

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. No. 96 of 2010**

IN THE MATTER OF:

L/NK Gurdeep Singh

.....Applicant

Through Mr. S.S. Pandey, counsel for the Applicant

Versus

Union of India and Others

.....Respondents

Through: Mr. Anil Gautam, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: -02-2011

1. The Applicant vide this petition has prayed for;
 - a) To issue an appropriate order or direction for quashing the decisions of the medical board dated 07-04-2008 to downgrade the applicant in Permanent Low Medical Category in spite of finding the improvement in his condition since the time he was placed in Temporary Medical Category.
 - b) To issue appropriate orders or directions for quashing of the order dated 09-12-2008 by which the Applicant had been ordered to be discharged w.e.f 28-02-2010.

c) To pass appropriate orders to the respondents to allow the applicant to be examined by a medical board to review his medical condition and thereafter further direction to retain him in service if he is able to achieve Shape One Medical Category by cancelling the discharge order issued in his respect.

2. The applicant was enrolled in the army in 1979. He served in various units until the year 1996, when the applicant was discharged from the regular army on completion of normal terms of engagement in medical category SHAPE-I. On 08-02-2000, the applicant being found medically fit i.e. SHAPE-I and fulfilled other criteria was re-enrolled in the DSC for initial terms of engagement for 10 years with a option to renew the service for another term of 5 years at the first instance.

3. On 16-10-2007, the applicant was brought before a medical board and his medical category was downgraded to P-3 (T-24) w.e.f. 16-10-2007 for “primary hypertension” despite the fact that no abnormality was detected and the Blood Pressure (BP) was normal and other vital parameters were also normal as per the board proceedings. On 07-04-2008, the applicant was again brought before the medical board for review and was upgraded to P-2 (P) with directions for review after two years i.e. in April, 2010.

4. On 09-12-2008 discharge orders were issued for the applicant to be discharged w.e.f 01-03-2010. Thus denying him an extension of 5 years on the ground that he was a low medical category. Accordingly on 21-08-2009, the applicant was brought before a Release Medical Board (RMB). Despite the classified specialist in Medicine recording that B.P. was 136/82 and there were no abnormalities detected in the other parameters, he was directed to be released in permanent low medical category P-2 (P).

5. On 20-10-2009, the applicant submitted an application bringing out that he was medically fit and, therefore, sought 5 years extension. His application was duly recommended by the chain of command to the higher authorities. However no response was received and he was released from service on 28-02-2010.

6. After his release, there has been no medical treatment and BP monitored regularly has been found to be normal. Even during the RMB held on 21-08-2009, it was recorded that his BP was within normal limits, that he was not obese and there was no abnormality detected in other parameters. Consequently, he was not placed under any medical restriction whatsoever.

7. Learned counsel for the applicant cited certain cases to further his arguments. He cited the case of Delhi High Court titled “**Sub Maj. Jagdish Chand Versus UOI & Ors.**” in W.P.(C) No. 3162/2008 in

which their Lordships held that *“Re-classification/Re-categorization Medical Board would be held to verify whether the Petitioner has attained Shape-I and in case claim of the Petitioner is found to be correct, there would be no occasion to discharge the Petitioner”*. Further he cited the case of Delhi High Court titled **“Arvind Kumar Singh Versus U.O.I. & Ors.”** in W.P.(C) No. 6178/2008 in which their Lordships had held that *“Re-classification/Re-categorization Medical Board would be held as scheduled on 10-09-2008 and the Petitioner would not be discharged if he has achieved Shape-I failing which he would be discharged.”* Thus the learned counsel for the applicant prayed that review medical board which was to be held in April, 2010 should be held immediately as the charter of a release board is limited and is not required to ascertain the medical category. The only task assigned to RMB is to decide on attributability/aggravation aspect and the degree of disability of the patient concerned.

8. Learned counsel for the respondents claimed that the applicant was put in permanent low medical category on 07-04-2008 with a review scheduled for 07-04-2010 while the applicant was discharged on completion of his terms of engagement i.e. 10 years of service on 28-02-2010. This was much before the review medical board schedule and, therefore, on the date of discharge, the Petitioner was a low medical category i.e. P-II(P) for “primary hypertension”.

9. Learned counsel for the respondents further argued that the parameters as claimed by the applicant to be normal are incorrect. The applicant was put through the release medical board and the specialist in medicine clearly opined that the disease i.e. primary hypertension suffered by the applicant still existed, as the applicant was under medication. The medication was recommended to continue. The normal BP reading, therefore, was recorded as 136/82 because the Petitioner was under medication. All other parameters were within normal limits and, therefore, the point is conceded. Since the applicant is suffering from the disease of primary hypertension, it was also assessed by the RMB that the disability was assessed as 30% for life, which was neither attributable nor aggravated by military service. It is under these circumstances that the applicant was discharged on completion of his normal terms of engagement i.e. 10 years of service as on 28-02-2010.

10. We have heard both the parties at length and have examined the documents that were produced by the respondents in terms of medical proceedings, copy of which has been taken on record.

11. We are of the opinion that the applicant was a low medical category from 07-04-2008 to 07-04-2010 in category P-2(P). Therefore, at the time of extension of service on completion of normal terms of engagement i.e. on 28-02-2010, the Petitioner was P-2(P)

and a low medical category. As per rules, low medical category personnel are not eligible for grant of extension. So much so, had the applicant become a low medical category even after having been granted the extension, it would have immediately attracted the clause for termination of the extension period.

12. No case has been made out to suggest that a Re-categorization/Re-classification medical board should be held in case of the applicant. The parameters of hypertension appeared to have been normal while the applicant is on medication. It does not mean that the applicant is free from the disease. The other parameter being within normal limits has been accepted by the Respondents. It still does not mean that the applicant is free of the disease of primary hypertension.

13. A Release Medical Board is chartered with the primary of assessing the disability of an individual and the attributability of disease. In this case, the disability has been assessed as 30% for life. However the medical board has opined this disease is neither attributable nor aggravated by military service. Therefore, no purpose will be served by examining the applicant afresh by a Re-categorization/Re-classification Medical Board. Should the applicant want to be re-examined he should make an appeal as provided under the regulations so that his disability can be re-assessed. Had the

disability been zero or even below 20% then one could had reasonable grounds to assume that the applicant was clear of the disease or disease was on its decline. In this case, the disability has been assessed by the RMB as 30% clearly indicates that the disease is very much in existence and perhaps is on the increase.

14. In view of the foregoing, the O.A. is dismissed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this ____ day of February 2011