

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T.A No. 567of 2009
W.P (C) 6542 of 1999

Grenadier Narender Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner : Sh. Virendra Kumar, Advocate
For respondent: Sh. Mohan Kumar, Advocate

CORAM:

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

ORDER
10.12.2010

1. The petitioner by this petition has prayed that the impugned order of discharged by the Commanding Officer be quashed and the petitioner may be treated as medical category CEE (P) and he is fit for civil employment and for re-enrolment in DSC. The petitioner may be taken back in service retrospectively and place him in sedentary job and treating him for the injury incurred during the service.

2. The petitioner was enrolled in the Indian Army on 27.5.1989. On 31.3.1994 he was discharged by a medical board under Army Rule 13 (2A). According to the petitioner that he has received some injury in his head which cause Neurosis and osteolytic lesion skull and this is attributable to military service and he is entitled to all benefits flowing there from. The respondent has

contested the position and submit that the petitioner was discharged on medical ground as he was suffered from Neurosis, Osteolytic Lesion Skull which is not attributable or aggravated by military service hence he is not entitled for benefit for pension or disability pension. We have heard learned counsel for the parties and perused the record.

3. The petitioner suffered from two diseases ie. Neurosis and Osteolytic Lesion Skull and composite disability was to the extent of 40 %. The submission of learned counsel of petitioner that as per Rule 13 (2) (A) the Central government and Chief of Army Staff is alone competent to discharge incumbent from the service either unconditionally or on the fulfillment of certain special conditions, then, notwithstanding anything contained in this rule, the commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision. Learned Counsel has submitted that no order has been passed by the Central Government or Chief of Army Staff, therefore, the Commanding Officer has exceeded his limit in discharging the petitioner on the recommendations of the medical board. The submission of learned counsel for the petitioner appears to be totally misconceived. The rule 13 (2)(A) which was inserted by the SRO 126 dated 12.3.1964 delegates the power to the commanding Officer of the Central Government or of Chief of the Staff to release the person if he is found medically unfit for further retention in service. Therefore, it is a delegation of power to the Commanding Officer and Commanding Officer in relation to the COAS is the incharge of the unit. Therefore, in the present case the Commanding Officer on recommendation of the Medical Board has released the

petitioner as he is found to be unfit to be retain in service. Therefore, in view of this delegation of power, the submission of learned counsel for the petitioner appears to be totally misconceived and consequently, we do not find any merit in this petition and accordingly it is dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 10, 2010.