

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

O.A NO. 68 of 2010

IN THE MATTER OF:

Subedar Raj Bahadur Singh**APPLICANT**
Through : Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Mr. Ankur Chibber 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.68/2010 was filed in the Armed Forces Tribunal on 02.02.2010.
2. Vide this petition, the applicant has sought quashing and setting aside of the impugned order of EME Records dated 21.01.2000 by which he was discharged w.e.f. 30.06.2000 being discharged on LMC grounds alleged to be contrary to the Army Rule 13 and Medical Regulations for the Armed Forces. He has also sought pay and allowances in the rank of Subedar from 01.07.2000 upto 31.07.2005 and inherent promotion to the rank of Subedar Major from 01.08.2005 with revised pension in the rank of Subedar Major from 01.08.2009 with all other consequential benefits.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 16.7.1977. During his service the applicant contracted an ailment of **“Impaired Glucose Tolerance Obesity and ECG Abnormality”** since July 1998. It is submitted that he was under treatment and was performing all military duties to the satisfaction of his superior officers. Based on the directions of higher authorities vide Army Order of 1980, the medical authorities made him medical category BEE which is equivalent to P-2. Consequently, a discharge order was issued dated 21.01.2000, which is the impugned order in this petition.

4. The applicant was put through a Release Medical Board (RMB) but not through the Invalidating Medical Board (IMB). The applicant also preferred an appeal dated 22.12.2000 against the rejection of his disability claim. The same was rejected and conveyed to the applicant on 22.4.2001. Thereafter, the applicant served a number of representations to various authorities through himself and also through his wife for reinstatement into service or re-employment in ex-servicemen quota.

5. The applicant also filed WPC No.64763/2006 in the Hon'ble High Court of Judicature at Allahabad for grant of disability pension. The same was dismissed by the Hon'ble Court at the admission stage vide their judgment dated 28.11.2006 due to territorial jurisdiction. Thereafter, the applicant filed CWP No.3238/2006 in the Hon'ble High

Court of Delhi for grant of disability pension. The Hon'ble Court vide their judgment dated 02.05.2007 dismissed the CWP at admission stage with direction to the applicant to make a suitable representation to Office-in-Charge EME Records for re-assessment of his disabilities and for making a claim for payment of disability pension.

6. Accordingly, the applicant made a representation dated 14.05.2007. This was rejected by the Army HQ vide their letter of 24.3.2008. He was advised to prefer a second appeal to the Defence Minister's Appellate Committee on Pension within six months, should he still feel aggrieved. On 05.01.2009 a legal notice was served by the applicant for grant of disability pension and other AGIF and other related benefits which was disposed off vide letter dated 01.02.2009. Thereafter, he filed the present OA in Hon'ble Tribunal.

7. Learned counsel for the applicant argued that the case is very simple since it comes squarely under the judgments 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 Naik Vidya Dutt Dhyani Vs UOI in CWP No.5100/08** decided by the Hon'ble Delhi High Court. He has also stated that even in **Sub (Skt) Puttan Lal & other connected petitioners Vs Union of India on 20.11.2008**, the Hon'ble Delhi High Court has clearly issued the directions regarding reinstatement of personnel who were being discharged withholding IMB with consequential benefits.

8. Learned counsel for the applicant argued that the applicant has sought for the above reliefs as he was discharged under Army Rule 13 without holding Invalidation Medical Board (IMB) as mandated by Army Rule 13. He further contended that the order of discharge is bad in law, therefore, the delay in challenging the said order would not come in granting relief to him. He also submitted that the order of discharge is a continuous wrong. He cited the judgment given in case of ***Union of India Vs. Tarsem Singh*** (2008) 8 SCC 648.

9. Learned counsel for the applicant also submitted that the impugned order dated 31.05.2001 also violates para 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.”

10. 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.

11. Learned counsel for the applicant further stated that since he was denied his full military service, he also lost out on promotion at par with his batch mates to become Subedar and Subedar Major and thus he seeks parity with his batch mates on reinstatement. 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 stated that the said judgment is applied mutatis mutandis to this case also.

12. Learned counsel for the respondents stated that the applicant was placed in low medical category BEE (T) w.e.f. 04.07.1998 due to the disabilities Diabetes Mellitus, Obesity, ECG Abnormality and Ectopics. On review the applicant was again continued in low medical category BEE (T) with effect from 04.01.99 for a period of six months. On 04.07.1999 he was placed in the category BEE(P) for two years. Under the provisions of Para 2 of Army Order 46/80 and AHQ Letter dated 25.05.1999, the applicant was discharged from service w.e.f. 30.06.2000 under item 1(iii)(b) and 2(A) of Army Rules 1954 as inserted by SRO 126/64 for JCOs and Clause III(v) for OR of the table annexed to Army Rules 13(2A) and 13(3) as inserted vide SRO 126/64

“Being placed in permanent low medical category and the category being surplus”.

13. Learned counsel for the respondents further argued that his consequential dues in terms of pension and other financial benefits were paid to him in terms of AGIF, service gratuity, commutation of pension and service pension for life. The applicant was also placed before the Release Medical Board (RMB) on 19.4.2000. No disability pension is paid to him as the disease was considered neither attributable nor aggravated by military service and the disability assessed as less than 20% (11-14%) that too for disability for two years. Claim for grant of disability pension alongwith connected documents were forwarded to the PCDA (Allahabad) for adjudication vide letter dated 13.9.2000. Learned counsel further submitted that after examination of the pension documents, the disability claim was rejected vide letter dated 23.10.2000 and was conveyed to the applicant on 16.11.2000 by EME Records. In this letter of rejection, the applicant was advised to approach the competent authority should he feel aggrieved.

14. The applicant preferred an appeal dated 22.12.2000 against the rejection of his disability pension claim. After careful examination of the appeal, the same was rejected vide order of PCDA(P) dated 28.12.2001 and the same was communicated to the applicant. He was further advised to put an appeal to the RM's Appellate Committee.

15. Learned counsel for the respondents further submitted that the applicant made several representations to various authorities through himself and also through his wife for reinstatement into service or re-employment of ex-servicemen medically boarded out from service. He further states that the applicant was discharged from service under item I(iii) of Rule 13 and Clause 2(a) of Army Rule 1954 as inserted by SRO 126/64 due to being placed in permanent low medical category being surplus to the establishment. Hence the provision contained in para 143 of Regulations for the Army 1987 is not applicable to the applicant.

16. Learned counsel for the respondents further submitted that the applicant also filed a WPC No.64763/2006 in the Hon'ble High Court of Judicature at Allahabad for grant of disability pension which was dismissed by the Hon'ble Court at the admission stage vide their judgment dated 28.11.2006 due to territorial jurisdiction. Thereafter, the applicant filed CWP No.3238/2006 in the Hon'ble High Court of Delhi again for grant of disability pension. The Hon'ble Court vide their judgment dated 02.05.2007 dismissed the CWP with direction to the applicant to make a suitable representation to Office-in-Charge EME Records for re-assessment of his disabilities and for making a claim for payment of disability pension.

17. He further argued that accordingly the applicant made an appeal on 14.05.2007 which was considered by the Army HQ and was rejected on 24.03.2008. In this rejection the applicant was advised that

if he is not satisfied with the decision, he may prefer second appeal to the Defence Minister's Appellate Committee on Pension.

18. Learned counsel for the respondents further contended that in compliance of court order dated 02.05.2007 appeal medical board of the applicant was carried out at Base Hospital, Delhi Cantt. The appeal medical board dated 23.06.2008 considered the disabilities of the applicant as neither attributable to nor aggravated by military service and compositely assessed the same as 20% for life. As per the opinion of the Appeal Medical Board, the applicant was not meeting primary conditions for grant of disability pension as per para 173 of Pension Regulations for the Army 1961. Hence the same was communicated to the applicant vide EME Records letter dated 05.08.2008. On 05.01.2009, the applicant served a legal notice for grant of disability pension. The said legal notice was suitably replied to the counsel for applicant vide EME Records letter dated 01.02.2009. Now the applicant has filed the present OA for setting aside the discharge order dated 21.1.2000, which is not maintainable as he has not challenged earlier, secondly the order of discharge is of 2000 and now that cannot be challenged in 2010 as it is time barred as per Section 22 of the AFT Act, 2007. The judgment of **Tarsem Singh** (supra) does not help the case of the applicant.

19. We have heard both the parties at length and have also examined the documents placed on record. The medical authorities are unambiguous as regards the attributability as also the aggravation

of the disease being not attributable to military service. Therefore, the issue of disability pension cannot be adjudicated herein. Already in appeal that has also been maintained. Further on his representation, pursuant to direction of Hon'ble High Court matter was again examined and claim has been rejected. Thus, there is no ground to interfere, at this stage. He has already granted regular pension.

20. As regards the discharge of the applicant under Army Rule 13 without holding the IMB, we are of this opinion that the applicant was discharged on medical grounds w.e.f. 30.06.2000. Therefore, this case does not come under the ambit of judgment of Hon'ble High Court of Delhi in Puttan Lal's case vide para 7(iv) has laid down the instructions as regards the re-opening of old cases which were not governed by the orders of 2007. Para 7(iv) of the Puttan Lal's case reads as under:-

"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."

21. Learned counsel for the applicant also cited the judgment given in case of **Tarsem Singh** (supra), but that case pertains to pension matter. In this case, without quashing the order of discharge the applicant is not entitled for anything and for that purpose the cause of

action arose when he was discharged. 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. A contention was 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.”

22. 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.

23. On the similar facts, 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.

24. The judgment cited by the applicant of **Kalu Ram** (Supra) also does not help the applicant as in that case the petitioner was discharged on 31.01.2008 and as per judgment given in **Puttan Lal's** case (Supra), the petitioner was given option vide letter dated 19.12.2008 to rejoin the service and he remain in service but that is not the case of the present applicant.

25. As such we are not inclined to interfere in the matter. The case is dismissed. 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