

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI**

T.A. No. 418/2010

[W.P. (C) No. 6885/2000 of Delhi High Court]

Ram KaranPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Sh. B.S. Saini, Advocate and Sh.S.K. Tyagi,
Advocate.

For respondents: Dr.Ashwani Bhardwaj, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
02.08.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. Petitioner by this petition has prayed that by writ of certiorari Annexure P-14 may be quashed and respondents no.1 and 2 be directed to treat him in service and pay him all the back pay and allowances and other service benefits.

3. Brief facts which are necessary for the disposal of present petition are that petitioner enrolled in the Indian Army as a Sepoy on 20.02.1981 and with passage of time, he became Havildar but he was discharge vide order dated 08.06.1998 with effect from 01.12.1998 on account of low medical category. It is alleged that petitioner problems started when he filed some written complaints during 'Sainik Sammelan' held on 31.08.1995 wherein he made grievances of various nature. The petitioner was sent by the Commanding Officer, Devlali to the military hospital, Kirkee, Pune and he reported there on 22.09.1995. He remained in the hospital upto 08.03.1996. He was classified by psychiatrist that he was suffering from 'paranoid personality disorder' and therefore, he was given show cause on 14.05.1998 and finally discharged from vide order dated 08.06.1998 with effect from 01.12.1998. The grievance of the petitioner is that he has been discharged without undergoing examination by Invaliding Medical Board as required under Army Rule 13 (3) (iii) of the Army Rules. The Clause (iii) of the Army Rules contemplates that an incumbent is to be discharged only on the recommendation of the Invaliding Medical Board. Therefore, the condition precedent to discharge under Rule 13 is the

recommendations from the Invaliding Medical Board. The grievance of the petitioner in the present petition is that he was never asked to appear before the Invaliding Medical Board and he was discharged vide order dated 08.06.19998 with effect from 01.12.1998 on the basis of so called recommendations of Release Medical Board. Without facing the Invaliding Medical Board, the order passed by the Authorities, is dehorse the Rules. In that connection learned counsel for the petitioner invited our attention to the decision of Hon'ble Supreme Court in the case Union of India & Ors v. Rajpal Singh cited as 2008 (12) SC 476 wherein the Lordship have taken the view that *Commanding Officer can only discharge the incumbent on the recommendation of Invaliding Medical Board*. The Lordship have also held that “*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 1 (ii) in Column 2 of the said Table.*”

4. To this, learned counsel for the respondents submitted that infact the petitioner was sent to the Release Medical Board and on the recommendations of that Medical Board dated

08.05.1998 wherein he was categorised in the category BEE (Permanent) with effect from 06.05.1998. A show cause notice was issued on 14.05.1998 and thereafter, he was discharged from service vide order dated 08.06.1998 with effect from 01.12.1998. Therefore, learned counsel submitted that on the recommendation of Medical Board, the Authorities has applied there mind and discharged the petitioner from service.

5. We have head learned counsels for parties and pursued the record.

6. In fact the Army Rules contemplate two kinds of Medical Boards, one is the Release Medical Board and other is the Invalidating Medical Board. But before an incumbent is discharged from service on account of medical ground, he is to be examined by the Invalidating Medical Board as contemplated in the Rules. The Commanding Officer has only power to discharge incumbent in case Invalidating Medical Board finds that person is unfit on medical grounds to be retained in service.

7. We have been informed that the Invalidating Medical Board is normally constituted of three doctors, one of them is to be specialist. Though in the present case the original record shows that the Release Medical Board was three doctors and in that one of them was Psychiatrist Specialist. But nonetheless the proceedings show that it is a Release Medical Board and it is not an Invalidating Medical Board. In the original proceeding which is place before us, the Medical Board has not recorded that he is unfit to be retained in service, though they mentioned that he may be released under BEE category (permanent). As per the rules, there should have been properly Invalidating Medical Board. Their Lordship in the case of Union of India & Others vs. Rajpal Singh (Supra) have taken a categorical view that when the Rule requires that a particular thing has to be done in a particular manner then in that case it should be done in that particular manner alone and alone and none else.

8. In the present case, it is identical situation no Invalidating Board was constituted. It was only a Release Medical Board constituted and petitioner appeared and as per the recommendations of the Release Medical Board the Commanding Officer gave a show cause notice and discharged the incumbent.

As per the decision in the case of Rajpal Singh (supra) it has to be a properly constituted Invalidating Medical Board which recommends that whether incumbent should be retained in service or discharged on medical grounds. Such properly constituted Invalidating Medical Board alone is competent to give such findings and on these findings the Commanding Officer can discharge the incumbent under Army Rule 13 (3) (iii) of the Army Rules, 1954 but that was not done in the present case.

9. Consequently, in view of the decision given in the case of Rajpal Singh (supra), we have no choice but to set aside the order passed by the respondents dated 08th June, 1998. We allow this petition. All the arrears of the incumbent should be worked out and same shall be paid to the petitioner within three months from today. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 02, 2010.