

**COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 392 of 2010**

**(Delhi High Court W.P (C) No. 7998 of 2009)**

**IN THE MATTER OF:**

**Ex L/Nk S.K Tiwari** .....**Applicant**  
Through Shri Ashok Chaitanya, counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Dr Ashwani Bhardwaj, counsel for the Respondents

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 08-12-2010**

1. The applicant had filed WP (C) 7998/2009 in the Hon'ble Delhi High Court and the same was transferred to this tribunal on 16/11/2009. The applicant has prayed the quashing of release of his medical board proceedings held on 07/09/2007 and his order of his discharge dated 30/09/2007 (Annexure P-8) and prayed that he be reinstated in DSC with all consequential benefits.

2. The applicant states that he was enrolled in the DSC on 02/09/1997 and subsequently promoted L/Nk. His terms of engagement were for 10 years for initial period, extendable by 05 years. The applicant states that this extension was granted to him from 02/09/2007 to 01/09/2012.

3. The applicant was downgraded to low medical category (P-2) on 04/08/2006 for obesity. He claims that subsequently he reduced his weight to acceptable 83 Kilos. During his medical examination on 20/07/2007 he was medically examined at MH, Kirkee by Lt Col Lalit Maudar at the MI Room and his weight in the document is recorded as 83 kilos (Annexure P-1). The medical advisor Col Kamal C Koley re-examined him on 10/08/2007 and malafidely reflected his weight as 103 kilos. Col Kamal C Koley also distorted details of his Pathological reports to justify an additional disability of hypothyroidism on 07/09/2007.

4. The applicant avers that he was subjected to a release medical board on 07/09/2007 where his weight was recorded as 84 kilos (Annexure P-5).

5. The applicant states that he was discharged on 30/09/2007 under Army Rule 13 (3) Item (iii) (i) (Annexure P-4) on the grounds of being LMC (P-2).

6. The applicant contends that since he had already been granted extension till 01/09/2012, but discharged prematurely before that on 30/09/2007, it was mandatory to subject him to invaliding medical board and not a release medical board.

7. The applicant states that he also submitted an application for an appeal medical board on 20/09/2007 but did not receive any intimation on the same till his date of discharge. The applicant avers that on 10/10/2007 he received a telegram (Annexure P-6) from Commandant MH Kirkee directing him to report to the MH within one week. The applicant states that since the medical advisor MH Kirkee was biased against him he requested that his appeal medical board be held at Base Hospital, Delhi Cantt (Annexure P-7). Subsequently he received another letter dated 30/11/2007 from MH Kirkee directing him to report to the hospital within 15 days (Annexure P-10). The applicant replied vide letter dated 17/12/2007 (Annexure P-11) and again on 22/01/2008 requesting for appeal medical board to be held at Delhi Cantt. Subsequently he served a legal notice on the same subject on 02/06/2008.

8. In the counter affidavit the respondents stated that the applicant did his initial spell in the Army from 23/08/1977 to 29/02/1996 and is in receipt of a pension. He was re-enrolled in the DSC for an initial tenure

of 10 years i.e from 02/09/1997 to 01/09/2007 but was discharged only on 30/09/2007 at the end of the month, on completion of his initial period of engagement under Army Rule 13 (3) Item (iii) (i) but not as a LMC case.

9. The initial contract was for 10 years with clause for further extension of 05 years till superannuation (55 years age) provided the individual fulfilled the laid down criteria and not be a permanent low medical category. The applicant was downgraded to low medical category (P-2) from 04/08/2006 to 14/01/2007 for obesity. His low medical category in P-2 was then subsequently extended from 14/01/2007 to 02/07/2007 (obesity) and then from 02/07/2007 to 02/07/2009 (obesity and hypothyroidism).

10. The applicant was granted provisional extension of service for 05 years from 02/09/2007 to 01/09/2012 provided he fulfilled the laid down criteria. Since the applicant was finally downgraded medically P-2 permanent on 14/08/2007 he no more met the eligibility criteria for extension. This was before the expiry of his initial terms of re-enrolment in DSC finishing on 01/09/2007. The applicant was discharged on 30/09/2007 at the end of the month. The respondents stress that applicant was placed in low medical category P-2 permanent. He was thus in LMC (P-2 permanent) two months prior to crucial date of

commencement of provisionally extended service commencing on 02/09/2007.

11. The respondents state that the applicant was subjected to release medical board. An invaliding medical board was not necessary since his discharge was not after commencement of provisionally extended terms of engagement. The applicant was paid Rs 35,616/- towards death cum retirement gratuity and also Rs 74,980/- towards service gratuity as he did not qualify for second pension in DSC.

12. The applicant was subjected to a release medical board on 02/09/2007 at MH, Kirkee where he was graded P-2 permanent for obesity and hypothyroidism with 11 to 14% disability. It was noted that his disease was neither attributable nor aggravated by military service (Annexure R-2). The applicant was thus ineligible for disability pension.

13. The applicant appealed for review medical board on the ground that his medical papers had been tampered with. The President of the medical board (Annexure R-6) and Commandant MH, Kirkee (Annexure R-7) asked the applicant to report to MH, Kirkee for review. The applicant did not respond for 04 months and possibly after reducing his weight wanted a re-examination at Delhi. The respondents stress that the applicant appealed against obesity but not against his second disability of hypothyroidism. The applicant was declared obese in

03 medical boards held on 04/08/2006, 14/01/2007 and 02/07/2007 and did not reduce his weight. The respondents state that DSC Records letter (Annexure P-4) clearly states that the applicant terms of engagement expired on 01/09/2007 and extension granted was provisional. "In case individual is placed in low medical category permanent w.e.f 02/07/2007 on review he will be discharged from service w.e.f 30/09/2007". The respondents have thus recommended that the application be rejected.

14. In a rejoinder to the counter affidavit the applicant has reiterated his earlier contention and stressed that an appeal medical board would have been biased. That is why he requested that it be held at Base Hospital Delhi Cantt. The review medical board on 07/09/2007 recorded his weight is 84 kilos and he was wrongly declared to be suffering from hypothyroidism by tampering with entries in his Pathological reports.

15. We have heard the arguments and perused the record. The applicant initially served in the Army from 23/08/1977 to 29/02/1996 from where he is earning his pension. He was re-enrolled in the DSC for initial period of ten years from 02/09/1997 to 01/09/2007 but he was discharged at the end of the month 30/09/2007. The applicant was eligible to a further extension of 05 years provided he fulfilled the laid down criteria. This criteria for extension was not met as the applicant

remained low medical category (permanent) from 04/08/2006 onwards and his release medical board of 02/07/2007 (before expiry of his initial period of engagement upto 01/09/2007) confirmed that he was suffering from obesity and hypothyroidism. The findings of the release medical board have to be given due weightage. The applicant was not entitled to invaliding medical board as he had completed the period of his initial engagement for which he was paid death cum gratuity benefits and thus cannot place reliance in the judgements of Raj Pal Singh SLP (C) No 6037 of 2007 or in the case of Sub/SKT Puttan Lal WP (C) 5946 of 2007. The applicant was not entitled to dictate the place of review medical board and did not respond to the directions of Commandant MH, Kirkee to report for review of his case. No injustice has been done to the applicant and no relief is warranted. Application is dismissed. No costs.

**Z.U.SHAH**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on the day of 08<sup>th</sup> December, 2010**