

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

O.A. 14 OF 2016

PRESENT

**HON`BLE MR. JUSTICE B.P.KATAKEY, OFFICIATING CHAIRPERSON
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

**Sub Hakam Singh, 222 ABOD, C/o 99 APO,
Vill+P.O. Charuni Jattan,
Tehsil & P.S. Sahabad ,
Dist. Kurukshetra,
Haryana, PIN 136135.**

..... **Applicant.**

By legal practitioners for
Applicant.

**Mr. Sumit Kumar,
Ms Piyonka Saikia.**

-VERSUS-

- 1. Ministry of Defence,
Through its Secretary,
Ministry of Defence,
South Block, New Delhi.**
- 2. Chief of Army Staff,
Integrated HQ of MoD(Army),
South Block, Central Secretariat,
Raisana Hills, New Delhi.**
- 3. DGMS (ARMY),
Integrated HQ of MoD (Army),
AG`s Branch, L Block, DHQ Post Office,
New Delhi – 110001.**
- 4. MG Medical,
HQ Eastern Command (MED),
PIN- 908542, C/o 99 APO.**
- 5. BRIG (MED),
HQ 101 AREA,
PIN 908101, C/O 99 APO.**
- 6. COMMANDANT,
151 BASE HOSPITAL,
C/O 99 APO.**

7. HQ 51 SUB AREA (A),
PIN 908651, C/O 99 APO.

8. COMMANDANT,
222 ABOD, C/O 99 APO.

..... Respondents..

Brig N.Deka (Retd.), CGSC

Legal Practitioner
for the Respondents.

Date of Hearing : 23.08.2016

Date of Order : .26.08.2016

ORDER

(By B.P.Katakey,J)

1. This application is directed against the order dated 23.3.2016 discharging the applicant from service locally, he having been categorised as Medical Category S-2(P) by the Review Medical Board, conducted pursuant to the order dated 27.01.2016 passed in O.A. 01/2016.

2. The undisputed facts leading to the filing of the O.A. are that the applicant, who was enrolled in the Indian Army on 28.11.1986, on completion of his normal tenure on 28.11.2014 was granted extension of service for two years with effect from 28.11.2014 to 27.11.2016, he having found fit both medically and otherwise for such extension. While the applicant was serving during his extended period he reported sick. The Medical Board in its proceeding held on 12.08.2015 downgraded the medical category of the applicant from S-1 to S-3. A communication dated 24.9.2015 was then issued to the applicant to prepare himself for the discharge from the Army within six months from the date of issue of the said notice and to submit his reply, as the same is required for the pension document. The applicant on receipt of the said communication informed the Commandant that he has already applied for review of the medical category and the statement of the case for the same was under process. Before submission of the said reply dated 17th October, 2015 a discharge order was passed on 30th September, 2015 asking the applicant to report to Admn Bn (Dipot Coy) AOC Centre, Secunderabad on 3rd February, 2016 (AN) for discharge. A Release Medical Board was thereafter conducted on 30.11.2015 which categorised the applicant's medical category as S2 Permanent for Alcohol Dependence Syndrome. Thus the Medical Category of the applicant has been upgraded from S3 to S2. The applicant then approached this Tribunal in O.A. 1/16 challenging the Medical Board proceeding dated 12.8.2015, communication dated 24.9.2015 and the discharge

order dated 30.9.2015, apart from the Release Medical Board proceeding dated 30.11.2015. The said O.A. was disposed of vide order dated 27.1.2016. The relevant portion of which is reproduced below:

"In view of the above this application is disposed of with a direction to the respondents to complete the Review Medical Board proceedings as early as possible and in any case within a period of 45 days from the date of receipt of a copy of this order and if, in the report of the Review Medical Board, the applicant is found in S1, then the respondents are directed not to discharge the applicant from service. In any case the respondents are directed not discharge the applicant till finalization of the proceedings of the Review Medical Board and thereafter, without observing due procedure prescribed therefor in accordance with relevant Army Orders."

Pursuant to the aforesaid direction issued a Review Medical Board was conducted on 19.3.2016 which has maintained the Medical Category of the applicant as S2. Based on the said Medical opinion the applicant has been discharged from service locally with effect from 29.2.2016 (AN).

3. We have heard Mr. Sumit Kumar, learned Counsel for the application and Brig N.Deka (Retd), learned Central Govt. Standing Counsel for the respondents.

4. Learned Counsel for the applicant referring the order dated 27.1.2016 passed by this Tribunal in O.A. 1/2016 has submitted that since this Tribunal had directed the respondents not to discharge the applicant till finalization of the proceedings of the Review Medical Board, as directed, and without observing due procedure prescribed therefor in accordance with the relevant Army Orders, the action on the part of the respondents in discharging the applicant from service locally with effect from 29.2.2016, vide communication dated 23rd March, 2016, cannot be sustained in law on two grounds, firstly, the said order being not passed by the Commandant and secondly, having been passed without issuance of a show cause notice, which is required to issued in terms of the procedure laid down vide communication dated 20th September, 2010. Drawing the attention of this Tribunal to Rule 13 of the Army Rules, 1954 it has been submitted by the learned Counsel that the JCOs can be discharged either by the Commanding Officer or any other authority superior to him and cannot be discharged from service locally, in absence of any order or decision by the Commanding Officer in that regard, after conducting the Review Medical Board on 19.3.2016. Learned Counsel further submits that the opinion of the Review Medical Board proceeding dated 19.3.2016, which has been conducted pursuant to the aforesaid order passed by this Tribunal in O.A. 1/2016, also cannot be the basis for discharge of the applicant in view of the fact that the Medical Board based on the parameters found could not have arrived at its opinion relating to the medical category of the

applicant as S2. Learned Counsel further submits that had the applicant been given the opportunity to show cause by issuing a show cause notice, as required under the aforesaid decision of the Govt. of India, dated 20th September, 2010, the applicant could have contended the same before the authority and pleaded why the opinion of the Medical Board should not be accepted and why he should be allowed to complete the extended period of service, which opportunity having been denied to him, the impugned order of discharge from service locally needs to be interfered with further direction to re-instate the applicant in service with full service benefit.

5. Per contra, the learned Counsel appearing for the respondents referring to the pleadings in the affidavit in opposition filed has submitted that since this Tribunal while passing the order dated 27.1.2016 in O.A. 1/2016 did not set aside the earlier order of discharge dated 30th September, 2015, which order was passed after due notice to the applicant as required under the Army Order, the applicant is not entitled to any further notice when the Review Medical Board conducted on 19.3.2016, pursuant to the aforesaid order dated 27.1.2016 passed by this Tribunal has maintained the Medical Category of the applicant as S2. Learned Counsel further submits that in terms of the Army Order dated 20th September, 2010, the applicant cannot be retained in service for his extended period as he has been categorized as Medical Category S2. It has also been submitted that the categorization of the applicant as Medical Category S2 by the Review Medical Board held on 19.3.2016 is not open to challenge by the applicant in the absence of any allegation of mala fide against the Members constituting the Review Medical Board. That apart, according to the learned Counsel it is evident from the aforesaid Order dated 27.1.2016 that if the applicant is found to be in S1 Medical Category then only the respondents were bound to keep the applicant in service and could not have discharge him from service and in any case since the applicant was found to be in Medical Category S2, the respondent authority has no alternative but to discharge him from extended service because of his low medical category.

6. The submissions advanced by the learned Counsel for the parties received our due consideration. We have also perused the pleadings of the parties including the Annexures appended thereto, apart from the records of O.A. 1/2016.

7. As discussed above, the applicant's service was extended for a period of two years with effect from 28.11.2014 to 27.11.2016, after completion of his normal tenure of service on 28.11.2014. The Medical Board held on 12.8. 2015, after the applicant has reported sick, had categorized the applicant in Medical Category S3.

A communication dated 24.9.2015 was thereafter issued by the Commandant, which for better appreciation is quoted below in its entirety:

" Tele: 6336

222 Adv Base Ord Depot

PIN 909222

C/o 99 APO

2039/Disch/CA-II/ME

24 Sep 15

Sub/SKT GS & C

Hakam Singh

222 ABOD

C/O 99 APO

DROP OF ACCEPTABLE MED CAT DURING EXTENDED PERIOD OF TWO YEARS
ISSUE OF SHOW CAUSE NOTICE

1. Please ref your medical category board proceedings (AFMSF-15) dt 12 Aug 15, Appx 'B' to MoD (Army) letter No. B/33098/AG/PS-2 © dt 20 Sep 2010 and A/20121/MP-8(1 of R) 9(a) dt 20 Apr 2015 copy recd vide AOC Records letter No. 30004/D-2/P/CA-4 dt 07 May 2015.
2. It is intimated that you have been downgraded to med cat S3 (T-24) wef 12 Aug 2015 by the med board held on 12 Aug 15 at 151 Base Hosp. C/o 99 APO. At present you have been serving in extended period of two years wef Nov 2014.
3. As per service policy in vogue, issued vide IHQ of MoD (Army) letter under ref, drop of acceptable medical category at any time during the extended tenure, the individual will be discharged from service within a period of maximum six months, by handing over the individual concerned with a 'SHOW CAUSE NOTICE'.
4. In view of the above, you are hereby issued 'SHOW CAUSE NOTICE' to prepare yourself for the discharge from the Army within Six Months from the date of issue of this Notice.
5. Your reply to this 'SHOW CAUSE NOTICE' is required for enclosing the same with your pension documents.

(Vipin Bhatia)

Col

Commandant"

8. It is evident from the said communication that the applicant has been issued the show cause notice to prepare himself for discharge from the Army within six months from the date of issue of the said notice, as stipulated in Para 4 of the said notificationcommunication and not asking him to show cause as to why he should be discharge from service for low medical category.

9. Army Order dated 20th September, 2010 has been issued laying down the procedure and criteria for screening a personnel below the Officer rank (PBOR) for grant of extension of service by two years, which also includes consideration of PBOR for continued retention during extended tenure in case there is drop in any criteria as stipulated in Appendix B to the said communication. Appendix B relates to the retention of the PBOR during extended tenure. It provides that such retention during extended tenure would be subject to two criteria, namely, (a) Medical standard and (b) Discipline. It requires that the individual should remain in acceptable medical category as applicable during the pre-extended tenure, i.e. S1. Para 2 of Appendix B, however, provides that if there is drop in any of the aforesaid two criteria at any time during the extended tenure, the PBOR will be discharged under relevant Army Rules within a period of maximum six months after serving the JCO/NCO the show cause notice.
10. Rule 13 of the Army Rules, 1954, provides that the competent authority to discharge a Junior Commissioned Officer (JCO) is the Commanding Officer or any other authority superior to it.
11. In the instant case, there was a clear and specific direction issued by the Tribunal vide order dated 27.1.2016 passed in OA. 1/2016 directing the respondents to conduct a Review Medical Board proceeding and not to discharge the applicant till finalization of the said proceeding and thereafter without observing due procedure prescribed therefor in accordance with the relevant Army Orders. Such Review Medical Board proceeding having been conducted on 19.3.2016, the respondent authority was bound to issue a show cause notice in terms of the aforesaid order read with the aforesaid decision of the Govt. of India dated 20.9.2010, more particularly the stipulation in Appendix B thereof, which has admittedly not been done in the instant case.
12. The applicant has been discharged from service locally without a fresh order passed by the Commandant after the Review Medical Board Proceeding dated 19.3.2016. The contention of the respondents that since the earlier discharge dated 30.9.2015 has not been interfered with by the Tribunal in O.A. 1/2016, the subsequent discharge order dated 23.3.2016 is nothing but the continuation of the earlier notice dated 24.09.2015 cannot be accepted on two grounds, firstly, in view of the specific order passed by the Tribunal on 27.1.2016 in O.A. 1/2016 directing the respondents not to discharge the applicant from service without following the due procedure

and secondly, the communication dated 24.9.2015 cannot be treated as a notice required to be issued under Appendix B of the Govt. of India decision, dated 20th September, 2010, the same having been issued to prepare the applicant for the discharge from Army within six months from the date of issue of the said notice, and not to show cause why the applicant should not be discharged. The contention of the applicant relating to his medical categorization by the Review Medical Board held on 19.03.2016, has not been dealt with by us as it is open to the applicant to raise the issue before the Commanding Officer in the show cause reply to be filed.

13. The applicant admittedly is out of service w.e.f. 1.3.2016 as he has been discharged from service locally vide communication dated 23rd March, 2016 with effect from 29.2.2016. The applicant, till he was locally discharged from service vide order dated 23rd March, 2016 was discharging his duties.

14. In view of the aforesaid discussion, we dispose of the O.A. with the following directions:

- (i) The applicant, within a week from today, shall show cause to the Commanding Officer as to why he should not be discharged from service because of his low medical category S2 as opined by the Review Medical Board on 19.2.2016. No fresh show cause notice, however, is required to be issued by the Commanding Officer as the applicant is now well aware of the grounds on which he sought to be discharged from the extended period of service.
- (ii) The Commanding Officer, within 15 days from the date of receipt of the said show cause reply to be filed by the applicant shall take a decision as to whether the applicant shall be discharged from service or retained in service.
- (iii) In case, the Commanding Officer takes a decision in favour of the applicant, he shall be re-instated in service with full salary.
- (iv) In case, the Commanding Officer decides to discharge the applicant from service, the same would be effective from the date of the order to be passed by him. The applicant, however, would not be entitled to the salary from 23.3.2016 till the date of the order to be passed, he, admittedly, having not discharged his duties for the said period. The applicant, however, shall be entitled to the salary up to 23.3.2016, i.e. the date on which he was discharged from service locally.

15. The O.A. is accordingly disposed of.
16. No costs.

MEMBER (A)

OFFICIATING CHAIRPERSON.

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