

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

**TA 01/2014**  
(AOO WP(C) No. 2540/2013)

**PRESENT**  
**HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)**  
**HON`BLE VICE ADMIRAL M.P. MURALIDHARAN, MEMBER (A)**

**Ex Hav Santosh Khanikar,**  
Son of late Hem Kanta Khanikar,  
Resident of Village Charing Napam  
Khanikar Gaon, P.O. Charing,  
P.S. Gaurisagar,  
District Sivasagar, State Assam.

.....Applicant  
By legal practitioners for  
Applicant

Mr.R.P. Sarma,  
Mr. S.M. Sarma,  
Mr.K. Gogoi,  
Mr.K.K. Upadhyay,  
Mrs. G. Bora

Versus

1. The Union of India,  
Represented by the Secretary  
Ministry of Home Affairs,  
New Delhi – 110 001.
2. The Commandant,  
Eastern Commandant, Group H.Q. T.A.,  
Pin – 900285.
3. The Commanding Officer,  
119 Inf Bn (T.A.), Assam,  
C/o. 99 APO, Pin – 934319.
4. Recods The Assam Regiment,  
Represented by the Officer-in-Charge,  
Records, Happy Valley, Shillong,  
C/o. 99 APO, Pin – 900 302.
5. Medical Board Authority,  
151 Base Hospital, C/o. 99 APO.

..... Respondents

By Legal Practitioner  
for the respondents.

Mr.Nilutpal Baruah, CGSC

Date of Hearing : 28.04.2016

Date of Judgment & Order : 19.05.2016

### **JUDGMENT & ORDER**

***(Vice Admiral MP Muralidharan)***

1. The Transferred Application was initially filed by the applicant Ex Hav Santosh Khanikar, No. 10245632Y of 119 Infantry Battalion (Territorial Army), Assam as WP(C)No.2540/2013 in the Honourable Gauhati High Court, which was transferred to this Tribunal and re-numbered and registered as TA.No.01/2014, for setting aside his discharge on medical grounds and reinstatement in service.

2. The essential facts of the case are that the applicant was enrolled into 119 Infantry Battalion (TA) Assam on 22<sup>nd</sup> April 1996. While serving with the Unit in November 2010, he was admitted to 151 Base Hospital for severe pain in right eye and was treated for 'Central Serous Chorioretinopathy (RE)'. He was transferred to Army Hospital (R & R), Delhi Cantonment in January 2011 for further treatment and underwent laser treatment. He was initially placed in temporary low medical categories E3 and E2 and eventually in permanent low medical category E2 in November 2011. His medical category made

him unfit for deployment in operational areas and was discharged from service on 31 August 2012 in low medical category S1H1A1P1E2 with disability assessed as aggravated by service and at 15-19%. The applicant was granted service pension as he had 15 years of embodied service, but no disability pension was granted to him.

3. Sri K Gogoi, the learned counsel for the applicant submitted that the applicant, at the time of his enrolment in Territorial Army in April 1996, was fully fit and in due course was promoted to the rank of Havildar in May 2009. In November 2010, the learned counsel submitted that the applicant had severe pain in his right eye and was initially treated at 151 Base Hospital (Annexure I) and subsequently at the Army Hospital (R & R), Delhi Cantt. The learned counsel also submitted that the applicant underwent laser treatment to leakage areas in his right eye on 11 February 2011 (Annexure II) and was recommended to be placed in low medical category E3 (T-12), (Annexure III). The learned counsel further submitted that the applicant was examined by the concerned specialist in November 2011, who opined that the applicant was responding well to the treatment given, but requires to be in low medical category (E2 Permanent) and could be considered for upgradation to E1 if no recurrence was observed in the next

review, which was to be after six months (Annexure V). The learned counsel submitted that the applicant requested his Commanding Officer for convening a Special Review Board for upgradation to category E1 in May 2012 (Annexure VII). The learned counsel further submitted that the applicant was referred to 151 Base Hospital for specialist opinion, who observing that the applicant was asymptomatic since February 2011, had excellent visual recovery and no recurrence of the ailment during the past 15 months, recommended that he be upgraded to medial category E1 (Annexure VIII).

4. The learned counsel further submitted that even though the applicant was recommended to be upgraded, in the discharge note, it was brought out that the applicant was not eligible for Special Review Board as he had not completed 50% duration of his total medical categorisation period and could apply for special review in November 2012. It was also noted that in the absence of any recurrence he was likely to be upgraded to E1 in next review (Annexure IX). However despite the above recommendation of the Specialist, the learned counsel submitted that the Commanding Officer of the applicant, directed him to proceed for Release Medical Board as he was to

be discharged from service on 31 August 2012 on medical grounds (Annexure X). The learned counsel further submitted that during the Release Medical Board the specialist, despite observing that the applicant was asymptomatic and the general state of his eye was within the normal limits, recommended that the applicant be released from service in low medical category E2 without carrying out any special review of his medical status (Annexure XI).

5. The learned counsel further submitted that the applicant approached Respondent No.2 (Commandant, Eastern Commandant, Group H.Q.T.A) and Respondent No.3 (Commanding Officer, 119 Inf Bn(TA), Assam) for reconsideration of his discharge on medical grounds and also submitted a certificate of willingness to continue in service. The learned counsel further submitted that the specialist opinion at Army Hospital (R&R), Delhi Cantt as well as at 151 Base Hospital had indicated that the applicant had recovered from his ailment and if there was no further recurrence of the same, he was likely to be upgraded to medical category E1. The learned counsel also submitted that even though the next medical review of the applicant had been planned in November 2012, the respondents without due diligence discharged the applicant in August 2012. The learned counsel further submitted that as

the applicant had been discharged on medical grounds, he should have been granted disability pension, but his claim for it was rejected allegedly as the Release Medical Board assessed the disability as NIL (Annexure XIII). The learned counsel therefore prayed that if the disability was NIL, the applicant should have been retained in service and hence the applicant be reinstated in service or be granted disability pension.

6. Mr.N.Baruah, the learned Central Government Standing Counsel for the respondents submitted that the applicant who was found to be suffering from 'Central Serous Chorioretinopathy (Rt) Eye)' was initially placed in temporary low medical category thereafter based on medical review placed in Permanent medical category. The learned counsel further submitted that even though the recovery of the applicant from the ailment was satisfactory, the recommendation of the Specialist was for considering him for upgradation of medical category if no recurrence was found during the next review. The learned counsel further submitted that as the applicant was in low medical category, there were restrictions on his employment in that he had been excused from duties requiring good binocular vision, physical training, firing and night duties. The learned counsel also submitted that 119 Infantry Battalion (Territorial Army), was essentially deployed in counter

insurgency operations and with employment restrictions, the applicant was unfit for military duties with his Unit in operational areas. The learned counsel further submitted that in November 2011, the applicant had been placed in Permanent medical category E2 for a period of two years and his review was to be only in November 2013 (Annexure A). The learned counsel further submitted that even though the applicant was sent for a periodic medical review in May 2012 as recommended by the Specialist in November 2011, the opinion given was that the applicant was likely to be upgraded to E1, but was not actually upgraded and therefore continued to be in low medical category with employment restrictions.

7. The learned counsel further submitted that in accordance with the policy of retention of low medical category personnel serving in the Territorial Army, since there are no sheltered appointments in TA Units, personnel other than battle casualties, are retained only till they complete 15 years of embodied service which would enable them to earn pension. Only battle casualties are retained till completion of their terms of engagement (Annexure B). The learned counsel submitted that the applicant despite being in permanent low medical category from November 2011, was discharged only when he

had completed 15 years of embodied service in August 2012, which enabled him to earn regular service pension.

8. The learned counsel submitted that as per the earlier policy of 1977, after half the period of categorisation was over, a person could seek review of category. However, the learned counsel further submitted that in accordance with the revised policy on medical categorisation of serving JCOs/ORs in the Army, promulgated vide Army Order 03/2001, medical categorisation of those in permanent low medical category like the applicant, can be re-assessed only every two years, unless an individual needs to be further downgraded based on his medical condition. The learned counsel also submitted that there is no provision for a Re-categorisation Board for upgradation till the initial period of categorisation is over and as the applicant was in permanent low medical category from November 2011, his upgradation Board could only have been carried out in November 2013. The learned counsel also submitted that the applicant could not have been retained in service with employment restrictions, only because there was a chance of his being upgraded medically. The learned counsel further submitted that the disablement of the applicant at the time of Release Medical Board was assessed as between



15-19% and therefore he was not eligible for any disability pension as it was below the prescribed 20%.

9. Heard rival submissions and perused records. Lt Col Kaltamoi Kakati, Graded Specialist (Ophthalmology) of 151 Base Hospital assisted the learned Central Government counsel and explained to the Bench the ailment of the applicant and the nuances of categorisation of personnel with such ailment.

10. It is not disputed that the applicant was discharged from service on medical grounds due to his disability "Central Serous Chorioretinopathy (RE)". The essential issues for our consideration are whether the discharge of the applicant was legally valid and if the applicant was eligible for grant of disability pension.

11. The primary contention of the applicant is that since the Specialist in Ophthalmology had indicated that he was asymptomatic after treatment and was likely to be upgraded in the next review, he should have been retained in service and not discharged. The respondents, on the other hand, have contended that since the applicant was in low medical category he could not have been retained merely on the presumption that he was likely to be upgraded during his next review. The re-categorisation medical proceedings placed before us by the

respondents (Annexure A), indicates that the applicant was in temporary low medical category E2 from 24 May 2012, was placed in permanent low medical category S1H1A1P1E2 with effect from 08 November 2011 for a period of two years and the next Categorisation Board was due in November 2013. The Specialist opinion from Army Hospital (R & R) of November 2011 (Annexure V/Annexure A) and that from 151 Base Hospital of May 2012 (Annexure VIII), both indicate that even though the applicant had responded well to his treatment, he was to continue in low medical category, but was likely to be upgraded in the absence of any recurrence of the ailment in the next review. The Discharge Note from 151 Base Hospital of May 2012 (Annexure IX) indicates that the applicant was not eligible for special Review Board since he had not completed 50% duration of his medical categorisation period and could again apply for a special review in November 2012. It has also been indicated that in the absence of any recurrence he is likely to be upgraded to E1 in the next review. It is observed that the applicant has not been medically upgraded by any of the Specialists during any of the reviews and they had only indicated that there was likelihood of upgradation in next review provided there was no recurrence of the disability.

12. The respondents placed before us Army Order 3/2001, which lays down procedures for medical examination and categorisation of serving JCOs/ORs. Para 19 of the order being relevant is re-produced below:

“19. Commanding Officers will assist medical officers in maintaining accurate medical standards of all personnel serving under their command by keeping a constant watch on their medical categorisation. They are responsible to ensure that: -

(a) The medical Category of those placed in temporary category is reassessed on completion of the prescribed period.

(b) The medical category of those placed in permanent medical category is reassessed every two years except in cases where the AMA considers that the existing medical category of any individual is to be downgraded. In such cases, the individual should be brought before a duly constituted medical board immediately.”.

13. It is therefore evident that re-assessment of medical category can only be done on completion of the prescribed period. However if the medical condition of an individual worsens he could be further downgraded at any point of time. There are no provisions for review of medical category for upgradation till the prescribed period is complete. Therefore any request of the applicant for upgradation of his medical category prior to the date when re-catergorisation became due

could not have carried out. In our view, the six monthly review as indicated by the Specialists was only for the purpose of monitoring condition of the eye of the applicant post the laser treatment.

14. As regards the issue of whether the applicant could have been retained in service till his categorisation became due, it is observed that the policy on disposal of permanent low medical category JCOs/ORs of Territorial Army is to be in accordance with Army Headquarters letter No.34456/GS/TA-3 dated 17 January 2011 (Annexure B). The letter clearly indicates that there are no sheltered appointments available in Territorial Army Units since the personnel are embodied only for operational duties. It further lays down that other than battle/ other specified casualties, all others are to be retained only till they complete 15 years of embodied service and are to be discharged thereafter. In case of the applicant it is observed that he became a temporary low medical category in February 2011 and permanent low medical category in November 2011, but was retained in service till August 2012 by which time he had completed 15 years of embodied service enabling him to earn regular service pension. As observed by us earlier, his medical category had not been upgraded and it had only been indicated that he could be upgraded if there was

no recurrence of the disability. It is also observed that the applicant had been excused duties requiring good binocular vision, physical training, firing, weight lifting, night duties etc. With such restrictions, in our view, he could not have been deployed for operational tasks and hence could not have been retained in a Unit which did not have sheltered appointments. In our view, therefore, the respondents were justified in discharging the applicant from service on completion of time to earn pension and it was in accordance with the laid down policies. We therefore do not find any merit in the contentions of the applicant that he should have been retained in service.

15. We now come to the issue of grant of disability pension. Release Medical Board proceedings of the applicant were placed before us by the respondents. It was observed that the disability of the applicant was assessed by the Board as aggravated by service and at 15-19% for life. Lt Col Kaltamoi Kakati, Graded Specialist (Ophthalmology) of 151 Base Hospital explained to the Bench the reasons for assessment of the applicant's disability at 15-19%. It was submitted that the assessment was in accordance with Guide to Medical Officers (Military Pensions), 2008. Para 19 of Chapter VII of the said document, deals with defective vision and vision upto 6/24 in the defective eye with the other eye having vision upto 6/12,

the percentage of disability assessment has to be 15-19%. It was also clarified that even though the vision of the applicant post treatment was 6/6 and other parameters were within the normal limits, the period of low medical categorisation/observation being for two years, the Release Medical Board could not have upgraded the applicant nor could the percentage of disability be assessed as anything other than 15-19%. While that be so, we need to examine whether the applicant was eligible for disability pension as he had been discharged in low medical category.

16. Chapter IX of Pension Regulations for the Army 2008 deals with issues of Territorial Army and Reg 182 specifies that grant of pensionary awards shall be governed by the same general regulations as are applicable to corresponding personnel of the Army except where they are inconsistent with the regulations specified in the Chapter for Territorial Army. Grant of disability pension to Territorial Army personnel is to be in accordance with Reg 193 of Pension Regulations for the Army 2008 and being relevant is re-produced below:

*"193. (a) Disability/war-injury/liberalised disability pension and constant attendance allowance may be granted to an individual if he is invalided from the Territorial Army on account of disability attributable to or aggravated by Military service under the same*

*conditions and at the same rates as applicable to regular Army personnel under Chapter IV to these Regulations.*

*Provided that no disability pension shall be admitted on the basis of aggravation of any minor physical defect which was noticed at the time of joining the Territorial Army but was condoned under the relevant rules, or if the disability can be attributed to, or considered as aggravated by, any minor defect.*

*(b) Service element of disability pension shall be computed as per Regulation 94(a) and Regulation 98(a) as the case may be without adding any weightage to qualifying service actually rendered.*

*(c) Personnel of Territorial Army who are placed permanently in a low medical category other than 'A' and for whom no suitable employment compatible to his medical category can be found will be discharged from service and will be deemed to have been invalided out of service for the purpose of Entitlement Rules for Casualty Pensionary Award to the Armed Forces Personnel, 2008 and his disability pension shall be dealt with under normal rules.*

*.....”*

17. Regulation 193 specifies that disability pension may be granted to an individual if he is invalided from Territorial Army on account of a disability which is either attributable to or aggravated by military service. The Regulation further amplifies that any person for whom no suitable employment compatible to his

medical category can be found will be discharged and will be deemed to have been invalided out of service for the purpose of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008. Rule 4 of the said Rules being relevant is reproduced below:

**“4. Invalidment from Service:**

*(a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.*

*(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.*

*(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE I or equivalent and are discharged, because (i) no alternative employment suitable to their low medical category can be provided, or (ii) they are unwilling to accept alternative employment, or, (iii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service.”.*

18. As observed earlier, the applicant was discharged from service on medical grounds, since no suitable sheltered/alternative



appointments were available in the Territorial Army. Therefore, in accordance with the Regulations the applicant has to be treated as invalided out of service. Further the Release Medical Board assessed the applicant's disability as aggravated by service and at 15-19% for life. Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 2008 quoted earlier indicates that disability element will be admissible to a person who is invalided out of service and further amplifies that it will also be admissible to those who are discharged on completion of terms of engagement provided the disability is assessed as 20% or more. As can be seen, no restriction on the percentage of disability has been specified in case of personnel who are invalided out from service. Therefore, in our view, the applicant even though his disability was assessed at 15-19% was eligible for disability pension as he was invalided of service.

19. Reg 98 lays down the amount of disability pension and being relevant is re-produced below:

**“98. (a) Service element of Disability Pension  
(Category 'B' & 'C") . . . . .**

**(b) Disability element of Disability Pension  
(Category 'B' and 'C') . . . . .**

**(c) The extent of disability or functional incapacity shall be determined in the following manner for the purpose of computing disability element:**

Percentage of disability element as finally accepted	Percentage to be reckoned for computing disability element
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

20. As observed the Regulations provide for rounding off percentage of disability and any percentage of disability element upto 49% is to be reckoned as 50%. Therefore, the applicant whose disability was assessed at 15-19% for life would be entitled to have his percentage of disability reckoned as 50% while computing his disability element.

21. It is surprising to note that the respondents have rejected initial claim of the applicant for disability pension stating that Release Medical Board proceedings have assessed the disability as 'nil' (Annexure XIII), when it is clearly seen from from the Release Medical Board proceedings that the disability was assessed as attributable to service and at 15-19% for life. While we observe that technically the applicant has not exhausted the remedies available to him for claiming disability pension, in that he has not even filed the first appeal, we are of the view that no useful purpose would be served if the case is reverted once again to the respondents in view of the delay that has occurred and

more so, as we have already held that the applicant is eligible for grant of disability pension.

22. In view of the foregoing, the Original Application is partly allowed and the applicant is held eligible for disability pension with benefit of rounding off to 50% from the date of his discharge. The respondents are directed to sanction and pay disability pension along with arrears to the applicant within a period of four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry a simple interest at the rate of 8% per annum to be paid by the respondents.

23. There will be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**

an/krs