

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

6.

O.A. No. 378 of 2011

Ex Signalman Nagmani Prasad Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate

For respondents: Mr. J.S. Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
07.09.2012

1. Petitioner has filed this petition challenging his order of discharge from service with effect from 1st January 2005 as well as the Army Order 46 of 1980 based on which the discharge order was passed. In alternative, he has prayed that Respondents may be directed to grant pension to the Petitioner along with disability pension with penal interest @ 18%.

2. Petitioner was enrolled in the Army in the Corps of Signals on 28th October 1995 and reported at Signals Regimental Training Centre at Jabalpur for basic training after he was found fit in all respects by the duly constituted Medical Board and underwent rigorous training involving different physical activities as well as weapon training. The Petitioner was posted to 27 Rashtriya Rifles Battalion deployed in Jammu & Kashmir in February 1998. In August 1998, the Petitioner due to stress and strain of service in the

counter insurgency environment, for the first time, noticed weight loss and severe chest pain and he reported sick. He was referred to Military Hospital (CTC) Pune for investigation and further treatment. Thereafter the Petitioner was admitted to 169 Military Hospital, Suratkot from where he was transferred to 150 General Hospital and further to Command Hospital (Northern Command). The Petitioner was downgraded to low medical category BEE (Temporary) for six months with effect from 15th July 1999. Thereafter the re-categorisation board further downgraded him to low medical category BEE (Permanent) with effect from 15th December 1999 and he remained in low medical category thereafter. It is alleged that the Respondent No.3 in an unjustified manner issued a direction on 7th July 2004 in respect of the some permanent low medical category personnel including the Petitioner apparently due to recommendation of the CO for not providing sheltered appointment to the Petitioner. On the basis of such order of Respondent No.3 approved discharge, the Petitioner while posted with 20 Mountain Division Signal Regiment, was served with a show cause notice on 23rd August 2004 wherein it was informed to the Petitioner that they have received a letter dated 7th July 2004 from Signal Records whereby the order of discharge from service in respect of the petitioner due to medical category S1H1A1P2E1 (Permanent) was issued, as the Unit was not able to provide sheltered appointment for further service to the Petitioner and asked the Petitioner as to why he should not be discharged from service being unfit for Army. The Petitioner replied to that show cause notice requesting not to discharge him on humanitarian ground and assured the CO that he will perform his duties with full dedication and devotion. His request was turned down and Petitioner was finally discharged from service on 1st January 2005 on medical grounds. During

January 2005 to May 2006 the Petitioner was discharged from service without granting him either service pension or disability pension. The Petitioner thereafter made a representation to the Respondents against his discharge and a reply was received by him on 4th May 2006 informing him that the invalidating disease was not found attributable to or aggravated by military service as the same was held to be a constitutional disease and not related to military service. The Petitioner filed a Civil Writ Petition No. 12070 of 2006 in Hon'ble Patna High Court wherein he challenged his discharge and denial of disability pension. During the pendency of that writ petition the Hon'ble Supreme Court has occasion to examine the legality of discharge order on medical grounds in terms of 13(2A) read with Army Order 46 of 1980 in the case of **Nb Sub Rajpal Singh** in which similar type of discharge of several low medical category personnel in terms of policy instructions of the Respondents dated 12th April 2007 was involved. The Hon'ble Supreme Court struck down such policy instructions on the ground that the procedure for discharge of a low medical category person as provided under Army Rule 13 requires obtaining of recommendations of a Medical Board declaring a person permanently unfit to serve in Army as necessary precondition. Then another order followed from the Hon'ble Delhi High Court in the case of **Sub. (SKT) Puttan Lal v. Union of India & Ors (Writ Petition (C) No. 5946 of 2007 decided on 20th November 2008)**. Petitioner wanted to amend his writ petition by incorporating subsequent events. However, the Petitioner was advised consequent to formation of this Tribunal that it would be appropriate if he withdraws his petition and file a fresh application before this Tribunal. Hence, the Petitioner instructed his counsel to withdraw the petition but he could not be present in the Court. Learned counsel for the Petitioner made a

mention before the Hon'ble Patna High Court and by the order dated 8th September 2000 he was granted liberty to withdraw such petition. The Petitioner after receiving a copy of the withdrawal order of the Hon'ble Patna High Court moved an application for modification of the order as Petitioner wanted that it may be observed in the order that the Petitioner wanted to withdraw this writ petition for the purpose of approaching this Tribunal. Hon'ble Patna High Court declined his request as the Court was of the view that since Petitioner wanted to approach the Tribunal based on the cause of action and also subsequent cause of action hence no such observation regarding liberty to approach this Tribunal was necessary. The Petitioner then filed OA No. 102 of 2011 before this Tribunal challenging the action of Respondents and during the course of hearing before this Tribunal it was found that on the same cause of action the Hon'ble Patna High Court has already dismissed the writ petition of the Petitioner without granting liberty to prosecute his remedies before the appropriate forum, therefore petition cannot be entertained. Thereafter an application was filed by the Petitioner before the Hon'ble Patna High Court having MJC No. 2648 of 2011 in Writ Petition No. CWJC 12070 of 2006 for modification of order dated 8th September 2009 passed by Hon'ble Patna High Court. By its order dated 17th August 2011, the Court clarified that this Court had not gone into the merit of the matter and the applicant may avail his remedy by initiating appropriate proceedings in an appropriate forum. Therefore, in this background the Petitioner filed the present petition challenging his order of discharge.

3. The Petitioner submitted that he was given a show cause notice on the recommendations of the Release Medical Board that because of his

permanent disability he has to be discharged from service under Rule 13 (2A) of the Army Rules. The Petitioner has basically relied on the decision in the case of **Union of India v. Rajpal Singh (2009) 1 SCC 216** in which it has been held that a person who is invalided out of the service could only be invalided out by an Invalidating Medical Board and not by the Release Medical Board. In the present case, the Petitioner has been released on the basis of the recommendations of the Release Medical Board as is apparent from the order dated 7th July 2004 which says "Disposal of Permt. Low medical category RMB Army Order No. AO 56/60".

4. The Respondents had filed their reply and contested the matter. They have raised the objection that the Petitioner's case is not covered by the judgment of the Hon'ble Supreme Court in the case of **Rajpal Singh**. The Respondents have submitted that Petitioner has been medically discharged because of permanent low medical category and he is not entitled to disability pension as neither the disability is attributable to nor aggravated by the military service.

5. We have heard learned counsel for the parties and perused the record.

6. The whole case depends on the fact that the Petitioner has been discharged from service being low medical category as recommended by the Release Medical Board. The question is whether he will be released on recommendations of Release Medical Board or Invalidating Medical Board. The undisputed fact is that he has been released on the basis of the recommendations of the Release Medical Board. In **Rajpal's** case their

Lordships has held that "Respondent's discharge on the recommendation of Release Medical Board was invalid. General provisions contained in Clause I(iii) could not be invoked when Respondent's case was covered by specific Clause I(ii). It was further held that power of discharge conferred on Commanding Officer under Rule 13(2-A) and Army Order 46/1980 regarding retention of army personnel placed in low medical category did not dispense with the requirement of subjecting a JCO to medical examination by Invalidating Board. It was further held that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. Principle applied in a case where an army official was discharged without the recommendation of medical authority prescribed in relevant rules. Therefore their Lordships has set aside the discharge of all the personnel recommended on the basis of the Release Medical Board. Therefore the order of discharge of Petitioner on the principle enunciated by the Hon'ble Supreme Court in **Rajpal's** case is fully attracted.

7. Learned counsel for the Respondents has strenuously objected that the Petitioner has not approached the Tribunal in time. The objection of course is correct that Petitioner approached this Tribunal in 2011 but the Petitioner filed a writ petition challenging his discharge order way back in 2006 before the Hon'ble Patna High Court and it remained pending there for a long time and meanwhile **Rajpal's** decision came on 7th November 2008. Had that judgment of **Rajpal** was brought to the notice of Hon'ble Patna High Court perhaps he would not have been going from pillar to post. It appears that an application was made for withdrawal of the writ petition because

meanwhile the Tribunal was constituted, he was advised to approach the Tribunal. The Petitioner approached the Tribunal but the Tribunal declined to interfere in the matter on the ground that the Hon'ble Patna High Court has not granted him liberty to prosecute his remedy before another forum. The OA filed by the Petitioner before this Tribunal was dismissed on 10th March 2011. Then the Petitioner again approached the Hon'ble Patna High Court and submitted that the order passed by the Court withdrawing his writ petition and the order passed in another miscellaneous application may be modified and then finally the Hon'ble Patna High Court modified the order on 17th August 2011 and observed that since the matter was not decided on merit, it will be open for the Petitioner to approach the appropriate forum for redressal of his grievances. Thereafter the Petitioner has filed this petition before this Tribunal again and now it has come up for disposal before us. Therefore the observation made in the case of **Puttan Lal** will not come in way of the Petitioner as the Petitioner was agitating his remedy prior to the decision in **Rajpal's** case and was prosecuting his remedy with all seriousness. Therefore any observation made in **Puttan Lal's** case will not come in way of the Petitioner.

8. Hence, in the net result and in the light of the decision of Hon'ble Supreme Court in **Rajpal's** case, the order of release of the Petitioner from 1st January 2005 is set aside. The Petitioner shall be reinstated straightway and he shall be given all the arrears of salary with 12% interest.

9. The petition is allowed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 07, 2012
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