

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

40.

OA 2051/2019

Sep Sudesh Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Maj Charul Bhat, OIC, Legal Cell

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE AIR MARSHAL B.B.P. SINHA, MEMBER (A)

ORDER
27.11.2019

The applicant herein challenges the impugned order dated 28th October, 2019 proposing to discharge him with effect from 30th November, 2019 on the ground that he has been found to be a person in the low medical category. Case of the applicant, as canvassed before us, is that after amendment to the provisions of Rule 13 of the Army Rules, 1954 (Annexure A-7) on 13th May, 2010 a person found to be permanently in low medical category shape-II or shape-III can be discharged by the Commanding Officer but only on recommendations of the Release Medical Board. The aforesaid rule came up for consideration before a Division Bench of the Punjab and Haryana High Court in CWP No.988 of 2012 and by order dated 19th May, 2014 (Annexure A-8) it has been held by the Learned Bench that even if the applicant was in

permanent low medical category he cannot be discharged without submitting him to the Release Medical Board. The case of the applicant is that he is being discharged without submitting him to the Release Medical Board.

We issue notice to the respondent to show cause as to why the contention of the applicant be not taken as correct as far as interim order is concerned. Notice is accepted by Maj Charul Bhat, OIC, Legal Cell on behalf of the respondents. Let objections/reply be filed before the next date of hearing.

It is made clear that the discharge of the applicant shall be in accordance with the statutory provisions after submitting him to the Release Medical Board.

List the matter before Court on 23rd December, 2019.

A copy of this order be provided **DASTI** to learned counsel for the parties.

(RAJENDRA MENON)
CHAIRPERSON

(B.B.P. SINHA)
MEMBER (A)

/vks/