

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

21.

O.A. No. 38 of 2010

Ex. Sep. Umesh Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Ashok Chaitanya, Advocate.

For respondents: Mr. Anil Gautam, Advocate

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

01.08.2012

1. Petitioner vide this petition has prayed to quash and set aside the impugned order dated 21.08.2006 passed by respondent no. 4 and other order dated 27.10.2006 passed by respondent no. 3 for discharging the petitioner from service on medical grounds. It is also prayed to quash the discharge of petitioner as carried out on 01.02.2007 and issue directions to respondents to reinstate the petitioner in service with back wages and all consequential service benefits.

2. Petitioner was enrolled in the Army on 29.12.1994 in the Army Medical Corps as an Ambulance Assistant. He was medically fit in all respects when he entered service. But in the month of June, 2005, petitioner fell ill and was detected to have been suffering from 'Acute Hepatitis (Non B, Non C) with 'Unconjugated Hyperbilirubinemia' (Gilbert's Syndrome), and was placed in temporary low medical classification S1H1A1P2(T-24)E for a period of six months by the Medical Board held at Army Hospital R&R, Delhi on

27.06.2005. He was again brought before the Medical Board in the month of December, 2005 at 165 MH for re-categorisation, which placed the petitioner in permanent low medical classification S1H1A1P-2(P)E1 w.e.f. 03.12.2005 for two years.

3. Respondent no. 4 issued a disposal order for low medical category persons on 21.08.2006 in respect of the petitioner with a direction to the unit that he be discharged from service w.e.f. 01.02.2007. Thereafter a show cause notice was issued to the petitioner on 09.09.2006, to which he replied on 16.09.2006. Thereafter respondents passed a detailed speaking discharge order dated 27.10.2006 and finally his services were terminated w.e.f. 01.02.2007, solely on medical ground under the provisions of Rule 13 (3) (III) (V) read with Rule 13 (2A) of the Army Rules, 1954. Meanwhile, petitioner filed a Civil Misc. Writ Petition No. 3604 of 2007 on 16.01.2007 which was dismissed by the Hon'ble Allahabad High Court for want of territorial jurisdiction on 24.01.2007.

4. Petitioner appears to have remained in the dark about the dismissal order of the said petition by the Hon'ble Allahabad High Court, as the counsel representing him before Allahabad High Court did not apprise him about the same. He remained under the illusion that his case is pending adjudication before the said court and after sometime, having smelled some foul play, he asked his counsel to provide certified copy of the latest order of the Hon'ble Allahabad High Court. Then his counsel sent a certified copy of the order dated 24.01.2007, which has apparently been certified on 17.09.2009. Petitioner received the said certified copy only in the second week of December, 2009 and subsequently he approached his counsel at Delhi to explore the legal remedies available to him in the present case. Thereafter, he

filed present petition before this Tribunal on 19.01.2010, along with application for condonation of delay in which all the above narrated facts have been mentioned.

5. Learned counsel for the petitioner submitted that petitioner has always been vigilant about his rights and he agitated the matter before the Hon'ble Allahabad High Court in 2007. However, his counsel did not apprise him about the dismissal order of the petition before the Hon'ble Allahabad High Court on 24.01.2007. It is only at the request of petitioner that his counsel provided the certified copy of order dated 24.01.2007, that too only in December, 2009. Thereafter petitioner immediately filed this present petition in January, 2010. Therefore, he prays that delay in filing the present petition may be condoned and petitioner may be granted the above said reliefs.

6. A notice was issued to the respondents and respondents have not been able to controvert the fact about his agitating the matter before the Hon'ble Allahabad High Court in January, 2007. We have bestowed our best of consideration on the subject and we are of the opinion that petitioner was mislead by his counsel and was only informed about dismissal order dated 24.01.2007 of petition before Hon'ble Allahabad High Court in September, 2009. Immediately, thereafter he approached this Tribunal and filed the present petition on 19.01.2010. Looking to the facts of the case, we think petitioner has made out a good case for condonation of delay under Section 22 of the Armed Forces Tribunal Act, 2007. We hereby condone the delay while exercising our power under Section 22(2) of the Armed Forces Tribunal Act, 2007.

7. Now having cleared the first objection of delay, learned counsel for the petitioner argued that in view of decision given by the Hon'ble Supreme Court in the case of Union of India Vs Rajpal Singh (2009) 1 SCC 216, persons who have been downgraded to unacceptable low medical category status can only be discharged by holding Invalidating Medical Board (IMB) under Army Rule 13 (3) (iii). Their Lordships in the judgment of Union of India Vs Rajpal Singh (Supra) have held that if a particular action is required to be taken in a particular manner then it should be taken in that manner only and not in any other way. In the present case, petitioner has been discharged on the basis of Release Medical Board (RMB) and not by the IMB. Therefore, in view of above said judgment of Hon'ble Supreme Court, discharge orders passed on the basis of RMB dated 21.08.2006 and 27.10.2006 were held to be illegal and same were accordingly set aside.

8. Now the question arises what relief can be granted to the petitioner. Petitioner was enrolled in 1994 and he could have continued till completion of qualifying service for pension for a period of 15 years i.e. upto 28.12.2009. Since, petitioner has illegally been discharged by RMB in 2006, it is ordered that petitioner will be deemed to complete his qualifying service of 15 years i.e. upto 28.12.2009 and he will be entitled for service pension. Petitioner be also paid arrears of the service pension. It is made clear that petitioner will continue to get the disability pension besides service pension and the decision given in the case of Subedar (SKT) Puttan Lal Vs. Union of India & Ors. decided on 20.11.2008 will not come in his way as he had already agitated the matter before the Hon'ble Allahabad High Court at the relevant point of time.

9. The petition is accordingly allowed. No order as to costs. //

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A.K. MATHUR
(Chairperson)

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S.S. DHILLON
(Member)

New Delhi
August 01, 2012
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