

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 491 of 2018

Thursday this the 28th Day of October, 2021

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

No. 3203300Y Sep Sunil Kumar S/o Shri Chaupal Ram,
Presently on the Strength of Depot Coy, The JAT Regiment
Centre at Bareilly (UP).

..... Applicant

Ld. Counsel for the: **Shri Ashok Singh and .**
Applicant **Shri Vikas Singh Chauhan,**
 Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India New Delhi 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, Po-New Delhi-110011.
3. OIC Records The JAT Regiment Pin -900496 C/o 56 APO.
4. The Commanding Officer, 2 JAT Battalion, Pin 911202 C/o 56 APO.
5. Commanding Officer, Adm Battalion / Depot Coy The JAT Regiment Centre, Pin -900496 C/o 56 APO.

.....Respondents

Ld. Counsel for the: **Shri Amit Jaiswal,**
Respondents. **Central Govt. Counsel**

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

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

(i) To quash /set aside the impugned order dated 01 May 2018 passed by the respondent No.3 as a Annexure No A-1 with compilation No-1 to this O.A.

(ii) Issue an order or direction directing the respondent authorities to permit the applicant to be continue in service till completion of minimum period of qualifying service actually rendered for earning service as per the authority (Para 5.1.2. of MOD. Department of Ex-Servicemen welfare letter No. 17(4)/2008 (2)/D (Pension/policy) dated 12 Nov 2008.

(iii) Issue an appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the demand of justice.

(iv) Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicants.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 21.09.2007. He was downgraded to Low Medical Category wef 28.10.2013. He was granted sheltered appointment from time to time and finally he was discharged from service on 31.10.2018 due to onset of

disease “**Primary Hypertension**”. Before discharge, he was asked to appear before Release Medical Board but neither he appeared before the Medical Board nor signed the pension papers. Being aggrieved applicant has filed instant Original Application for reinstatement him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the army on 21.09.2007. Applicant was downgraded to low medical category P2 (Permanent) for the disease “**Primary Hypertension**”. He was willing to serve in the army but Commanding Officer 2 JAT Regiment exercised his power vide AO 46/80 and Army Headquarters letter dated 30 September 2010 and withdrawn the sheltered appointment and passed impugned order dated 01 May 2018 to discharge the applicant under Army Rule 13 (3) III (iii) a (i) of Army Rules, 1954. Previous Commanding Officer, based on medical board classification report dated 04.07.2016 recommended the applicant for completion of service tenure till pensionable period of 15 years. Commanding officer 2 JAT Regiment over looked the recommendation of previous Commanding Officer and withdrawn sheltered appointment without issuance of show cause notice.

4. Learned counsel for the applicant further submitted that as per AO 46/80, paragraph 2(b), “Ordinarily permanent low medical category personnel will be retained in service till completion of 15 years service, then he can be discharged from service in the normal manner subject to their willingness and fulfilment of the stipulation laid in sub para (a) of the AO 46/80. Prior to discharge from service, no opportunity of hearing was provided to the applicant, hence impugned discharge order have been passed in utter disregard of the Rules on the subject. Learned counsel for the applicant prayed that applicant may be permitted to continue in service till completion of minimum qualifying service for grant of pension.

5. On the other hand, learned counsel for the respondents submitted that applicant was downgraded to low medical category P2 wef 28 Oct 2013 for “**PRIMARY HYPERTENSION**”. As per AFMSF-15 dated 28 Oct 2013, disability suffered by the applicant was aggravated by military service with restriction “Unfit for High Altitude/Extreme Cold Climate/Hilly Terrain”. On review, he was again placed in low medical category P2 (Permanent) wef 04.07.2014 for two years. He was granted sheltered appointment for two years upto 03 July 2016. He was further placed in low medical

category P2 (Permanent) and was again given sheltered appointment upto 03 July 2018. His last medical board was held at Military Hospital, Jaipur on 30 July 2018 and he was again placed in low medical category P2 (Permanent) for next two years from 04 July 2018 to 04 July 2020 vide medical board proceeding dated 30 July 2018. The applicant is habitual of consuming excess alcohol in spite of knowing that it will worsen his health being patient of 'HYPERTENTION'. Due to excessive consumption of liquor, applicant was unable to perform basic administrative duties commensurate to his low medical category. Accordingly, applicant was issued a show cause notice dated 29 January 2018. Applicant replied show cause notice vide his letter dated 30 January 2018. After perusal of his reply and considering the restriction imposed by medical authority, sheltered appointment of the applicant was withdrawn. As per AO 46/80, Army Rule 13 and Govt of India, Min of Def letter dated 30 September 2010, the documents of the applicant were forwarded to Records, The JAT Regiment and Record Office issued order of discharge of the applicant wef 31.10.2018 (AN). Pension documents of the applicant were prepared and applicant was asked to undergo Release Medical Board as per AO 03/89. The applicant neither signed

pension papers nor underwent Release Medical Board. The unit has 89 permanent low medical category persons which has made the routine operational training and administrative duties a major challenge. The unit was scheduled to move out for field tenure on active location in March 2019. Sep Sunil Kumar based on his employment restriction was unfit for employment in High Altitude Area and as suitable sheltered appointment was not available in the unit, hence he was discharged from service.

6. Learned counsel for the respondents further submitted that applicant is habitual offender. On 31.05.2014 he was awarded with 7 days RI and 07 days pay fine for absenting himself without leave. Further, despite clear instructions vide letter No 1202/B dated 24.02.2017, the applicant while on routine duty consumed liquor from unauthorised source which was contrary to unit standing order as well as directions given to him by the medical authorities for which he was awarded 28 days Rigorous Imprisonment and 14 days pay fine. Furthermore the applicant was retained in service by providing suitable alternative appointment on humanitarian ground despite the facts that he used to express his incapability to perform the minor duties. In these circumstances his retention

in service and granting sheltered appointment was considered unjustifiable and against the interest of the organisation. As per directions of Records, The JAT Regt, documents of the applicant were prepared and submitted to Records, The JAT Regt duly signed by two independent witnesses and counter signed by Commanding Officer. Learned counsel for the respondents submitted that instant Original Applicant has no substance and is liable to be dismissed.

7. We have heard learned counsel for the parties and perused the documents available on record.

8. The question before us for consideration is whether applicant can be reinstated in service or not?

9. As per Govt of India, Min of Def policy letter dated 20.10.2010, personnel placed in Low Medical Category BEE are entitled for 2 years of extension of service but sub para (ii) of this policy letter stipulates that "*Medical category BEE (both temporary and permanent) due to psychological causes, **misconduct** or self inflicted will not be eligible for extension in service.*

10. In the instant case, it is not disputed that the applicant was placed under medical category at the time of discharge. As per policy letter dated 20.10.2010, the PBOR placed in low

medical category should be physically fit related to job content depending on trade or category. Learned counsel for the respondents invited our attention to medical board proceedings where it has been mentioned that applicant is unfit to serve in High Altitude Area/Field Area and unit of the applicant was likely to move in Field Area . Applicant was invalidated out from service on 31.05.2018 after completion of 11 years, 01 month and 10 days of service in low medical category P2 (Permanent). He was granted sheltered appointment two times on humenterian ground in spite of being awarded two red ink intries. Physical fitness is necessary to enable a person to discharge his duty. We agree to the contention of the respondents that the applicant is habitual offender and undisciplined soldier and does not meet with any of the conditions stipulated in the policy to further reinstate him in service. Opinion of the Commanding Officer is based on opinion of the medical board, hence does not suffer from any illegality and arbitrariness. In case the Commanding Officer would have taken independent decision then the applicant may have a case for consideration.

11. On due consideration of the case, we find that denial of extension of service for further two years does not suffer from illegality. Learned counsel for the applicant argued that the applicant is fit to discharge his duty. Argument advanced by learned counsel for the applicant seems to be misconceived. It is for the respondents to assess who is fit and who is unfit for serving in the army keeping in view the opinion of the medical board. The nation wants young army and members of the Armed Forces must be physically and mentally fit to meet out the challenges which army is likely to face during the course of discharge of duty. Any infirmity on any ground may be fatal to the collective discharge of duties by Armed Forces. Army cannot be a dumping ground of old persons and infirms and low medical categories to keep on working in spite of physical ailment. Original Application is bereft of any merit qua the relief for reinstatement into service is hereby rejected.

12. Resultantly, the O.A. is **dismissed**.

13. No order as to costs.

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

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

Dated: 28 October, 2021

Ukt/-