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

**T.A NO. 508 of 2010
WP(C) No.802 of 2009 of Delhi High Court**

IN THE MATTER OF:

SEPOY RAVINDER 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: 19.03.2012

1. This petition was originally filed on 05.02.2009 before the Hon'ble High Court of Delhi as WP(C) No.802 of 2009. Thereafter, it was transferred to the Armed Forces Tribunal on 05.02.2010 and was registered as TA No.508/2010.

2. Vide this petition, the applicant has sought setting aside of the discharge order issued by Army Medical Corps Records, Lucknow dated 27.01.2005 (Annexure P-1) by which he was discharged being LMC(P) case. The applicant has also sought reinstatement into service with all consequential benefits which include pay and allowances, continuity of service, promotion with ante date seniority.

3. Brief facts of the case are that the applicant was enrolled as a Sepoy in the Army Medical Corps on 25.02.1995. In Feb 2002, the applicant suffered from Primary Hypertension while serving in the counter insurgency area of Doda, Jammu and Kashmir and was downgraded to LMC P-2 (P).

4. Subsequently, the applicant was discharged from military service on 01.06.2005 on the grounds of being LMC, P2(P) vide Army Medical Corps Records Letter dated 27.01.2005 (Annexure P-1).

5. Aggrieved by the premature discharge from the service, the applicant was constrained to file a writ petition before the Hon'ble High Court of Delhi in February, 2009.

6. 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 he should not have been discharged medically without holding the IMB. Learned counsel for the applicant further argued that in **Union of India Vs Nb Subedar Rajpal Singh decided by the Hon'ble Apex Court on 07.11.2008 in Civil Appeal No.6587/2008 as cited in (2009)1 SCC (L&S) 92** it has been held that Army Rule 13 explicitly mandates that no military personnel can be discharged from military service 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.

7. Learned counsel for the applicant also submitted that the impugned order 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."

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 further argued that the Hon'ble Apex Court as well as the Division Bench of the Hon'ble High Court of Delhi has allowed writ petitions filed by Subedar Rajpal Singh (Supra) and **Sub (Skt) Puttan Lal & other connected petitioners on**

20.11.2008 and based on these judgments, the respondents were forced to reinstate personnel who were discharged under the policy of 2007. He further argued that though Subedar Puttan Lal's case (supra) set aside the Army HQ letter of 12.04.2007 (Annexure P-6), the implication of this is that Army Rule 13 was violated alongwith para 424(c) of Regulations for Medical Services as also the ratio decidendi arising out of a catena of judgments. Inter-alia even while filing a Civil Writ Petition, the applicant honestly stated that he was discharged from military service way back on 16.09.2002 and therefore, was not directly affected by the AHQ letter dated 12.04.2007.

10. Further, he argued that vide AMC Records letter of 24.04.2003, the applicant was promoted though being LMC P-2(P) w.e.f. 07.10.2007, he was entitled to be retained upto 24.02.2012 and was permitted to continue in service despite the LMC. But his services were liable to be terminated if no longer required. However, the AMC Records suddenly did a volte face and issued the discharge order (impugned order) for applicant's discharge from Army Service from 01.06.2005 after having completed just 10 years 6 months and 3 days of service. He also argued that from 2005 onwards he has been constantly representing to the authorities and there has been no satisfactory response.

11. Learned counsel for the applicant also cited **Civil Appeal Nos.12037-48 of 1996 in the matter of State of Karnataka and**

others Vs S.M. Kotrayaa and others 1996 (6) SCC 267 in which the delay was condoned by the Hon'ble High Court since it dealt with the case of pension and their Lordships observed that Tribunal was within its right to condone the delay.

12. He also cited **UOI and Others Vs Tarsem Singh (2008) INSC 1369 dated 13.08.2008** in which their Lordships observed as under:-

> *"6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser, it ought not to have granted interest on arrears in such circumstances.*
>
> *7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored."*

13. Learned counsel for the applicant also quoted the judgment of AFT(PB) in **2011 (1) AFTLJ 174 in the matter of Shri Sadashiv Haribabu Nargund and Others Vs Union of India & others in TA No.564 of 2010** wherein while granting the prayer of the applicant it

was observed that " *It is clearly unfair that a person should change his position much less the Government to detriment of citizens. The public interest demands that administration must abide by the promises held out to citizens. It is totally immoral to go back from the promises held out by the mighty state to the detriment of a small people. Therefore, it is the function of the Courts to see that the citizens rights should be protected against the mighty state and state should be forced to abide by the promises made to its citizens."*

14. He further contended that the letter of AMC Records dated 24.04.2003 clearly mandated that he shall retire in the present category on 24.02.2012.

15. Learned counsel for the respondents stated that the present petition is hopelessly time barred and is suffering from lapses and laches. The applicant was discharged on 01.06.2005 and he filed writ petition on 31.01.2009.

16. Learned counsel for the applicant further stated that the applicant was in permanent LMC P-2 and in terms of AO 46/80 and order dated 15.03.2000, validity of which were not in question at any point of time. Therefore, his discharge that was sanctioned on 27.01.2005 was perfectly legal and within the law. He argued that the applicant cannot claim retrospectively the benefit of Hon'ble High Court judgment in the case of Sub Puttan Lal (Supra) which in fact disentitles the applicant to prefer the present application. He drew our

attention to Annexure R-2 dated 15.03.2000 which lays down clearly the guiding principles for giving sheltered appointment. The same reads as under:-

> *"**Sheltered Appointments***
>
> *4. AO 46/80 lays down implementation instructions for disposal of permanent LMC JCOs and OR. Vide Para 2 (a) of the AO, the retention of such personnel is subject to the following conditions:-*
>
> *(a) Availability of suitable alternative appointments commensurate with their medical category.*
>
> *(b) Should be justifiable in the public interest.*
>
> *(c) Such retention will not exceed the sanctioned strength of the Regiment/Corps.*
>
> *5. **Guiding Principles**: Within the conditions laid down in AO 46/80, the guiding principles that should be considered by the Commanding Officers for retention/discharge of permanent LMCs are as under:-*
>
> *(a) Those nearing their minimum pensionable service should preferably be retained.*
>
> *(b) The nature of disability and capability of the individual to look after himself outside the service and the need to continue treatment at MHs which may not be located in the vicinity of the individual's home station.*
>
> *(c) The circumstances under which the injury was sustained and/or aggravated. No differentiation should be made between attributable and non-attributable cases,*

except for battle casualties. Each case should be examined on merit.

(d) Whether requisite medical treatment has been provided to the individual, including fitting of artificial limbs or other aids.

(e) The effect on pensionary/disability benefits from the Central and State Govts/Army HQ/AGI/NGOs etc."

17. Learned counsel for the respondents also drew our attention to Annexure R-1 which is AO 46/80. In the General Principles it has enunciated that "*the employment of permanent low medical category personnel at all times, is subject to the availability of suitable alternative appointments commensurate with their medical category and also to the proviso that this can be justified in the public interest and that their retention will not exceed the sanctioned strength of the regiment/corps*". It further clarifies that *"ordinarily, permanent low medical category personnel will be retained in service till completion of 15 years service in the case of JCOs and 10 years in the case of Ors*".

18. In this case the applicant had completed 10 years of service.

19. The show cause notice was issued to the applicant on 08.2.2005 by the Commanding Officer to which a reply was also sent by the applicant on 10.02.2005 (Annexure R-4) whereby he expressed his willingness to continue in service till he attained pensionable service of 15 years. The case was again recommended by the CO 173 MH.

However, on 17.02.2005, the AMC Records wrote back to the unit 173 MH stating as follows:-

> *"4. Therefore, retention of the indl to continue in PLMC is not justified in the interest of service due to surplus manpower in the category to which the indl belongs.*
>
> *5. As per para 2(b) of ibid AO under ref, PLMC pers will be ordinarily retained in service till completion of 10 yrs service in the case of OR (incl NCOs) and 16 years in the case of JCOs.*
>
> *6. Therefore, in view of the above, discharge order issued vide office letter No.490059MP/PLMC/Ser-04/2005 dated 27 Jan 2005 holds good and the indl will be SOS w.e.f. 01 Jun 2005 (FN).*
>
> *7. The indl may please be informed accordingly*."

20. The learned counsel for the respondents also contended that the law laid down in ***Tarsem Singh*** (supra) will not help his contentions, as in his case the action of discharge was a complete act and case is not pertaining to pension matter. In support of his contentions, he cited **(2010) 2 SCC 59 in the matter of 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 this stage. It has been stated that the applicant has already drawn

gratuity which he was entitled because of 10 years of service, therefore, he cannot be given pension.

21. Learned counsel for the respondents also drew our attention towards para 7(iv) of the judgment given in case of ***Sub. (Skt.) Puttan Lal*** (supra) and contended that as the petitioner was discharged in 2005 neither under the policy letter of 12.04.2007 nor any petition was pending at the time of judgment, thus, he is not entitled to challenge this order. He further cited the judgment of Principal Bench, AFT in the matter of **OA No.262/2010 titled NK Narendra Kumar Vs Union of India & Others,** wherein the OA was dismissed since the case was excluded by para 7(iv) and 7(v) of the judgment dated 20.11.2008 of Hon'ble High Court of Delhi in the matter of Sub (Skt) Puttan Lal & Others.

22. Learned counsel for the respondents also quoted the judgment of Principal Bench, AFT in the matter of **TA. No.2/2010 Hav Hamman Singh Vs Union of India & Others dated 10.12.2010**. The said TA was dismissed by the Hon'ble Tribunal on the ground that "*it was pointed out in the case of Puttan Lal (Supra) that those who have already filed the petition or discharged under Scheme dated 12.04.2007 or proposed to be discharged under the aforesaid policy of 2007 they alone will be entitle to benefit of Rajpal Singh's case decided by the Hon'ble Supreme Court."*

23. Having heard both the sides at length and having examined all the documents, we are of this opinion that the assurance given to the applicant vide AMC records letter of 24.04.2003 clearly stated that "*No 13990768 k Sep/AA Ravindra Singh of your unit is in permanent low medical category P2(P) with effect from 07 Oct 2002 has been retained upto 24 Feb 2012 and permitted to continue in service in permanent low medical category vide RO (AMC) Centre Part II Order No.190/2003. His services are liable to terminate, if no longer required."* The last line in the paragraph clearly states that "*His services are liable to terminate, if no longer required*". Since the respondents have taken the view that his services are no longer required because the trade to which he belongs was having surplus personnel, it was incumbent on the part of the respondents to discharge him in order to prevent loss to the State. Further the contention of the applicant that he was approved for promotion despite LMC, but that has no nexus with discharge on the ground of LMC.

24. We have also considered the contentions placed by applicant with regard to delay and laches, but as the applicant was discharged in 2005 and he filed writ in 2009, he has challenged the order of discharge which was a complete act, the cause of action arose in this case in 2005, therefore, the judgment cited by applicant in ***Tarsem Singh*** (supra) does not help his contention. 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."

25. We have also considered the judgment of Sub (Skt) Puttan Lal (Supra) and also Sub Rajpal Singh as passed by the Hon'ble Apex Court. Para 7(iv) of Puttan Lal's judgment excludes such personnel who were discharged before the judgment came into force and who had not approached to any of the competent Courts in the country. Para 7(iv) 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."*

26. 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, ***Rifleman***

Ram Bahadur Thapa Vs. Union of India & Ors. in O.A. No.176/2011 decided on 19.10.2011 and ***Nk. Narendra Kumar Vs. Union of India & Ors.*** in O.A. No.262/2010 decided on 08.11.2010, the same view was taken by this Tribunal, and the decisions taken in ***Risaldar Ram Karan Singh*** (supra) and ***Ram Bahadur Thapa*** (supra) were also maintained by the Hon'ble Delhi High Court.

27. Having given our best considerations to the case put up by the applicant, we are of the opinion that ***Puttan Lal***'s case (supra) effectively excludes the applicant's case. Therefore, we are not inclined to interfere in the matter. The T.A. is dismissed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 19th day of March, 2012.