

COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

1.(Judgment)  
OA 2045/2019

Sub Jay Kishor Mishra  
VERSUS  
Union of India and Ors.

..... Applicants

..... Respondents

For Applicant : Ms. Archana Ramesh, Advocate  
For Respondents : Ms. Jyotsna Kaushik, Advocate

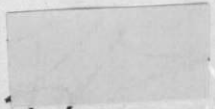
CORAM:

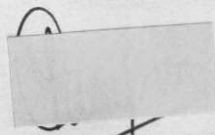
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GENERAL PHILIP CAMPOSE, MEMBER (A)

ORDER  
20.03.2020

Vide our detailed order of even date, we have dismissed the main OA No.2045/2019. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

2. After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

  
(RAJENDRA MENON)  
CHAIRPERSON

  
(PHILIP CAMPOSE)  
MEMBER (A)

/ps/

**COURT NO. 1, ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

**O.A No. 2045 of 2019**

**Sub Jay Kishore Mishra**

**..... Applicant**

**Vs**

**Union of India and others**

**..... Respondents**

**For Appellant : Ms. Archana Ramesh, Advocate**

**For Respondents : Ms. Jyotsna Kaushik, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**

**HON'BLE LT GEN. PHILIP CAMPOSE, MEMBER (A)**

**ORDER**

Aggrieved by the order of his discharge on medical grounds with effect from 30.11.2019 vide order of the respondents (Records, The Ladakh Scout Regiment letter) dated 10.06.2019, the applicant, a JCO of Subedar rank with about 24 years of service in the Ladakh Scouts, who was downgraded medically to Low Medical Category (LMC) with effect from 04.07.2017 for Diabetes Mellitus Type II, whose discharge order was stayed vide this Tribunal's interim order dated 27.11.2019, has filed this O.A seeking cancellation of the impugned discharge order on the ground that it is in violation of Government of India policy dated 03.09.1998 and IHQ of MoD (Army) (ADG PS) letters of 20.09.2010 and 30.09.2010, and grant consequent extension of the applicant's service till 31.08.2026.

2. Brief facts of the case, as averred by the applicant, are that he was enrolled in the Indian Army (Ladakh Scouts) as a Clerk on



16.08.1996 and was promoted to various ranks over the years. In the meanwhile, the applicant was detected with the disease 'Diabetes Mellitus Type II' and downgraded as LMC P2 (Permanent) with effect from 04.07.2017 with the restriction that he cannot serve in high altitude area, hence, he cannot be posted with actively deployed Ladakh Scout battalions, and can only be posted in peace stations like Chandimandir or Delhi. Despite his being a permanent LMC, he was promoted as Subedar on 01.05.2019 vide order issued by Respondent No. 3 and Part II order for the same was published on 17.05.2019. In the meanwhile, on 21.09.2018, the applicant had been served a show cause notice (SCN) for discharge from service on medical grounds, to which he replied on 03.10.2018, requesting that he should not be discharged due to the fact that his children were studying in Class X and Class III in Army Public School and that he, though LMC, could continue to carry out his duties as a Clerk satisfactorily in a peace station. Thereafter, he was served another letter by CO 2 Ladakh Scouts on 22.11.2018 informing him that he was being retained in service for three months to observe his levels of competence and efficiency. Thereafter, another SCN dated 18.04.2019 was served on him by his CO informing him that, being a permanent LMC P2, he was required to be discharged from service in keeping with the instructions contained in circulars of IHQ of Army (MoD) (ADG PS) letters dated 20.09.2010 and 24.08.2018 and asking why he should not be discharged accordingly. He forwarded his reply dated 23.04.2019

justifying his retention and requesting that he not be discharged from service, but Respondent No. 3, on 10.06.2019, issued his discharge order in the rank of Naib Subedar, along with 11 other LMC JCOs and other ranks, to take effect on 30.11.2019. This Tribunal took up the matter on 27.11.2019 and issued notice to the respondents, while concurrently ordering a stay on the impugned discharge order, till hearing of the case.

3. Heard the learned counsel on both sides and perused the pleadings and documents on record.

4. Ms. Archana Ramesh, learned counsel for the applicant, has referred to IHQ of MoD policy letter dated 03.09.1998 (Annexure A5) to highlight that a Subedar has a minimum contractual service of 28 years and, in addition, he can get 02 years' extension, thus, the applicant is entitled to serve up to 31.08.2026. Hence, the discharge order is illegal, being contrary to existing policy, and deserves to be set aside.

5. Learned counsel has also referred to the Recategorisation Medical Board proceedings dated 10.08.2019, whereby his existing medical category P2 (Permanent) for Diabetes Mellitus Type II was affirmed and extended up to 09.08.2021, wherein P2 implies that the applicant is 'fit for all duties but may have limitations regarding duties involving physical/mental stress and require perfect acuity of vision and hearing'. Learned counsel has referred to Para 4(b) of IHQ of MoD (Army) (AG's Branch) policy letter dated 10.10.1997 titled 'Criteria for Promotion: JCOs/NCOs' to contend that the applicant meets medical standards for



promotion and retention in the rank of Subedar. Para 4(b) of the said policy letter is reproduced as under:

MEDICAL STANDARDS (ALL PROMOTIONS TO THE RANK OF DFR/HAV AND ABOVE)

4. Must be in Medical Category AYE (SHAPE 1). However, personnel in lower medical category (both temporary and permanent) as a result of the circumstances indicated below would be eligible:

(a) Eligible up to Medical Category 'CEE'.

(i) Battle casualties as defined in Special Army Order 8/S/85 including those casualties in fighting against armed hostiles shall also be treated as battle casualties.

(ii)           xx xx           xx xx           xx xx

(iii)           xx xx           xx xx           xx xx

(iv)           xx xx           xx xx           xx xx

(b) Eligible up to Medical Category 'BEE' (SHAPE 2).

Personnel placed in medical category 'BEE', will be eligible for promotion to the next higher rank. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable/non-attributable to or aggravated by service conditions. However, cases of medical category 'BEE' (both temporary/permanent) due to psychological causes, misconduct or self-inflicted injuries will not be eligible for promotion.

(c) (i) Eligibility at (a)(b) above is subject to proficiency of the affected personnel being of a specially high standard and suitable appointments being found for them within the Regiment/Corps.

(ii) The above yardsticks will apply uniformly to all categories of JCOs/NCOs and no consideration will be granted that a particular disability (hearing, eye-sight and so on) does not interfere in the performance of their duties.

Thus, learned counsel contends that the applicant meets the medical category for retention in service up to 30 years, as is evident from the fact that the unit promoted the applicant on 01.05.2019 and published

Part II order accordingly. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Union of India and others v. Rajpal Singh* (2009) 1 SCC 216, the relevant paragraphs of which are reproduced as under:

23. *In the present case, it is evident from Column 9 of the order of discharge that respondent has been discharged on account of his having been placed in a low medical category (permanent) by the Re-categorisation Board. As noted above, he was not discharged immediately and was apparently detailed for sheltered appointment. However, suddenly within a few months of his evaluation by the "Re-categorisation Board", he was served with a show cause notice, seeking to discharge him on the aforementioned grounds. We are convinced that although the discharge is purportedly shown to be also on account of non-availability of a sheltered appointment, the main ground for discharge was undoubtedly on account of permanent low medical category i.e. medical unfitness. In that view of the matter, the order of discharge of the respondent would not fall under the residual ground, namely, I (iii) in Column 2 of the Table.*

XX XX

XX XX

XX XX

XX XX

XX XX

XX XX

26. *It is manifest that the said Army Order has been issued for disposal of permanent low medical category personnel and merely contemplates that the employment of permanent low medical category personnel at all times, is subject to the availability of suitable alternative appointments commensurate with their medical categories and also subject to the conditions that such a sheltered appointment can be justified in the public interest. A plain reading of the Army Order shows that it comes into operation after an opinion has been formed as to whether a particular personnel is to be retained in service or not, if so for what period. If a person is to be retained in service despite his low medical category for a particular period as stipulated in the Army Order 46 of 1980, the question of subjecting him to Invalidating Board may not arise. However, if a person is to be discharged on the ground of medical unfitness, at that stage of his tenure of service or extended service within the meaning of the Army Order, he has to be discharged as per the procedure laid down in Clause I (ii) in Column 2 of the said Table. Similarly, sub-rule (2A) of Rule 13, heavily relied upon by the appellants does not carry the case of the appellants any further. It is only an enabling provision to authorise the commanding officer to discharge from service a person or a class of persons in respect whereof a decision has been taken by the Central Government or the*



*Chief of Army Staff to discharge him from service either unconditionally or on the fulfilment of certain specified conditions. The said provision is not in any way in conflict with the scope of the remaining part of Rule 13, so as to give it an overriding effect, being a non obstante provision.*

*27. For the foregoing reasons, we wholly agree with the reasoning and the conclusion of the High Court that the discharge of the respondent was not in accordance with the prescribed procedure and was, therefore, illegal. We do not find any illegality or infirmity in the impugned judgment/order, warranting our interference. ....*

6. Learned counsel has also referred to the fact that the children of the applicant are studying in Army School, as was clarified in his replies to the SCN served on him, and contended that early discharge at this stage will affect their studies adversely as there is no Army school in his home district.

7. Ms. Jyotsna Kaushik, learned counsel for the respondents, at the outset, submitted details of the service profile of the applicant, wherein it was highlighted that the applicant has been serving in peace area continuously for almost six years since August 2014, initially at Army HQs, New Delhi and subsequently, since August 2017, at Chandimandir. Personnel of Ladakh Scouts are recruited for service in Ladakh (High Altitude area) from where they are occasionally posted to Chandimandir, a peace station, or at Delhi. The Ladakh Scouts Regiment has only five battalions, four of which are stationed in Ladakh, and the fifth in rotation at Chandimandir, which is a peace station. Further, due to policy constraints, LMC personnel of the Ladakh Scouts cannot be posted to Extra Regimental Employment (ERE) postings in peace stations. In the case of the applicant, since his down gradation medically in July 2014,

he cannot be posted back to high altitude area, thus, the only place he can be posted to now is with the unit in Chandimandir, where there are limited sheltered appointments available to adjust the applicant and other LMC personnel like him. Hence, the unit, due to lack of sheltered appointments to adjust the high number of LMC personnel has no option but to discharge some of them, including the applicant, in the interest of maintaining organisational efficiency of the unit. The CO is authorised, as per Army Rule (AR) 13 (as amended) to discharge LMC JCOs if there are no sheltered appointments available with his battalion, after conduct of Release Medical Board and thus, in accordance with Army Order (AO) No. 46/1980 and Army Rule 13(3)I(ii)(a) as amended vide SRO 22 dated 13.05.2010, read in conjunction with IHQ of MoD (Army) (MP) letter dated 30.09.2010, he recommended the discharge after Release Medical Board and serving of SCN, as per the Rule, which was sanctioned by Army HQs. Para 4(c) of the policy letter dated 10.10.2010 and extract of Para 2(a) to AO 46/1980 on 'Retention in Service' are reproduced as under:

*Medical Standards – Promotion. IHQ of MoD (Army) Letter No. B/33513/AG/PS 2(c) dated 10 Oct 2010.*

- |   |     |       |       |       |
|---|-----|-------|-------|-------|
| 4 | (a) | xx xx | xx xx | xx xx |
|   | (b) | xx xx | xx xx | xx xx |

*(c) (i) Eligibility at (a) and (b) above is subject to proficiency of the affected personnel being of specially high standard and suitable appointments being found for them within the Regiment/Corps.*



(ii) *The above yardsticks will apply uniformly to all categories of JCOs/NCOs and no consideration will be given to categories like Clerks, Storemen etc on the ground that a particular disability (hearing, eye-sight and so on) does not interfere in the performance of their duties.*

*Note : Medical Category 'BEE' denotes the revised term of Medical Category 'SHAPE 2'*

Retention in Service : *Extract of para 2(a) to Army Order 46/1980 is appended below:*

## *2. General Principles.*

*(a) The employment of permanent low medical category personnel, at all times, is subject to the availability of suitable alternative appointments commensurate with their medical category and also to the proviso that this can be justified in the public interest, and that their retention will not exceed the sanctioned strength of the regiment/corps. When such an appointment is not available or when their retention is either not considered necessary in the interest of the service or it exceeds the sanctioned strength of the regiment / corps, they will be discharged irrespective of the service put in by them. (emphasis supplied)*

However, the applicant has refused to report for Release Medical Board and also has not submitted his pension documents, which is a mandatory requirement, prior to his discharge.

8. The respondents have asserted the need for maintaining an Army which is physically and medically fit and, to that extent, where sheltered appointments to adjust LMC personnel are not available, the CO is authorised to discharge such LMC personnel in accordance with the relevant clause of Army Rule 13 (as amended vide SRO 22 of 13.05.2010). Learned counsel has contended that Ladakh Scouts have been raised for a particular operational purpose in difficult high altitude

terrain and retention of medically unfit personnel can happen only at the cost of operational efficiency.

9. Reliance in this regard is placed on the order of this Tribunal dated 11.02.2016 in *Sub Lakshmi Kant Mishra v. Union of India and others* (O.A No. 228 of 2012), wherein the Tribunal had ruled that, as sheltered appointment could not be provided to the petitioner in that case and he had been discharged from service after completion of minimum service as laid down (20 years for JCO) and the impugned order of discharge under AR 13(3)I(ii)(a)(i) was in consonance with the guidelines as laid down in AO No.46/1980 and policy dated 30.09.2010, the discharge order did not merit any interference from the Tribunal. Reliance is also placed in the matter of *Hav/Instr Mohan Kumar v. Union of India and others* (O.A No. 11 of 2013, RB Chennai), wherein the Tribunal had upheld the action of the respondents to discharge the petitioner therein on medical grounds as no sheltered appointment was available for his retention in service.

10. With regard to reference to the case *Rajpal Singh* (supra), the respondents have contended that amendment of AR 13 has been issued after due process in 2010 and hence the context is no more relevant. Moreover, the applicant has completed minimum qualifying service for pension.

11. We have given careful consideration to the arguments on both sides and find that the primary issue before us is, whether the



proposed discharge on medical grounds of the applicant, a Subedar of the Ladakh Scouts, who is in low medical category P2 (Permanent) for Diabetes Mellitus Type II needs to be interfered with by this Tribunal.

12. Learned counsel for the applicant has argued that the applicant is in acceptable medical category as is evident from the fact that the respondents promoted him to the rank of Subedar on 01.05.2019, even after serving him with SCN on 03.10.2018 and 18.04.2019 asking him to show cause as to why he should not be discharged from service on medical grounds. Learned counsel contends that, having promoted the applicant as Subedar after having found him in acceptable medical category, it is mandatory for the respondents to allow him to continue in service up to completion of 28 years of pensionable service, extendable by two years by screening or 52 years, whichever is earlier viz. up to 31.08.2026.

13. Learned counsel for the respondents, on the other hand, contends that, though the applicant was promoted to the rank of Subedar on 01.05.2019, as he met the criteria for promotion, however, as there is no sheltered appointment available for retention of the applicant in the unit, it is within the powers and discretion of the CO, in accordance with the provisions of AO 46/1980 and AR 13 (as amended vide SRO 22 of 2010) to discharge the applicant on medical grounds in the interests of organisational efficiency of an operational unit. The respondents have also referred to the peculiarities of the Ladakh Scouts where four

battalions out of five remain deployed in high altitude area in Ladakh, whereas only the fifth battalion is rotated in Chandimandir, a peace station. Consequently, LMC personnel of all five battalions end up getting posted to the Battalion in Chandimandir resulting in adverse effect on the organisational efficiency of the unit and, as sheltered appointments are not available for all such LMC personnel, the applicant and some other LMC personnel have to be discharged as per the rules.

14. From the documents placed before us, it is evident that SCNs had been served on the applicant more than once for his discharge from service even before orders for his promotion to the rank of Subedar was issued. The respondents, in their wisdom, decided to promote the applicant despite being in the midst of exchanging letters preliminary to his discharge on medical grounds, however, they still held that there being no sheltered appointment, he should be discharged in his new rank of Subedar. The respondents have also explained the problem of limited sheltered appointments in the Ladakh Scouts and have asserted that, in such situations, the aspect of organisational efficiency must take primacy over any request for retention in service on compassionate grounds

15. Thus, we are in agreement that the discharge of the applicant from service has been ordered by the respondents after following due policy and process and consequently we find no reason to interfere with the impugned order and the O.A is liable to be dismissed.

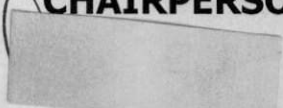


16. In the result, the O.A lacks merit and is dismissed. The interim stay granted by this Tribunal vide order dated 27.11.2019 on the applicant's discharge is hereby vacated. The applicant to be discharged accordingly, after conduct of the Release Medical Board.

17. No order as to costs.

Pronounced in open Court on this the 20<sup>th</sup> day of March,  
2020.

  
**(RAJENDRA MENON)**  
**CHAIRPERSON**

  
**(PHILIP CAMPOSE)**  
**MEMBER (A)**

Alex