

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

O.A .- 26/2015

PRESENT

**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL A.G.THAPLIYAL, AVSM & BAR, MEMBER (A)**

Sub/Clk (SD) Dusan Sahu

..... **Applicant.**

By legal practitioners for
Applicant.

**Ms Rita Devi,
Mr. A.R. Tahbildar,
Mr. S.J.Deka.**

-VERSUS-

- 1. Union of India,
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi –110001.**
- 2. Commanding Officer,
110 Engineer Regiment,
Pin- 914110, C/o 99 APO.**
- 3. Commanding Officer,
155 Base Hospital,
C/o 99 APO.**
- 4. Commanding Officer,
158 Base Hospital,
C/o 99 APO.**
- 5. Records,
The Bombay Engineer Groups,
Pin- 900462, C/o 56 APO.**

.....**Respondents.**
Mr. C.Barua, CGSC.

Date of hearing: 31.03.2016.

Date of Judgment & Order: 31.03.2016.

JUDGMENT & ORDER

(By B.P.Katakey,J.)

The applicant, who was enrolled in the Indian Army on 28.9.1987 and whose period of service, on expiry of the normal tenure was extended for a period of two years with effect from 27.09.2015 to 27.09.2017, vide Order dated 12.10.2013, has filed the present O.A. challenging the decision of the respondents authority taken vide order dated 13th August, 2015 for his discharge on the ground of his low medical category S-2, Alcohol Dependence Syndrome.

2. We have heard Ms Rita Devi, learned Counsel for the applicant and Miss D.Tamuly, learned Proxy Counsel for Mr. C.Barua, learned CGSC, assisted by Col Anand, OIC, AFT Legal Cell, Guwahati.

3. Learned Counsel appearing for the applicant referring to the various medical opinions of the various Medical Boards as well as the functional opinion of the Commanding Officer given in the month of December, 2014 and October, 2015, has submitted that since the Commanding Officer in his functional opinion have found the applicant fit for discharging the duties, whose performance was also found to be excellent, there was no reason why the applicant should not be allowed to serve the Army for the period of extension till 27.09.2017. Learned Counsel submits that since the Army Order 9/2007 requires consideration of remark of the Commanding Officer on AFMSF-10, about the patient`s habits and socio-occupational impairment, and to give due importance, the Army authority can not discharge the applicant from service, thereby refusing him to serve the Indian Army for the period of extension simply on the ground that he has been medically categorized as S2. Learned Counsel, therefore, submits that having regard to the Commanding Officer`s remark on AFMSF-10, the impugned order dated 13th August, 2015 discharging the applicant from service deserves to be interfered with.

4. Per contra, learned Counsel appearing for the respondents has submitted that the applicant was given the benefit of extension of service from 27.09.2015 to 27.09.2017 vide order dated 12.10.2013 after completion of his normal tenure, having regard to his performance, which, however, is always subject to the medical categorization of the applicant. According to the learned Counsel, since, in the instant case, the applicant was medically categorized as S2, i.e. Low Medical Category, the Army can not retain him in service and extend the benefit of extended service from 27.09.2015 to 27.09.2017, despite the functional opinion of the Commanding Officer, who has found the performance of the applicant as 'excellent'.

5. It is not in dispute that the Army authority had passed the order on 12.10.2013 giving the extension of service to the applicant for 2 (two) years with effect from 27.09.2015 to 27.09.2017. It is also not in dispute that such extension, however, is subject to the medical categorization of the applicant. During the period of normal tenure of service the applicant was categorized as Low Medical Category S3 on 7.7.2014. The next Medical Board held in December, 2014 also categorized the applicant as S3, which, however, was upgraded to S2 by the subsequent Medical Boards held in the months of June, 2015 and October, 2015. The person with Low Medical Category S2, cannot be retained in service in view of the Army Headquarter's Letter dated 20th September, 2010. The benefit of extension of service admittedly can be given only if a person is categorized as S1 and cannot be given if he is categorized as S2.

6. Army Order No. 9/2007 provides that the Commanding Officer's remark on AFMSF-10 relating to the patient's habits and socio-occupational impairment is to be given due importance. It does not mean that the Commanding Officer's remark would override the medical opinion or the medical categorization by the Medical Board. Since the person who is in Low Medical Category S2 cannot be

given the benefit of extension of service, the Commanding Officer's remark on AFMSF-10 cannot be the basis for extension of service of the applicant.

7. In view of the above, and having regard to the fact that the applicant has been categorized as S2 by the Medical Board, we do not find any merit in the O.A. and hence it is dismissed.

8. No costs.

9. Needless to say that the interim order passed earlier stands vacated. No recovery, however, shall be made from the applicant.

MEMBER (A)

MEMBER (J)

Nath.

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