

COURT NO. 3, ARMED FORCES TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

M.A. No.47 of 2010 & 58 of 2010 in

T.A. No. 128 OF 2009

W.P.(C) No.6831 of 2010 of Delhi High Court

IN THE MATTER OF :

Ex. Sub./CGD T.P. Sharma

.....Applicant

VERSUS

Union of India & Ors.

.....Respondents

Dated: 07-12-2010

Present: Mr. V. Siva Subramaniam, counsel for the Applicant.
M. Anil Gautam & Mr. Mohan Kumar, counsel for the respondents.

M.A. No.47/2010

Heard and perused the record.

By the present M.A. the applicant wants leave to amend the main T.A. No.128/2009 to the extent that before discharging no notice was given by the Army Commander. He has made this averment in his application. Considering the submissions from both the sides we allow this application. The main T.A. be amended to the above extent and the amended T.A. be filed with the direction that advance copy of the same be supplied to the applicant. The respondent side is free to file reply.

M.A. stands disposed of. It may be tagged with the main file.

M.A. No.58/2010

Counsel for respondents wants time to file reply. Time is granted as prayed for.

Put up on 04.01.2011.

In future the name of Mr. Anil Gautam be also shown as counsel for the respondents in the cause list.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Dated: 07-12-2010

→ Amended writ petition with affidavit filed.

→ Reply to M.A. No. 58/10 is not filed.

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

TA No.128/2009
WP(C) NO.6831 of 2009

Ex Sub/CGD T.P. Sharma

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. V. Siva Subramaniam, Advocate.

For respondents: Mr. Mohan Kumar , Advocate

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
17.12.2012

1. This writ petition was filed by the petitioner before the Hon'ble High Court of Delhi which has been transferred to this Tribunal after its formation.
2. The petitioner vide this petition has prayed that directions may be issued to the respondents to quash the discharge order dated 16.05.2005 and direct the respondents to reinstate the petitioner with back wages, continuity of service and all consequential benefits. This prayer was further amended by the petitioner when the matter was transferred from the High Court of Delhi to this Bench and sought the amendment to the effect to direct the respondents to award back wages to the petitioner from 18.07.2008 to 30.11.2009 with all consequential benefits or in alternative, direct the respondents to revise the pension of the petitioner as if he had retired on superannuation on 30.11.2009 and pay him the arrears of pension, gratuity, leave encashment and composite transfer grant on the basis of the petitioner's last pay as on 30.11.2009, as if the petitioner had retired on 30.11.2009.
3. The petitioner was enrolled on 28.11.1981 as a Sepoy(Clerk/GD) in the Army Service Corps of the Indian Army. The petitioner was promoted as

Sub/CGD in ASC Records, Bangalore on 01.02.2003 and he was due to retire on superannuation on 30.11.2009 after completion of 28 years of service. On 14.06.2004, he was posted to 343(I) Sup PI ASC. On 27.09.2004, the petitioner was placed in Low Medical Category (Permanent) for Obesity. On 17.02.2005, the respondents issued a letter stating that the individual is placed in LMC for obesity and should not be given sheltered appointment. On 26.04.2005, the petitioner submitted a willingness certificate to continue in an alternative employment on being placed in permanent low medical category. On 16.05.2005, the respondents issued an order of discharge stating that the petitioner be discharged from service being placed under LMC on 31.10.2005. Thereafter, on 02.06.2005, a show cause notice was issued to the petitioner intimating that he was under order of discharge from service w.e.f. 31.10.2005 under the authority of Army Rule 13(3) Item I(iii) read with Army Rule 11(a) on being placed in medical category lower than SHAPE-1 and not up to the prescribed military physical standard. On 03.06.2005, he agreed to the decision regarding his discharge from service.

4. The petitioner submitted that he had outstanding career and he has never had any red ink entry and his record has been good throughout. It has been submitted that the petitioner was discharged from service before completion of the terms of engagement i.e. 28 years and without holding the Invalidating Medical Board. Hence the petitioner has filed statutory as well as non-statutory complaint, but without any result. Thereafter, the petitioner filed the present writ petition before the High Court of Delhi, which was transferred to this Court after its formation.

5. A reply was filed by the respondents who took the position that as per the Army Order 03/2001 Clause 20 which clearly states that a person who is

over-weight and has failed to reduce his weight to bring it within the ideal body weight will be placed in permanent low medical category and no sheltered appointment will be given to him. After completing the period of service, the individual may be released from the service as per Army Rule 13. It has also been pointed out that in Regulation 134, it has been clearly stipulated that an incumbent will get 20 years of colour service plus three years of reserve service. It is further submitted that in view of LMC, his further retention in service was against the public interest and he was not recommended by the CO and accordingly, a notice was given to him to which he agreed discharge on account of being placed in low medical category for disability 'obesity' and accordingly, he was discharged from service.

6. We have heard learned counsel for the parties and perused the record. Learned counsel for the petitioner has emphasized that in normal course, a Subedar is entitled to 28 years of pensionable service and since the petitioner has not completed 28 years of service, therefore, his discharge is prima facie illegal. Learned counsel also submitted that he should have been allowed to continue his service upto 2009 i.e., after completing 28 years of service so that he could get the benefit of 6th Pay Commission and other consequential benefits also.

7. But the fact remains that the petitioner was initially inducted in service by the clear stipulation that he will be allowed to continue in service for a period of 20 years. The respondents have placed before us the blank format of the contractual service which the petitioner had entered. According to this, he is required to continue upto 20 years of colour service and three years of reserve service or till the attainment of 46 years of age, whichever is earlier.

Regulation 134 is also of the same effect. Regulation 134 showing the terms of service reads as under:-

"134. Terms of service. (a) The minimum periods of colour service and the Reserve liability will be as follows:-

(i) Group I.- 17 years service with the colours and 2 years in the reserve or till the attainment of 40 years of age, whichever is earlier.

.....

(ii) Group II.- 20 years of service with colours and 3 years in the reserve or till the attainment of 46 years of age, whichever is earlier.

Arm or service

.....

All Arms and Services

Trade and category

.....

Bandsman

Barber

Blacksmith

Bugler

Carpenter

Carpenter and Joiner

Clerk Store

Clerk GD

....."

8. As per this Regulation, for persons like the petitioner who entered in the Army Service in the Clerk GD, falls in the category of Group II. There it is clearly mentioned that he will be allowed to continue for 20 years of colour service and three years of reserve service or till the attainment of age of 46 years, whichever is earlier. In the present case, he has put in 20 years of service. But the regulation clearly says that 20 years of colour service plus 3

years of reserve service or till the attainment of age of 46 years, whichever is earlier. In this view of the matter, it is submitted that he cannot be allowed to continue in the service beyond 20 years as per contract of service.

9. The basic fact as mentioned above is it is a contractual appointment and as per terms and conditions of the contractual appointment as stipulated in Regulation 134 is 20 years of colour service plus 3 years of reserve service or till he attains the age of 46 years, whichever is earlier. In the present case, the first contingency is applicable to petitioner that he has already completed 20 years of service in 2001. In fact, if the respondents wanted to enforce the contractual appointment, he could have retired somewhere in 2001 itself. But the respondents allowed him to continue till he became a low medical category and that too permanent low medical category and as per Regulation 134, he should not have been allowed to continue beyond 20 years of service irrespective of the disability of 'obesity'. As such, this notice was given to him and his services were discharged.

10. So far as Army Rule 13 is concerned, the petitioner himself has agreed that he may be discharged from service and his case has been recommended by the CO, which have been approved by the higher authorities as per Army Rule 13. The next submission of learned counsel for the petitioner is that he should be allowed to continue upto 2009 or till he get the benefit of 6th Pay Commission. Learned counsel for the petitioner has also submitted that in spite of being low medical category, he may be given sheltered appointment. Both prayers cannot be acceded to but as per Army Order 03/2001 wherein no sheltered appointment can be given to a person who is obese and therefore, even if the Medical Board does not put any restriction for re-

appointment for an obese person, the obesity is a anti-thesis to the force like Army.

11. The petitioner is low medical category (permanent) and his services has to be discharged in terms of the contract. Since the service of petitioner has been discharged in terms of contract, therefore, no relief can be given by this Court.

The T.A. is accordingly dismissed. No order as to costs.

**A.K. MATHUR
(CHAIRPERSON)**

**M.L. NAIDU
(MEMBER)**

**New Delhi
Dated 17TH December , 2012
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