

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

OA.No. 262 of 2010

Nk Narendra Kumar

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri D.S. Kaunte, Advocate

For the Respondents: Shri Ankur Chibber, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

ORDERS

1. Petitioner by this petition has prayed that the order dated 31.12.02 discharging the petitioner may be declared as illegal and he shall be deemed to be continue in service and to have retired w.e.f. 31.12.2009 in the present rank with all consequential benefits.

2. Petitioner's date of birth is 3.8.1967 and he joined the Indian Army as a soldier on 10.12.1987. While serving in J&K, he was admitted to 150 GH C/o 56 APO on 20.7.2001, where he was diagnosed as a case of SEIZURE DISORDER and was downgraded to temporary low medical category P3 for 6 months by the medical board. Then petitioner was directed to appear before the re-categorisation medical board for review of his temporary low medical category.
3. Immediately after placing the petitioner in low medical category, a shelter appointment was granted in favour of the petitioner recommending his further retention in public interest by the then Commanding Officer. However, his Commanding Officer did not allow him to continue in permanent low medical category and passed the adverse order ordering the petitioner to be discharged from Army Service under rule 14(3) III (v) pursuant to an impugned order dated 15.3.2000 passed by the Army Headquarters that all the authorities to pass a discharge order

wherever the incumbent is in permanent low medical category from service.

4. It is alleged that the CO has wrongly passed the order of discharge as the order of discharge can be passed only by the Invaliding Medical Board and the petitioner was not invalidated out from service on the recommendation of the invalidating board. Petitioner has put in 17 years with colours and 2 years in the reserve and as a Naik he is entitled to continue upto 22 years of service or 47 years of service, whichever is earlier. Since the applicant was enrolled on 10.12.1987 and he was Naik, therefore, he is legally entitled to continue upto 31.12.2009 or till attaining the age of 47 years of age whichever is earlier, whereas he has been discharged from army service only after completion of 15 years of the service.
5. The reply has been filed by the respondent and the respondent has pointed out that taking the position that the petitioner has been discharged from service with the 20% disability, but he was not found to be attributable to nor aggravated by the military

service. So far as in the case of a judgement dated 20.11.2008 passed in the Sub (Skt) Puttan Lal & others, the Court has ruled that personnel discharged in low medical category after 12.04.2007 without holding Invaliding Medical Board and those personnel discharged on similar grounds prior to 12.04.2007 who had approached the competent court against the contemplated discharge will be reinstated with all back wages and consequential benefits.

6. In this instance case, applicant was discharged from service w.e.f. 31.12.200 and the present OA has been filed on 13.4.2010, therefore, it is submitted that this case is not covered under any of the conditions as ruled by the Hon'ble Delhi High Court judgement dated 20.11.2008.

7. We have bestowed our best of consideration and found that since the petitioner did not challenge the order of discharge in time and filed a petition now in 2010, whereas Delhi High court has already closed the doors for further litigation in the aforesaid

judgement, therefore, no relief can be granted to the petitioner in the present petition.

8. Hence as a result of above discussion, we don't find any merit in the petition and the same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
8 November, 2010