

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

**O.A NO.434 of 2011 with M.A. No.397 of 2011**

**IN THE MATTER OF:**

**HAVALDAR RAJARAM** .....**APPLICANT**  
Through: Mr. K. Ramesh, counsel for the applicant

**Versus**

**UNION OF INDIA AND OTHERS** .....**RESPONDENTS**  
Through: Dr. S.P. Dharma proxy counsel for Dr. Ashwini Bhardwaj  
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 OA No.434/2011 was filed in the Armed Forces Tribunal on 13.10.2011.
2. Vide this petition, the applicant has sought quashing and setting aside of the discharge order dated 31.08.2005 being based on LMC ground alleging to be contrary to the Army Rule 13 and Medical Regulations for the Armed Forces. He has also sought reinstatement back into service with grant of seniority, service, inherent pay and allowances and also adequate compensation for the sufferings and misery as may be deemed just.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 05.08.1988. It is submitted that the applicant suffered a Head Injury on 15.07.2003. He subsequently became low medical category P-3(P) and thus was discharged from the Army on 31.08.2005. It is further alleged by the applicant that from 01.04.1991 till 19.04.2003 he was continuously serving in field area. Thus, despite 13 years of service in field area, the respondents have been rather harsh in discharging him as a LMC that too without holding the Invalidation Medical Board (IMB) as mandated.

4. Learned counsel for the applicant argued that the applicant was discharged under Army Rule 13 without holding the IMB. Since the applicant was low medical category P-3(P) with minor restrictions on employability, he should not have been discharged medically without holding the IMB. Learned counsel for the applicant further argued that this point was finally settled by 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** in which Army Rule 13 was held to be sacrosanct and therefore, IMB is the pre-condition for being discharged medically. In **Subedar Rajpal Singh (Supra)** it has been 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. Learned counsel for the applicant also stated that alongwith the OA, he has also moved an MA for condonation of delay. He argued that this being a continuous wrong, the delay needs to be condoned and in support of his contentions, he has cited the judgment of Hon'ble Apex Court in **Civil Appeal Nos.5151-5152 of 2008 arising out of SLP(C) No.3820-3821/2008 in the matter of Union of India Vs Tarsem Singh**, in which the Hon'ble Apex Court has laid down parameters of continuing wrong.

6. Learned counsel for the applicant also submitted that the impugned order also violates para 424(c) of the Medical 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."*

7. Learned counsel for the applicant further submitted that the aforesaid Regulations and the system of Medical classification are placed ad seriatim. The opening preface of a similar Regulation states that *"Departmental orders and instructions are based on and take their authority from these Regulations. Should any variance arise between such orders and instructions and these Regulations for the Army, the latter shall prevail."* He argued that the Regulation gets its strength and

source from Section 192 of Army Act, 1950 as passed by the Parliament while all other orders and instructions cannot overturn the basic principle.

8. Learned counsel for the applicant further stated that since he was discharged illegally from the military service, he would have been promoted in normal course to the rank of Subedar/Subedar Major had he been permitted to continue in service. In support of his contentions, learned counsel for the applicant cited the judgment of **Hon'ble High Court of Delhi dated 27.05.2009 in the matter of Kalu Ram Vs Union of India** and further contended that the said judgment is applied mutatis mutandis to this case also.

9. Learned counsel for the applicant also stated that the applicant has also filed a statutory complaint on 25.08.2010 which has not yet been disposed off.

10. Considering facts of the case, we also heard respondents at the stage of admission. Learned counsel for the respondents submitted that the applicant had been discharged on 31.08.2005 and he has filed this petition on 13.10.2011, which is hopelessly time barred. He drew our attention towards Section 22 of the Armed Forces Tribunal Act, 2007 and submitted that the case is liable to be rejected. He also contended that the order of discharge cannot be treated as continuous wrong and the judgment given in case of **Tarsem Singh** case (supra) does not help him as the facts are distinguishable.

11. Learned counsel for the respondents further submitted that the case is squarely covered by the judgment given by the Hon'ble High Court of Delhi in the matter of **Sub (Skt) Puttan Lal & other connected petitioners on 20.11.2008** which was given after the judgment of Hon'ble Apex Court in case of **Naib Subedar Rajpal Singh's** (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. In that respect the Hon'ble Court has 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."*

12. It was further contended that in similar matters this Tribunal as well as the Hon'ble Delhi High Court has relied on para 7(iv) of **Puttan Lal's** case (supra) and rejected the petitions.

13. Having heard both the parties at length, at admission stage, and the fact that the applicant was discharged on 31.08.2005 and has filed this O.A. on 13.10.2011, we are of the view that the contention of continuous wrong is not acceptable as the act of discharge is a complete act. This contention also came before the Hon'ble Delhi High Court in case of **Rifleman Ram Bahadur Thapa vs. Union of**

**India & Ors.** W.P.(C) No.586/2012 decided on 30.01.2012, wherein the petitioner, who was discharged on 01.01.2007 filed a writ petition in the year 2011. This contention 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.”

14. We have also considered the discharge issue dealt with in **Puttan Lal's** case (Supra) wherein it was held that persons who were discharged under the policy of 12.04.2007 will be reinstated. The present petitioner was discharged in 2005. Therefore, no relief can be granted. In such type of cases, similar view has been taken by the AFT and other Courts. The AFT (PB) in the matter of **Nk Narendra Kumar Vs Union of India & Ors., OA No.262/2010** decided on 08.11.2010 has held 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. This conclusion also finds support from the view taken by this Tribunal in case of ***ERA Rakesh Kumar Aggarwal Vs. Union of India & Ors.*** passed in O.A. No.55/2012 decided on 17.02.2012, wherein the Tribunal has discussed the provision of Section 22 of the Armed Forces Tribunal Act, 2007.

16. In view of the foregoing, we are not inclined to interfere in the matter. The O.A. along with M.A. is dismissed in limini, at admission stage. 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, 2011.**