

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

**T.A. No. 562 of 2009
(Delhi High Court W.P (C) No. 8240 of 2009)**

IN THE MATTER OF:

Ex Sub Mohan Singh**Applicant**
Through Col (Retd) S.R. Kalkal, counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Ankur Chibber, counsel for respondents

CORAM :

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

Order

Date: 26-4-2010

1. The applicant filed a writ petition (civil) No. 8240 of 2009 in the Hon'ble Delhi High Court for quashing his discharge order dated 1.6.2005 on the ground that he is a battle casualty and for reinstating him

with all consequential benefits. The same was transferred to the Armed Forces Tribunal on 12.10.2009.

2. Brief relevant facts of case are that the applicant was enrolled in the Army on 17.9.1980. During his service he was promoted to the rank of Subedar (Sub). The applicant states that during the period 2000 – 2003 while serving with 13 Rastriya Rifles (13 RR) in high altitude areas of Jammu and Kashmir (J&K) he was exposed to extreme cold and developed frost bite which led to gangrene and subsequently his toe was amputated. The medical case sheet dated 3.6.2003 is at (Annexure P-1). The applicant was placed in low medical category P2 (permanent).

3. The applicant was transferred from 13 RR to his new unit (12 KUMAON) in a peace station. The applicant requested Officer-in-Charge (OIC) Records KUMAON Regiment to declare him a battle casualty on 23.7.2004 (Annexure-P2). This was not done but a show cause notice dated 27.4.2005 (Annexure P-3) was served upon him and orders were issued for his discharge being a low medical category case with effect from 1.6.2005. The applicant was released on 1.6.2005. The applicant contends that since he was a battle casualty he should not have

been discharged in terms of Army Order 1/2003 (Annexure P-6). He also contends that Apex Court with reference to *SLP (C) 6037 of 2007* had held that army personnel if placed in low medical category can not be released without the recommendation of invaliding medical board. He has prayed that the order of his discharge dated 1.6.2005 be quashed and he be reinstated in service with all consequential benefits.

4. The respondents in their counter affidavit have stated that the applicant was posted in 13 RR from 12.3.2002 to 30.12.2002. He was posted to 12 KUMAON and thereafter to KUMAON Regimental Centre on 29.8.2003. Two months after his reversion to a peace station with 12 KUMAON the applicant was admitted to 161 Military Hospital from 27.2.2003 to 5.5.2003 where he was diagnosed as a patient of “peripheral vascular disease and Gangerene toe (left foot)” as per AFMSF-15 dated 4.6.2003 and 6.12.2003. The date and place of origin of the disability has been mentioned as 27.2.2003 at Pithoragarh (Uttarakhand). Para 19 of the AFMSF – 15 (Medical Board proceedings) dated 4.6.2003 opined that the disability was not attributable to military service. The applicant was placed in low medical category A-2 for six months with effect from 4.6.2003. He was further downgraded to A2 (permanent) with effect

from 4.12.2003. The respondents contended that since the applicant was not a battle casualty his continued retention in military service was not considered necessary by his commanding officer in view of lack of a sheltered appointment. The discharge of the applicant was approved by OIC Records, KUMAON Regiment. The applicant was brought before a release medical board on 20.4.2005 which again opined that both his disabilities were not attributable to military service and assessed 20 percent disability for life.

5. The applicant was discharged from service under Army Rule 13 (3) Item 1 (ii) with effect from 31.5.2005 with a disability element of Rs. 950/- per month and Rs. 75,000/- from Army Group Insurance.

6. The respondents have also brought out that the KUMAON Regimental Centre requested applicant's previous units 13 RR to examine his case for consideration as battle casualty. 13 RR conveyed that the applicant was a non battle casualty. More over in the initial AFMSF – 15 (Medial Board Proceedings) the competent medical authorities also considered both the disabilities as not attributable to military service. The disabilities have been aggravated but not

attributable to military service. For this the applicant had been given a disability element of Rs. 950/- (per month for life).

7. The respondents have stated that the applicant was posted in field/ counter insurgency area from 22.4.2002 to 27.12.2002 and not during 2003 and the applicant never developed frost bite. His case was of peripheral vascular disease with gagerene toe (left).

8. The respondents have submitted that Hon'ble Supreme Court in judgment given in case of *Ex. Sapper Mohinder Singh Vs. UOI (CA No. 164 of 91, dated 14.1.1993)* wherein it has observed that findings of the medical board is a very important document and it should be respected unless the individual is re-examined by properly constituted medical board for reassessment of his disability. In this case too the findings of the medical board opined the disabilities of the applicant as not attributable to military service. In view of the observation the respondents have recommended that application be rejected.

9. In a rejoinder affidavit the applicant has stated that medical board proceedings, as stated by respondent, have not been attached with their

reply. There are no annexure in the counter affidavit by the respondents, nor copies of these have been supplied.

10. We have perused the records and heard the arguments at length. During the course of arguments learned counsel for the applicant again stressed that case of applicant is a battle casualty as per Army Order A.O 1/2003. He drew our attention to the medical case sheet and urged that inference can be drawn that he was a battle casualty, but wrongly no specific opinion has been given. Thus he was not liable to be discharged. The learned counsel for the applicant also placed reliance on the judgment given by this Tribunal in case of ***Maj P.P. Singh Vs. UOI (TA No. 57 of 2009 decided on 13.11.2009)*** and judgment given in case of ***Nk Jaswant Singh Vs UOI WP (C) 3316 of 2008 of Delhi High Court decided on 27.5.2008***. The learned counsel for the applicant also submitted that the applicant being low medical case can only be discharged on recommendations of invaliding medical board. In this case it was not held. The applicant further contended that release medical board could not be a substitute to holding an invaliding medical board. On this count also his discharge order is bad. A prayer is made to quash his discharge order and for grant of consequential relief.

11. On the contrary learned counsel for the respondent rebutted the contentions and submitted that applicant's case was not that of a battle casualty. He was examined by a medical board which opined that disabilities were not attributed to Military Service. There is no contrary material on record, but the problem was aggravated during service, therefore disability pension had been awarded. It was also contended that as the applicant was not released on the basis of policy dated 12.4.2007 and he has not moved a Court in time after discharge which took place in 2005. The applicant has filed the present petition after four years. He is thus not entitled to any relief.

12. We have considered the rival submissions, we have also perused the judgment given in case of Maj PP Singh (Supra) by this Hon'ble Tribunal. In that case prayer was for grant of war injury pension where medical authorities had opined that disability was attributed to battle. In this case there is no such opinion on record. We have also perused the other judgment cited by the applicant in the case of Nk Jaswant Singh (supra). In that case also directions for re-examination were given. We have also considered medical case sheet of the applicant dated 3.6.2003

(Annexure P-1). The observations given in this report is quoted “*A case of peripheral vascular disease, condition aggravated due to exposure to cold during winter month while posted in J & K and developed gangrene subsequently*”. No where has the report opined that disability was attributed to battle. Thus no finding can be based on that issue. Any findings with regard to injury / disability can be based on the medical opinion only. From the respondents side it was stated that medical board was held to determine the disability. That report has not been annexed, and no reliance can be made on mere submissions. Considering all facts of the case attributability of disability can be assessed by a responsible medical board. This matter of attributability can only be determined by medical authorities. We therefore direct that the applicant be re-examined by a properly constituted medical board for reassessment of his disability and pin point whether attributability was due to frost bite, as claimed by the applicant. This must be completed within a period of three months from the date of issue of this judgment. We have considered the other submission that being a low medical category he has been discharged without the recommendation of invaliding medical board. The applicant also relied on the option letter of *Ex Nk Vidya Dutt Dhyani of 31.1.2009 (Annexure P-5)* who was

also discharged in 2002 but thereafter he was given letter of option to rejoin service. In this case however the applicant was not discharged under the policy of 12.4.2007. The applicant if he had any grievance should have approached the competent higher authority as well. He is free to apply in this respect. On the basis of aforesaid discussion respondents are directed to re-examine attributability by a medical board and proceed accordingly. The discharge order is subject to this medical report. If medical report favours the applicant he will be entitled to get consequential relief, otherwise order of discharge stands without interference. No orders as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 26-4-2010