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

**T.A. No. 543 of 2009  
(Delhi High Court W.P (C) No. 6881 of 2000)**

**IN THE MATTER OF:**

**Ex Sepoy Sanjeev Tomar**  
Through Mr N.L Bareja, counsel for the applicant

**.....Applicant**

Versus

**Union of India and Others**  
Through: Dr Ashwani Bhardwaj counsel for the respondents

**.....Respondents**

**CORAM:**

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

**Order**

**Date: 13-5-2010**

1. The applicant filed a writ petition (civil) No. 6881 of 2000 in the Hon'ble Delhi High Court praying for quashing his discharge on medical grounds (Annexure P-1) and for reinstatement with all consequential

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relief. The same was transferred to the Armed Forces Tribunal 12.10.2009 on its constitution.

2. The applicant was enrolled in the Army on 29.2.1992. During his service he sustained injuries twice as a result of which he was diagnosed as "Lumber Disc Bulge L 4-5 Bladder Dysfunction". He was initially medically downgraded to CEE (temporary) for 12 months and on 19.8.1999 he was downgraded to CEE (permanent) for two years. The applicant was retained in service in a sheltered appointment for some time. The applicant avers that his commanding officer became annoyed with him on receipt of complaints from applicant's wife. On 9.9.2000 the applicant was dispatched to Depot Regiment, Jat Regimental Centre for completing his discharge formalities on medical grounds. He reached the Jat Centre on 13.9.2000 and was discharged on 30.9.2000 under Army Rule 13 (3) III (v) without completing requisite discharge formalities. (Annexure P-1). It is stated that before his discharge no invaliding medical board was held. His discharge was thus illegal.

3. The applicant contends that he should have been retained in service till completion of his terms of engagement to enable him to earn

a pension. He avers that there are several permanent low medical category personnel who have been retained in service and he should have been also given the same treatment. Applicant has alleged that he has been discriminated against. It is also stated that his father approached the Hon'ble Delhi High Court by filing writ petition No. 5929 of 2000. Later on was allowed to withdraw the same with liberty to file a petition himself vide order 1.11.2000 (Annexure P-5)

4. The applicant contends that his discharge was ordered by Officer-In-Charge, Records, the Jat Regiment who had no jurisdiction to pass the order of discharge. He was discharged despite having given his willingness to be retained in service. The applicant has also prayed that his discharge on medical grounds, without the recommendation of invaliding medical board, be declared illegal and he be reinstated and retained in service till he renders the minimum qualifying service to earn a pension.

5. The respondents in their counter affidavit have stated that the applicant while serving 3 JAT suffered from "Lumber Disc Bulge L 4-5 Bladder Dysfunction". He was downgraded medically to CEE

(Temporary) for six months from 19.8.1998 to 19.2.1999. This category was extended for another six months upto 19.8.1999 when on a subsequent review he was downgraded to CEE (permanent) for two years from 19.8.1999 to 19.8.2001. Since no sheltered appointment was available so the applicant was discharged with effect from 30.9.2000 under Army Rule 13 (3) III (v). A release medical board was held on 20.7.2000 and he was awarded 30 % disability pension.

6. The father of the applicant had represented against this discharge to the Chief of Army Staff (COAS) and the Ministry of Defence. He had also filed a writ petition (c) No. 5929 of 2000 in Hon'ble Delhi High Court. This was dismissed on 1.11.2000 with direction that the petition be filed by his son (applicant).

7. The respondents have stressed that employment of low medical category personnel is subject to availability of sheltered appointments commensurate to their medical category. Since a sheltered appointment was not available, the discharge of the applicant was sanctioned by (OIC) Records with effect from 30.9.2000 (Annexure R-3). The respondents have reiterated that OIC Records is the competent authority

to sanction discharge of low medical category personnel vide Army Headquarter letter No. B/10122/LMC/MP-3 (PBOR) dated 15.3.2000 (Annexure R-II). The case for discharge was initially referred to Army Headquarters who returned the case on the grounds that OIC Records was approving authority of order of discharge sanctioned by the Commanding officer. The respondents have recommended that the application be rejected.

8. In a rejoinder affidavit the applicant has brought out that the authority to sanction discharge under Army Rule 13 (3) (iii) (v) is the commanding officer of the Unit of the applicant. The discharge sanctioned by OIC Records is without jurisdiction. The applicant avers that sheltered appointments were available but the respondents, being vindictive, did not adjust him in them. The post release entitlements were paid to the applicant after more than three months from his date of discharge and he is entitled to interest on the same.

9. We have perused the records and heard the arguments at length. The applicant was discharged on medical grounds under Army Rule 13 (3) III (v) without an invaliding medical board. A release medical board

awarded him 30 % disability in addition to his pension. However for discharge, being low medical category cases, holding an invaliding medical board is a statutory necessity and the recommendations of the same are also required which are not on record. The discharge too was sanctioned by OIC Records where as the statutory provisions rule that cases of discharge under Army Rule 13(3) III (v) be sanctioned by the commanding officer. The contention of the respondent in this respect are not having legal force that OIC Records was competent to sanction the order of discharge. The discharge of the applicant is therefore illegal on both counts. We therefore direct that the applicant to be reinstated with effect from 30.9.2000 in service and be retained in service till completion of minimum qualifying service for pension. He is to be paid all consequential benefits of pay minus the emoluments paid to him at the time of discharge. His pension be accordingly revised. The applicant is entitled for disability pension also. Application is partially allowed. No costs.

**MANAK MOHTA**  
(Judicial Member)

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

Announced in the open court  
Dated: 13.5.2010