

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

**T.A. No. 548 of 2009  
(Delhi High Court W.P (C) No. 8333 of 2009)**

**IN THE MATTER OF:**

**Ex Hav Suresh Chander** .....**Applicant**  
Through Col (Retd) SR Kalkal, counsel for the applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Mr. Rajinder Nischal, counsel for respondents

**CORAM :**

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

**Order**

**Date: 28-4-2010**

1. The applicant filed a writ petition (civil) No. 8333 of 2009 in the Hon'ble Delhi High Court for quashing the release order dated 10.7.2006 (Annexure P-4) by which he was directed to be discharged with effect from 31.1.2007 vide Rule 13 (3) item 1 (iii) (v) and for reinstatement in service with all consequential benefits with effect from 1.2.2007. The same was transferred to the Armed Forces Tribunal on 12.10.2009.

2. The applicant was enrolled in the Army on 2.3.1988. It is stated that while serving in high altitude area the applicant was placed in low medical category P-2 (permanent) on 22.3.2006. He was served with a show cause notice on 1.5.2006 for discharging him from service being low medical category P-2 (permanent). The applicant contends that he replied stating that he wished to continue in service but was released from service with effect from 1.2.2007 (Annexure P-4). The applicant maintains that low medical category army personnel cannot be relieved without holding an invaliding medical board. It is stated that in view of the Hon'ble Supreme Court ruling given in the case of *UOI Vs. Naib Subedar Rajpal Singh (2009) 1 SCC (L&S) 92* the Ministry of Defence (MoD) issued detailed instructions for recall of persons earlier discharged (Annexure P-2). Accordingly record offices have issued recall letters to low medical category personnel who were discharged earlier. The applicant placed one letter issued to Ex Nk Vidya Dutt Dhyani dated 31.1.2009 who was discharged in 2002 and was given option to rejoin (**Annexure P-3**). It is contended that on the same analogy the applicant should have been given such letter. The applicant however has not received any recall letters, it is alleged that amounts to

discrimination. He prays that discharge order be quashed and he be reinstated with effect from 1.2.2007 with all consequential benefits.

3. The respondents in their counter affidavit have stated that the applicant was down graded to P2 (permanent) with effect from 22.3.2004 (and not 22.3.2006 as averred by him). The applicant was given a sheltered appointment for two years upto 22.3.2006 when his disability was reviewed and he was allowed to continue in the same category for another two years. Thereafter for another disability “fracture patella right” the applicant was placed in temporary medical category A3 for six month with effect from 17.8.2006. Keeping in view these two disabilities it was not found feasible to give the applicant a sheltered appointment and he was served a show cause notice. The applicant was discharged with effect from 1.2.2007 under the provisions of Army Headquarter letter No. B/10122/LMC/MP-3 dated 15.3.2000 after holding a release medical board on 26.10.2006.

4. The respondents maintain that only the personnel discharged on the authority of Chief of Army Staff letter dated 12.4.2007 were to be reinstated according to Delhi High Court Order dated 20.11.2008 in Sub

Puttan Lal Vs UOI W.P (C) 5946 of 2007 and connected matters. The applicant was not discharged under Chief of Army Staff letter dated 12.4.2007 but was discharged under Army Headquarter letter dated 15.3.2000. The applicant had also not filed any writ petition nor it was pending in any court of law at the time of issuance of Hon'ble Delhi High Court order. The applicant was released 20 months prior to the issuance of the Delhi High Court Order thus Hon'ble Delhi High Court order dated 20.11.2008 is not applicable in the applicant's case.

5. In a rejoinder affidavit the applicant has stated that the Hon'ble Delhi High Court had clarified that even persons who had not approached any court till date were entitled for relief (Annexure P-1). The applicant was discharged with effect from 1.2.2007 whereas persons discharged on the same grounds as far back as 2002 had been given an option to rejoin. The applicant would reach the age of superannuation on 31.3.2010 and if his orders for rejoining are not issued by then he should be given all financial benefits with 12 % interest.

We have heard the arguments at length and perused the records. The applicant was a medical category P2 (permanent) and was discharged

with effect from 31.1.2007 after a release medical board under the provisions of Army Headquarter letter dated 15.3.2000. The applicant had not been discharged under the letter of 12.4.2007 or at the time of direction given by Delhi High Court on 20.11.2008 in case of ***Sub (SKT) Puttan Lal & Ors W.P. (C) 5946 of 2007*** no case was pending with regard to his discharge order therefore no option letter was given to him to rejoin. He was released much earlier with effect from 31.1.2007. His case rests on the decision given in case of ***UOI Vs Naib Subedar Rajpal Singh (2009) 1 SCC (L&S) 92*** wherein it has been observed that low medical category Army personnel can be discharged on the recommendations of invaliding medical board. The applicant was also discharged on the basis of being a low medical category. The applicant has also cited letter dated 31.1.2009 addressed to Ex Nk Vidya Dutt Dhyani who was also discharged in 2002 but was given option letter to rejoin in 2009 (**Annexure P-3**). The contention of the respondents was that he was discharged under policy letter dated 15.3.2000 and therefore was not entitled for any relief as claimed. But neither the letter dated 15.3.2000 has been placed nor it has been established that since the applicant was a low medical category there was no need for holding an invaliding medical board. The contentions are not sustainable. We

consider the applicant should have also applied to the respondents for giving such relief but he has directly approached the court without filing any representation to the respondents. We think it proper to rule that the applicant is free to file such representation and the respondents are directed to consider the same on merit without influence by this order. We therefore partly allow the application and direct the respondents that if applicant files a representation in this regard the same should be considered on merit, preferably within six months from the date of filing. His discharge order will be subject to the out come of his representation. If that favours him he would be entitled to all financial benefits as if he had not been released on 31.1.2007. On the basis of aforesaid discussion the application is partly allowed. No orders as to costs.

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

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

**Announced in the open court**  
**Dated: 28-4-2010**