

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

**O.A NO.433 of 2011**

**IN THE MATTER OF:**

**HAVILDAR SURAT SINGH** .....**APPLICANT**  
Through: Mr. K. Ramesh, counsel for the applicant

**VERSUS**

**UNION OF INDIA AND OTHERS** .....**RESPONDENTS**  
Through: Mr. S.K. Sethi, counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 20.03.2012**

1. The O.A. No.433/2011 was filed in the Armed Forces Tribunal on 13.10.2011.
2. Vide this application, the applicant has sought quashing and setting aside of discharge order dated 23.06.1999 by which he was discharged on LMC ground, since it is alleged that it had not adhered to the Army Rule 13 and Medical Regulations for the Armed Forces. He has also sought notional reinstatement back into service with grant of seniority, service, inherent pay and allowances, promotion at par with his batch mates and also adequate compensation for the sufferings and misery as may be deemed just. An application is also

filed under Section 22 of the Armed Forces Tribunal Act, 2007 for condoning delay in filing O.A.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 08.02.1979. He sustained Head injury and was declared low medical category. Subsequently, he became permanent low medical category as LMC P-2(P). The Army Authorities on the ground of being Permanent Low Medical Category P-2, discharged him from service on 31.12.1999. It is alleged that this was done without holding an Invalidation Medical Board (IMB). However, the applicant was in receipt of disability pension at 20% for life. No Release Medical Board proceedings were available to the applicant earlier but since he is receiving the disability pension, now he has not agitated for the same.

4. Learned counsel for the applicant argued that the Hon'ble Supreme Court in judgment of **Union of India Vs. Nb Subedar Rajpal Singh decided on 07.11.2008 in Civil Appeal No.6587/2008 as cited in (2009)1 SCC (L&S) 92** has held that Army Rule 13 explicitly mandates that no military personnel can be discharged from military service without an Invalidation Medical Board and if a person is discharged contrary to Army Rule 13 it would be legally unsustainable in the eyes of law.

5. He also drew our attention to Regulation 424(c) of the Regulations for the Armed Forces, 1983 which reads as under:-

*“Rule 424(c):*

***Release on medical grounds:***

*(i) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.”*

6. He also drew our attention to the impugned discharge order which clearly states that *“The discharge will be carried out under item I(iii)(b) and Clause 2(A) of Army rule 1954 as inserted by SRO 126/64 for JCOs and clause III(v) for OR of the table annexed to Army Rule 13(2A) and 13(3) as inserted vide SRO 126/64 **“Being placed in perm t low medical category and the category being surplus”***. He also contended that order of discharge was bad in law and is a continuing wrong, therefore, delay is not coming in his way. He cited the judgment in case of ***Union of India Vs. Tarsem Singh*** given in (2008) 8 SCC 648.

7. Learned counsel for the applicant argued that the judgment of Hon’ble Apex Court in the matter of Re Naib Subedar Rajpal Singh (Supra) applied mutatis mutandis in this case also.

8. Considering facts of the case we also heard the respondent side. Learned counsel for the respondents submitted that this case is prima facie time barred as per provision of AFT Act Section 22. He further submitted that the applicant was discharged in 1999 and he

filed this application after near about 22 years, the grounds stated in condonation of delay application are not sustainable at all and on the similar facts the Hon'ble Tribunal has dismissed the application and held time barred in case of **Sep. Bijendra Singh Kushwah Vs. Union of India & Ors.** given on 17.10.2011 in O.A. No.154/2011.

9. He further submitted that the order of discharge is a complete act and cause of action, if any, had accrued to applicant on the day of discharge in 1999, but he has not filed any petition in time, it cannot be treated as continuing wrong, therefore, the judgment given in **Tarsem Singh** (supra) is not helping his contentions.

10. He further submitted that Hon'ble High Court of Delhi had delivered a judgment in the matter of **Sub (Skt) Puttan Lal & other connected petitioners on 20.11.2008** which is after the judgment of Hon'ble Apex Court in **Naib Subedar Rajpal Singh's** case (supra). Vide this judgment, the Hon'ble High Court having considered the decision of Apex Court in the above matter, laid down parameters for re-opening of cases which had been carried out upto that date and that judgment is judgment *in rem*, having binding force. In that they have directed vide para 7(iv) that "*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.*"

11. We have heard the arguments and perused the record and studied the judgments cited by the parties. We have also considered the issue of delay for which a M.A. for condonation of delay has also been filed.

12. From the perusal of record it is revealed that the applicant was discharged in 1999 and he has filed the present petition in 2011 before this Tribunal. As per Section 22 of the Armed Forces Tribunal Act, 2007, the period prescribed for filing petition is three years and in this case as the act of discharge is under challenge, which is a complete act in itself and the cause of action arose on the event of discharge, therefore, it cannot be said to be a continuing wrong. Therefore, the grounds stated in the M.A. and the judgment cited by the applicant of **Tarsem Singh** (supra) do not help his contention and the same is hopelessly barred by limitation as per the provisions of AFT Act, 2007. In similar cases the Hon'ble Court No.1 of this Tribunal in case of **ERA Rakesh Kumar Aggarwal Vs. Union of India & Ors.** in O.A. No.55/2012 decided on 17.02.2012, where the impugned order was of 2004 and the O.A. was filed in the year 2012. The O.A. was held time barred. In case of **Rifleman Ram Bahadur Thapa vs. Union of India & Ors.** in O.A. No.176/2011 decided by this Tribunal on 19.10.2011, wherein the petitioner, who was discharged on 01.01.2007 filed a petition in the year 2011. It was held time barred. The applicant again approached to Hon'ble Delhi High Court in W.P.(C) No.586/2012, which was decided on 30.01.2012, wherein a contention was also

raised of continuing wrong by the petitioner, but it was not accepted by the Hon'ble High Court and in that judgment the decision of **Tarsem Singh** (supra) was held to be apparently distinguishable. The Hon'ble Court, in this respect, observed as under:

“16. Therefore, it cannot be held that the defense of laches will not be applicable for the claim that the petitioner could not be boarded out without holding an Invalidation Medical Board. The case of Tarsem Singh (supra) is apparently distinguishable and the petitioner cannot place reliance on the same to claim his relief.”

13. We have also considered the other contention with regard to discharge. In this respect, judgment given in **Puttan Lal** (supra) by Hon'ble Delhi High Court is most relevant in which in para 7(iv) wherein it was held that the relief of reinstatement and like benefits are only available to those persons who have been discharged under policy of 12.04.2007 or they have filed petition earlier. The applicant had neither been discharged under the said policy nor he had filed petition earlier, therefore, he is not entitled for any relief as per para 7(iv) of **Puttan Lal** (supra), as referred above.

14. A similar view has been taken by this Tribunal in the matter of **Nk Narendra Kumar Vs Union of India & Ors., OA No.262/2010** decided on 08.11.2010. The relevant extracts of the said judgment is as under:-

*“..... So far as in the case of a judgment dated 20.11.2008 passed in the Sub (Skt) Puttan Lal & Others, the Court has ruled that personnel discharged in low medical category after 12.04.2007 without holding Invaliding Medical Board and those personnel discharged on similar ground prior to 12.04.2007 who had approached the competent court against the contemplated discharge will be reinstated with all back wages and consequential benefits.”*

15. The same view was taken by this tribunal in the decisions given in ***Risaldar Ram Karan Singh Vs. Union of India*** decided on 21.09.2011 in T.A. No.229/2009 and ***Rifleman Ram Bahadur Thapa Vs. Union of India & Ors.*** in O.A. No.176/2011 decided on 19.10.2011 and said the decisions were also maintained by the Hon'ble Delhi High Court.

16. In view of the foregoing, we do not find any merit in the case. The case is dismissed in limini. No orders as to costs.

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

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

**Announced in the open Court  
on this 20<sup>th</sup> day of March, 2012.**