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

O.A. NO.438 of 2011

IN THE MATTER OF:

SEPOY KIRPAL SINGH .....APPLICANT
Through: Mr. K. Ramesh, counsel for the applicant

VERSUS

UNION OF INDIA AND OTHERS .....RESPONDENTS
Through: Mr. S.K. Sethi proxy counsel for Mr. Akash Pratap 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.438/2011 was filed in the Armed Forces Tribunal on 13.10.2011.

2. Vide this OA, the applicant has sought quashing and setting aside of the Sikh Regiment Records Letter dated 09.05.2002 as communicated through Discharge Book alleging that it has not adhered to the Army Rule 13 and Medical Regulations for the Armed Forces. He has also sought reinstatement 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. An application was also filed under Section 22 of the Armed Forces Tribunal Act, 2007 along with O.A. for condoning delay in filing O.A.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 23.02.1998. He subsequently became low medical category P-2(P) and thus was discharged from the Army on 09.05.2002. It is alleged that this was done under Army Rule 13 but without holding the Invalidation Medical Board (IMB) as mandated. He was discharged from the Army on the grounds of non-availability of "sheltered appointment".

4. 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 by Hon'ble Apex Court on 07.11.2008 in Civil Appeal No.6587/2008 as cited in (2009)1 SCC (L&S) 92** and by the judgment of **Subedar Puttan Lal delivered on 20.11.2008 by the Hon'ble High Court of Delh**i. 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 on medical grounds without holding 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 discharge from service 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 further argued that the Hon'ble Apex Court has already laid down that Army Rule 13 is mandatory in terms of the IMB and any instructions or orders passed by any authority cannot infringe Army Rule 13. In this case the IMB was not carried out and the applicant was discharged on medical grounds despite the fact that though the applicant was willing to continue in service and a sheltered appointment was not made available in accordance with Army Order 46/80.

7. 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."*

8. 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.

9. Learned counsel for the applicant also argued that based on this faulty discharge on medical grounds, the applicant has lost out on promotion and further service to the Army.

10. In support of his contentions, learned counsel for the applicant placed reliance on Subedar Rajpal Singh (Supra) wherein the Hon'ble Apex Court has held that it is essential to hold IMB before discharging a person on medical grounds.

11. Learned counsel for the applicant further argued that on reinstatement the applicant is entitled to all deemed promotions and therefore, he will be entitled to pension of the highest rank reached i.e. of a Subedar Major. He conceded in his arguments that he will not claim his pay and allowances for the intervening period as he has not performed the duties physically. In support of his contentions, he cited the judgment of Hon'ble Delhi High Court passed in **"*Kalu Ram Vs Union of India*"** on 27.05.2009 wherein consequential benefits of service, inherent pay and allowances, seniority at par with his batch mates who were promoted in the interregnum period when the applicant was discharged, were given.

12. The applicant has also filed a statutory complaint on 22.02.2010 which has not yet been disposed off.

13. Considering the facts of the case, we also heard the learned counsel for the respondents, at admission stage. Learned counsel for the respondents cited Section 22 of the AFT Act 2004 and submitted that the applicant was discharged in 2002 and he has filed this petition in 2011, the case is highly time barred. The grounds stated in the M.A. for condonation of delay are not tenable and the judgment passed in ***Tarsem Singh*** (supra) is not applicable in the present case.

14. 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 is given after the judgment of Hon'ble Apex Court in Naib Subedar Rajpal Singh's (Supra) case. 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 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."* He further submitted that the Hon'ble Tribunal itself has taken the same

view in similar cases and the view has further been maintained by the Hon'ble Delhi High Court.

15. Having heard both the parties at length, we are of the opinion that the matter pertains to discharge made on 09.05.2002. The applicant himself has challenged that order. Until that order is quashed, he is not entitled to agitate the other issues. Thus, it cannot be said to be a case of continuing wrong, therefore, the judgment cited by the applicant of ***Tarsem Singh*** (supra) is not helping his contentions. This conclusion finds support from the judgment given in the matter of (**2010)2 SCC 59 Union of India and others Vs M.K. Sarkar** wherein it has been held that the person who is in receipt of gratuity in lieu of pension cannot change his option to seek pension at belated stage. This Tribunal has also taken a similar view in case of ***Bijendra Singh Vs. Union of India & Ors.*** O.A. No.154/2011 decided on 17.10.2011.

16. We have considered the issue of discharge also. In this regard, we have considered the judgment given in case of ***Puttan Lal*** (supra) passed by the Hon'ble Delhi High Court. Para 7(iv) of the said judgment is relevant, which has already been quoted above. As per observation made in this para, the applicant was neither discharged under the policy of 2007 nor he filed any petition earlier, therefore, he is not entitled for the relief claimed. Further this Tribunal in the matter of **Nk Narendra Kumar Vs Union of India & Ors., OA No.262/2010**

decided on 08.11.2010 has also taken the same view. 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."*

17. On the similar facts, in cases in cases of ***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, the same view was taken by this Tribunal, and the said decisions were also maintained by the Hon'ble Delhi High Court.

18. In view of the foregoing, we are not inclined to interfere in the matter. No ground exists to condone the delay also. The O.A. along with M.A. is dismissed at admission stage. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 20th day of March, 2012.