his terms of engagement of service.

3. Learned counsel for the applicant submitted that applicant has been discharged from service illegally and arbitrarily. The applicant was required to serve in the present rank up to 22 years i.e. up to February 2019. Thus he was prematurely discharged 05 years prior to completion of his terms of engagement for the reason being no sheltered appointment available. As per Army Order 03 of 2001 a person placed in medical category 2 or 3 (temporary or permanent) cannot be discharged from service. He submitted that a mere perusal of Para 13 clearly indicates that the individual placed in the medical category P-2 would be retained in service and he shall be given the assignment commensurate to the restrictions imposed by the Medical Board. However, this was not done in the case of the applicant and he was prematurely discharged from service which is arbitrary and illegal and against the provisions of law. Rule 13 as amended vide SRO 22 of 2010 specifically deals with the manner of discharge of permanent low medical category

personnel when no sheltered appointment is available in the Unit and the same has not been followed by the respondents while discharging the applicant from service. He placed reliance on the judgments of the Hon^{ble} Apex Court in case of ***Union of India vs. Raj Pal Singh***, reported in (2009) 1 SCC, 216, Division Bench of Punjab and Haryana High Court in case of ***Subedar Manjit Singh vs. Union of India*** in CWP No. 988/2012, decided on 19.05.2014 and AFT (RB) Chandimandir in OA No. 2360 of 2013, ***Rakesh Kumar Singh vs. Union of India***, decided on 17.04.2015 and T.A. No. 27 of 2013, ***R.K. Patel vs.. Union of India and Ors***, decided on 02.11.2017 and pleaded that applicant's case is covered with aforesaid judgments, hence, his discharge order should be quashed and applicant should be allowed to join duty till completion of his terms of engagement i.e. up to February 2019.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was diagnosed disability "Diabetes Mellitus Type 2" while serving with 2 Mtn Div and was downgraded to permanent low medical category vide letter dated 29.10.2009 and his disability was considered not attributable to military service but was considered aggravated by the military service. The applicant was recommended for retention in the service for next two years. On further review, the applicant was again placed in low medical category for two years, thereafter the

applicant was not recommended for retention in service against sheltered employment since the unit was deployed on intense counter insurgency area on the line of control and the individual was recommended to be discharged from service on medical grounds under the provisions of Army HQ letter No B/10122/LMC/MP-3(PBOR) dated 15 Mar 2000 and the applicant was discharged from service by RMB. The disability of the applicant was considered to be aggravated by military service and his percentage of disability was assessed to be 20% for life. Applicant was granted service pension for the services rendered in the army and disability element @ 20% rounded of to 50% for life. Now the applicant by means of instant O.A. has prayed for reinstatement him in service. Applicant has been granted pension and all his retiral dues. In view of the facts, Original Application is devoid of merit and lacks substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Army Order 03 of 2001 quoted by the applicant has been superceded and latest policy regarding disposal of low medical category personnel has been issued vide Army Headquarters policy letter dated 15.03.2000. As per this letter first conditions for retention in service for low medical category personnel is that sheltered appointment commensurate to disability of the applicant

should be available. Such retention of low medical category personnel should not exceed the sanctioned strength of the unit/regiment. This sheltered appointment should be justifiable in the public interest. Further while giving sheltered appointment, priority to retain in service should be given to those nearing their minimum pensionable service. Under the provisions of Army Rule 13, based on the recommendations of an Invaliding Board, the commanding officer is the competent authority to sanction discharge to those who have been found medically unfit for further retention in service. To ensure better management, this authority has been enhanced to OIC Records for sanctioning discharge of JCOs/OR who have been found medically unfit for further service for low medical category (Non- Battle Casualties- Willing to serve). Sheltered appointment shall be formally withdrawn with effect from the date of approval of discharge by the competent authority. In the instant case, applicant was granted sheltered appointment till completion of pensionable service. He was discharged only on recommendation of medical board. Further a perusal of opinion of medical board shows that applicant was declared **“unfit for High Altitude Area/ Counter Insurgency Operations”**. Since the unit of the applicant was deployed in intense counter insurgency area on the line of control and no sheltered employment was available commensurate to his disability as well as applicant was eligible for grant of service pension and due to being unfit for High Altitude Area, applicant

was rightly discharged from service. Hence, the applicant is not entitled for reinstatement in service as claimed.

7. We, therefore do not find any merit in the application to interfere with the impugned discharge order dated 30.04.2014 passed by the respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**.

8. Accordingly, Original Application is **dismissed**.

9. No order as to cost.

10. Pending applications, if any, stand disposed off.

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

Dated: 06 September, 2021

Ukt/-