

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

Original Application No. 3 of 2022

Wednesday, this the 5th day of April, 2023

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)

JC-548339N Sub Sati Mohan Sinha,
S/o Late SM Singha
R/o Ganeshpur, Lalmati PO
PS – Bashistha Chariali, District Kamrup Metro,
Guwahati, PIN 781029 Assam

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Girish Kumar Gupta**, Advocate

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, COAS Sectt, Integrated HQ of Ministry of Defence (Army), New Delhi – 110011.
3. Officer-in-charge Records, The Assam Regiment Happy Valley, Shillong-793007.
4. PAO (OR) Assam Regiment Shillong, PIN 793007, C/o 99 APO.
5. PCDA (Pensions) Allahabad U.P.

... **Respondents**

Ld. Counsel for the Respondents : **Shri P. Sharma**,

Central Govt Counsel

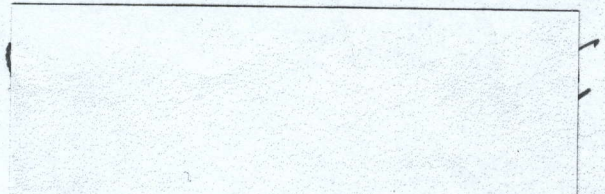
Assisted by :

Major Manisha Yadav,

OIC Legal Cell

ORDER

1. 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:-



- “1. To pass an order or direction to set aside/quash the order by the Commanding Officer for forced discharge from service before 19 months of his due dated i.e. 28.02.2008.
2. To pass an order/direction to the respondents to reinstate the applicant in the Army service notionally from the date of discharge ie. wef 01.06.2006 till 28.02.2008 alongwith all consequential benefits and pay and allowances.
3. The applicant be allowed to get the pay and allowances of Subedar Major ie. 28+4 years (extendable due to promotion of Subedar Major) till 29.02.2012, date of superannuation, as per his last duty station Barrackpore because the place is situated neither at hilly terrain, altitude above 2500 meters and extreme cold areas in terms of restrictions given in Medical Board of 181 MH, C/o 99 APO.
4. To pass an order or directions to the respondents so that benefits of OROP Scheme, re-fixation of basic pension is implemented in the case too from 01.07.2014 in terms of Ministry of Defence letter No. 12(1)/2014 D (Pen/Pol)/Part II dated 07.11.2015 and subsequent revision of Basic Pension be done as per central Pay Commission order wef. 01.01.2016.
5. To issue/pass any other order or directions as this Hon'ble Tribunal may deem just fit and proper under the circumstances of the case in favour of the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 29.02.1980 and was discharged from service in the rank of Subedar on 31.05.2006 in low medical category after rendering more than 26 years of service under Rule 13 (3) I (iii) of Army Rules, 1954 on being placed in permanent low medical category and not upto the prescribed physical standard and no

sheltered appointment was available in the unit. The applicant is in receipt of service pension as well as disability element of pension. However, being not satisfied with the procedure of discharge in low medical category, the applicant has filed this Original Application to reinstate him in service and allow him to serve till completion of terms of engagement in the rank of Subedar/Subedar Major.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 29.02.1980. The applicant served in different locations including High Altitude and Operational areas for which he was awarded various medals for his meritorious service. During his posting in the year 2002-03 in High Altitude Area in Indo-China Border in Arunachal Pradesh, the applicant suffered knee joint pain and was placed in low medical category due to diagnosis 'Gouty Arthritis', as per Medical Board dated 14.11.2002. His re-categorisation Medical Boards were conducted on 22.05.2003 and on 09.06.2005 and applicant was permanently placed in P2 (P) medical category w.e.f. 09.06.2005. The applicant was directed to appear before Release Medical Board vide Assam Records letter dated 08.12.2005 and to participate in the discharge drill on 05.05.2006. As per report of RMB, applicant was found to be suffering from 'Gouty Arthritis' which was assessed @ 20% for life as aggravated by military service. Accordingly, applicant was considered for disability element of pension @ 50% for life and granted w.e.f. 01.06.2006 vide PPO No. DE/012781/2006.



4. Learned counsel for the applicant further submitted that applicant was capable to perform clerical duties under normal circumstances in P2 Category and would have retired in the rank of Subedar on 28.02.2008 as per his terms of engagement but he was forcefully discharged from service on 31.05.2006 having put in 26 years of service, before 19 months of service from his actual due date of retirement. The denial of sheltered appointment to the applicant in P2 category before expiry of his terms of engagement is illegal and if applicant would not have been discharged from service due to non availability of sheltered appointment, he might have been promoted to the rank of Subedar Major. Therefore, denial of sheltered appointment is hit by Article 21 of the Constitution of India because continuity in the rank has been denied due to an arbitrary exercise of power. The order of the Commanding Officer recommending discharge of the applicant suffers from substantial arbitrariness and is not sustainable being not in consonance with the procedure prescribed by law.

5. Learned counsel for the applicant placed reliance on the judgment of the AFT (RB) Lucknow in OA No. 145 of 2020, **Havildar Dev Prakash Shukla vs. Union of India & Others**, decided on 12.10.2021 in favour of the applicant, directing the respondents to reinstate the applicant in his last rank till he completes his terms of engagement in that rank and therefore, present Original Application being similar in nature, applicant should also be reinstated into service in the rank of Subedar to complete his terms of engagement of Subedar/Subedar Major.

 2/7

5. In the present case, no counter affidavit/reply has been filed by the respondents. However, based on record, Ld. Counsel for the respondents submitted that applicant was placed in permanent low medical category P2 w.e.f. 30.04.2005 for his disability "GOUTY ARTHRITIS". The Commanding Officer of the unit of the applicant has not recommended retention of applicant in service in low medical category due to non availability of suitable sheltered appointment in the unit and therefore, discharge of the applicant in low medical category under Army Rule 13 (3) I (iii) was recommended by the Commanding Officer of the unit. The applicant was served a Show Cause Notice and on receipt of reply from the applicant which being not found considerable/acceptable, his discharge order was issued on withdrawal of sheltered appointment being placed in low medical category. Accordingly, the applicant was discharged from service under Army Rule 13 (3) I (iii) on 31.05.2006 in the rank of Subedar on being placed in permanent low medical category and not upto the prescribed physical standard and no sheltered appointment was available in the unit commensurating to his disability.

6. Learned counsel for the respondents further submitted that applicant is already in receipt of service pension as well as disability element of pension @ 50% for life. Since, the applicant has been discharged from service due to non availability of suitable sheltered appointment in the unit as per rules, his prayer to reinstate him in service to complete tenure of Subedar upto 28.02.2008 and also to grant further promotion to the rank of Subedar Major to serve for



another four years is not substantial and justified. The discharge of the applicant from service in permanent low medical category is as per rules and policy on the subject; hence, reliefs prayed in the Original Application are rejected being devoid of merit. He pleaded for dismissal of Original Application.

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

7. We find that applicant was downgraded to low medical category S1H1A1P2E1, permanently for his disability "GOUTY ARTHRITIS". There being no sheltered appointment available in the unit commensurate to his disability, the Commanding Officer of the unit recommended discharge of the applicant from service. The respondents/competent authority have rightly taken the decision to discharge the applicant in low medical category P2 (Permanent) as per policy on the subject. The applicant was discharged from service on 31.05.2006 after due procedure under Rule 13 (3) I (iii) of Army Rules, 1954 on being placed in permanent low medical category and not upto the prescribed physical standard being no sheltered appointment was available in the unit commensurating to his disability.


8. The applicant is already in receipt of service pension and disability element of pension @ 50% for life as per PPO issued to him, therefore, his contention to reinstate him in service to complete tenure of Subedar upto 28.02.2008 and also to grant further promotion to the rank of Subedar Major to serve for another four


years and then to be discharged from service, is not substantial and justified as per rules and policy on the subject. Hence, the applicant is not entitled to the reliefs prayed in Original Application to reinstate him in service and to allow him to serve till completion of his terms of engagement in the rank of Subedar/Subedar Major.

9. In the result, we do not find any illegality or arbitrariness in discharging the applicant from service in permanent low medical category due to non availability of sheltered appointment in the unit. We also do not find any arbitrary exercise of power, hit by the Article 21 of the Constitution of India, as alleged by the applicant. The Original Application is devoid of merit, deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

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


(Air Marshal Balakrishnan Suresh)
Member (A)


(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 5th April, 2023
SB

