

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI  
(Court No.2)**

**T.A NO. 229 of 2009  
(WRIT PETITION (CIVIL) NO. 7052 of 2009)**

**IN THE MATTER OF:**

**Risaldar Ram Karan Singh**

**.....APPLICANT**

Through : Mr. K. Ramesh, counsel for the applicant

**Vs.**

**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: 21.09.2011**

1. This petition was first filed in the Hon'ble High Court as WP(C) No.7052/2009 on 24 Feb 2009 and was subsequently transferred to the Armed Forces Tribunal on 05.11.2009.

2. The applicant vide his petition has prayed for quashing and setting aside the discharge orders made effective from 31.01.2006 in respect of the applicant issued vide Armoured Corps Records, Ahmednagar, Letter dated 17 Aug 2005 (Annexure –P-1) being contrary to Army Rule 13 and Regulations for the Medical Services of the Armed Forces 1983. The applicant has further prayed that the

applicant be reinstated with all consequential benefits and that the applicant should be considered for the promotion to the rank of Risaldar Major as on 01.3.2009 being the senior most Risaldar in the Unit 63 Cavalry and as decided by the Hon'ble Delhi High Court vide its judgment dated 20.11.2008 and 30.1.2009 (Annexure-P-5 and Annexure-P-8).

3. Brief facts of the case are that the applicant was enrolled in the Army on 17.9.81 in the rank as Sepoy. In 1995, he was diagnosed as Hyperthyroidism. He was thus downgraded to Low Medical Category (Annexure-P-2). Despite being low medical category, he was promoted as Risaldar on 01.11.2004.

4. The applicant was discharged from military service on 31.1.2006 on the grounds of being Low Medical Category vide Armoured Regiment Corps Records Letter dated 17 Aug 2005 without having invalided out from service as alleged.

5. Ld. Counsel for the applicant argued that in view of the **Hon'ble High Court of Delhi judgement in the matter of Subedar Puttan Lal Vs UOI dated 20.11.2008**, it was mandatory that before discharge of any individual, his discharge should be recommended by a properly constituted Invaliding Medical Board (IMB). No IMB was held in this case and the applicant was discharged pre-maturely for being Low Medical Category (Annexure-P-2).

6. Ld. Counsel for the applicant also cited the judgment of **Hon'ble Delhi High Court dated 28.1.2009 in the matter of Naib Risaldar Kalu Ram Vs Union of India and others in WP (C) No.579 of 2009** in which their Lordships have held that having been reinstated because of Court order, the petitioner is also entitled to promotions as and when they were due in case the petitioner is found fit in all respects.

7. Ld. Counsel for the applicant also cited **AIR 1981 SC 947 in the matter of Capt. Virendra Kumar Vs UOI and Ors.**, which deals with the status of Emergency Commissioned Officers and their discharge consequent to disability. Their Lordships observed that any medical category which makes the individual permanently unfit for any form of military service may be released from service in accordance with the laid-down procedures.

8. Ld. Counsel for the applicant also cited **127(2006) DLT 470 (DB) in the matter of Nb. Sub. Raj Pal Singh Vs UOI & Ors.**, in which their Lordships have held that Invalidating Board is essential before action can be taken under Army Rule 13(3)(i) and (ii) and IMB cannot be substituted by Release Medical Board (RMB).

9. Ld. Counsel for the applicant further cited **JT 2000 (5) SC 389 in the matter of State of Bihar & Ors. Vs Kameshwar Prasad Singh & Anr.**, in which their Lordships have held that "*power to condone the delay in approaching the court has been conferred upon the courts to*

*enable them to do substantial justice to parties by disposing of matters on merits.”*

**10.** Ld. Counsel for the applicant cited **Hon’ble High Court of Delhi judgment dated 12.9.2002 passed in CWP No.5958 of 2001 titled L/Hav Raj Singh Vs The Union of India and Others** in which their Lordships have held that *“Army Rule 13 must be read as a whole. Having regard to the fact that the matter relating to discharge on medical grounds is covered by rule 13(1)(iii), the doctrine of generally and specially non-derogant shall apply.”*

**11.** Ld. Counsel for the applicant also argued regarding the interpretation of continuing cause of action and stated that since it is a pension case, it is a settled law as interpreted by the Hon’ble Supreme Court, that being a matter of disability pension, it comes within the class of continuing cause of action.

**12.** Ld. Counsel for the respondents stated that since the applicant was a Risaldar w.e.f. 01.11.2004 and he was also placed under Low Medical Category for the disease ‘Primary Hyperthyroidism (Old) E-06’ and was below the category of AYE and therefore, not upto the prescribed medical standard due to the disease ‘Primary Hyperthyroidism (Old) E-06’ and he was discharged vide Army HQ letter dated 15.3.2000 having completed 24 years, 04 months and 14 days of service. It is noticed from the service records that the applicant was initially admitted to MH Patiala on 22.6.99 and diagnosed as

‘Primary Hyperthyroidism’ by medical authorities. As a result the applicant was placed in Low Medical Category CEE(Temporary) w.e.f. 04 October 1999 to 04 April 2000. On subsequent re-categorisation medical boards the applicant was placed in the following Low Medical Category as shown below:-

Sl. No.	Medical Category	Date		Remarks
(a)	CEE(T)	04 Oct 1999	04 Apr 2000	
(b)	BEE(T)	04 Apr 2000	04 Oct 2000	
(c)	BEE(T)	04 Oct 2000	04 Apr 2000	
(d)	S1A1EP2 (Permanent)E1	04 Apr 2001	04 Apr 2003	
(e)	S1A1E1P2 (Permanent)E1	21Feb 2002	21 Feb 2004	
(f)	S1A1E1P2 (Permanent)E1	04 Apr 2003	04 Apr 2005	

**13.** Ld. Counsel for the respondents further argued that at each stage of promotion the applicant was promoted since he was recommended for promotion in “public interest” by his Commanding Officer in terms of Army Order 46/80 as the Commanding Officer was able to provide him with a sheltered appointment commensurate with his Medical Category. He further stated that as per para 2(a) of Army Order 46/80 and para 4 of Army HQ letter dated 15.3.2000, retention of permanent Low Medical Category personnel is at all times subject to the following conditions:-

*(a) Availability of suitable alternative appointments commensurate with their medical category.*

*(b) Should be justified in the public interest.*

*(c) Such retention will not exceed the sanctioned strength of Regt/Corps.*

**14.** Ld. Counsel for the respondents further submitted that on 20 May 2005, a show cause notice was issued by the Commanding Officer, 63 Cavalry to terminate the services of the applicant. Discharge order was accordingly issued vide Armoured Corps Record Letter dated 17.8.2005 and the applicant was finally struck off strength on 31.1.2006. Accordingly, the applicant was brought before the release medical board and the same was carried out by Military Hospital Patiala on 30.9.2005 recommending his degree of disablement at 30% for life and the disability was regarded as neither attributable to nor aggravated by military service.

**15.** Ld. Counsel for the applicant further stated that since the disability was neither attributable to nor aggravated by military service his claim for disability pension was turned down by the PCDA(P) Allahabad. However, pension was released to the applicant as the applicant having served over 24 years 04 months and 14 days of service.

**16.** Ld. Counsel for the respondents further stated that the judgement of Hon'ble High Court of Delhi in the matter of Subedar

(SKT) Puttan Lal (Supra) cannot be applied to this case per se, because conditions were laid down vide para 7(iv) which reads as under:-

*(iv) The general directions are applicable only to such of the persons who have been discharged or proposed to be discharged under the policy letter dated 12.04.2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition.”*

**17.** Ld. Counsel for the respondents cited the judgment of Armed Forces Tribunal passed in OA No.262/2010 titled Nk Narendra Kumar Vs Union of India and Ors., in which it was observed that *“the case was dismissed on the facts that it was not covered by the Hon’ble High Court judgment dated 20.11.2008 in Puttan Lal’s case (supra) as the applicant was discharged from service w.e.f. 31.12.2000 and the present OA was filed on 13.4.2010.”* The Ld. Counsel for the respondents also cited the judgment given by Division Bench of Allahabad High Court in **Special Appeal No.964 of 2009 NK/OPR Rajeshwar Singh Vs UOI & Ors., decided on 08.09.2009**. In the said judgment, it was decided as under:-

*“As stated earlier, the petitioner was discharged from service on 31.03.2003 and he had chosen to file the writ application in January, 2009. The only explanation put forth by the writ*

*petitioner-appellant is that after the judgment of the Delhi High Court, he came to know that his discharge is illegal and therefore, the delay has sufficiently been explained. In our opinion, mere judgment of the Delhi High Court later on itself shall not give right to the writ petitioner-appellant to approach the Court belatedly. The learned Single Judge has referred to the judgment of the Delhi High Court as affirmed by the Supreme Court and has held that the writ petitioner-appellant is not entitled for the relief and the writ petition suffers from delay and latches.”*

**18.** Having heard both the parties in detail and examined the documents, we are of the opinion that this case comes under the limitations imposed by Subedar Puttan Lal's Judgement (Supra), wherein as per para 7(iv) the directions are applicable only to those persons who have been discharged or proposed to be discharged under the policy letter dated 12.4.2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition. In this case the applicant was discharged from service on 31.1.2006. He for the first time approached the Court only on 24.2.2009 i.e. after three years from his discharge from the service. Puttan Lal's Judgement was pronounced on 20.11.2008. Thus, in this case Puttan Lal's and other Judgements will be of no help to the applicant.



**19.** In view of this, we have set ourselves to consider the case on its merits. The applicant has put in 24 years, 04 months and 14 days of service before he was discharged from service on medical grounds. We have also noted that the applicant was a permanent Low Medical Category since 04 Apr 2001. Despite that he was given two promotions i.e. Nb Subedar on 02.5.2002 and as Risaldar on 01.11.2004. Admittedly, he was given a sheltered appointment in his regiment. The applicant was, therefore, entitled to have normal pension having put in 24 years, 04 months and 14 days of service.

**20.** The Commanding Officer in the overall public interest and availability of commensurate sheltered appointment was unable to provide a sheltered appointment to the individual and therefore, the individual had to be discharged. The applicant was thus discharged under the prevalent rules and conditions at that time. The applicant had not made any protest after his discharge from service on 31.1.2006 till he filed a case in April 2009 nor he has made any protest against denial of disability pension.

**21.** In view of the forgoing discussion, we have found no merit in the present case. The TA is dismissed accordingly. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

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

**Announced in the open Court**  
**on this 21<sup>st</sup> day of September, 2011**