

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

**T.A NO. 553/2009  
(WRIT PETITION (CIVIL) NO. 8180 of 2009)**

**IN THE MATTER OF:**

**Ex. Sub. Shiv Ram Baboo** .....**APPLICANT**  
Through : Mr. S.R. Kalkal, counsel for the applicant

**Vs.**

**Union of India and Others** ...**RESPONDENTS**  
Through: Mr. Anil Gautam proxy counsel for 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: 16.05.2012**

1. The case was initially filed before the Hon'ble High Court on 13.04.2009 as WP (C) No.8180 of 2009 and was subsequently transferred to the Armed Forces Tribunal on 03.12.2009.

2. Vide his prayer, the applicant has sought quashing of the order dated 16.02.2009 (**Annexure P-6**) by which he was informed under the RTI that he was discharged being LMC (P) case under Army Rule 13(3)(1)(iii) read with Army Rule 13 (2)(A) w.e.f. 31.07.2007. The applicant has also prayed for issuing directions to the respondents to implement the order/judgment dated 20.11.2008 passed in case of

***Sub. (SKT) Puttan Lal Vs. Union of India & Ors. W.P.(C)***

No.5946/2007 by the Hon'ble Delhi High Court and for reinstating the applicant with all consequential benefits.

3. Brief facts of the case are that the applicant was enrolled in the regular Army (Mech Infantry) as combatant soldier on 28.08.1982. During his service he was posted in peace, field, high altitude area and earned various medals. He was promoted to the rank of Subedar w.e.f. 01.05.2007. The applicant was a gunner by trade and was exposed to loud noise of the gun firing constantly and therefore, his ear drum got damaged and suffered loss of hearing. He was treated but could not be cured completely. Hence the applicant was placed in Low Medical Category H2(P).

4. It is alleged that the Army Headquarters issued a general circular for discharging all personnel below officers rank from service who were placed in Low Medical Category (Permanent) vide letter dated 12.04.2007. It is alleged by the applicant that he was served with a show cause notice for discharge from the Army Service. In response, the applicant submitted that he be permitted to complete his term of engagement in the present rank. The applicant had been promoted to the rank of Subedar on 01.05.2007 and in order to earn his pension in the said rank, he was required to serve for at least 10 months. The respondents did not consider his request and without holding IMB vide record office Mech. Inf. Letter dated 31.01.2007

(Annexure P-1), the applicant was directed to be discharged w.e.f. 31.07.2007 from the service.

5. Based on the impugned order, the applicant was issued a Discharge Certificate (Annexure P-2) and was discharged accordingly.

6. Learned counsel for the applicant argued that the Hon'ble Apex Court had decided a Special Leave Petition in the matter 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** has held that no JCO/OR can be discharged based on a general circular of being in a Low Medical Category unless such person is invalidated out of Army by a properly constituted Medical Board.

7. He further argued that the Hon'ble High Court of Delhi while deciding the batch matters pertaining to Low Medical Category cases in **Sub (Skt) Puttan Lal & other connected petitioners on 20.11.2008** (in short **Puttan Lal's** case) ordered, quashing of the circular issued by Chief of Army Staff on 12.04.2007, which directed discharge of all the personnel in Low Medical Category without holding the IMB. The Hon'ble High Court further directed that all the persons who stand discharged as a consequence of the aforesaid order are entitled to be reinstated with all consequential benefits. Therefore, learned counsel for the applicant argued that since the applicant's discharge was sanctioned w.e.f. 31.07.2007 vide order dated

31.01.2007, he was governed by the Hon'ble High Court order and applicant should also have been reinstated with all consequential benefits.

8. Learned counsel for the applicant further argued that as per directions given in the judgment individual option letter should have been sent to all the affected persons within two months making an offer to them to rejoin if they so desire and certain conditions were laid down. The respondents were also directed to issue a public notice in all national newspapers. The said order also clarified that it is applicable to all such persons who have been discharged or proposed to be discharged under the policy letter of 12.04.2007 (Annexure P-3), irrespective of filing petitions to challenge the same by them.

9. Learned counsel for the applicant further contended that based on the orders of Hon'ble High Court dated 20.11.2008, passed in **Puttan Lal's** case (supra) the Army HQ issued a letter dated 02.12.2008 (**Annexure P-4**) to all record offices for further action. Consequently, the respective Record Offices issued option letters to all affected individuals for reference one letter issued to Ex. Nk. Vidya Dutt Dhyani dated 31.01.2009 (**Annexure P-5**) is produced.

10. Learned counsel for the applicant further argued that notwithstanding the above, the applicant did not receive any recall letter from the Record Office. However, the applicant reported to the

training centre for rejoining service at his own accord, but was not accepted by the authorities. The applicant was forced to seek certain information under the RTI Act, 2005 and the respondents relied on their letter dated 16.02.2009 in which they stated that the applicant was not discharged because of being LMC but was invalidated out of service as the CO of the applicant did not recommend the retention of applicant in service (**Annexure P-6 colly**).

11. Learned counsel for the applicant further argued that as per Record Office letter, the applicant is not entitled to disability pension since his disability has been assessed less than 20%. It has also been stated that the applicant is also not entitled to pension of the rank of Subedar since he has not served in the rank for a minimum period of 10 months.

12. Learned counsel for the respondents argued that the applicant was initially downgraded to LMC H-2(T-24) w.e.f. 08.09.2004 for diagnosis "SENSORY NEURAL HEARNING LOSS (LESS) EAR". He was subsequently reviewed and was downgraded to medical category H-2(P) for two years. Learned counsel argued that as per his medical category, the applicant was provided with a sheltered appointment. When the CO was unable to provide him the sheltered appointment, he under Army Rule 13(3)I(iii) read in conjunction with Army Rule 13(2A) on having been placed in permanent low medical category other than SHAPE-1, recommended the applicant for discharge.

Therefore, in accordance with MOD letter dated 15.03.2000, he was recommended for discharge being Non-Battle Casualty (willing to serve) category. As such, the Record office issued a letter dated 31.01.2007 that the JCO shall be discharged w.e.f. 31.07.2007 as per the guidelines of the Army HQ letter *ibid*.

13. Learned counsel for the respondents further argued that the applicant submitted a statutory complaint against his premature discharge to the COAS. But before his complaint was considered, the applicant had filed a writ petition before the Hon'ble High Court of Delhi. The Hon'ble High Court vide its order dated 12.09.2007 directed the respondents to dispose of the statutory complaint of the applicant before 06.01.2008. On examination of the case, the COAS rejected the statutory complaint of the applicant. The applicant's wife also filed an application under RTI on 21.01.2009. This was responded to by the Records MIR vide their letter dated 16.02.2009 (**Annexure P-6**).

14. Learned counsel for the respondents further argued that since the applicant was not discharged under Government letter of 12.04.2007, he was not required to be sent an option letter as was done in those cases who were discharged under the policy of 12.04.2007 as per the orders of Hon'ble High Court in Puttan Lal's case (*Supra*).

15. The applicant in his pleading admitted that a SCN was given to him and he also replied thereto, thus, there is no dispute as regards the issuance of show cause notice and the reply thereto.

16. We have also considered the judgments cited by both the parties. Rajpal Singh's case (supra) decided by the Hon'ble Apex Court attained finality on 07.11.2008. Similarly, Puttan Lal's case (supra) attained finality on 20.11.2008. The applicant has not been discharged under the letter of 12.04.2007. Thus, the applicant cannot be said to be governed by either of the judgments. We have also examined the date of petition being filed by the applicant before the Hon'ble High Court of Delhi which was 16.04.2009. Therefore, the applicant is excluded under para 7(iv) of the judgment of Hon'ble High Court of Delhi in Puttan Lal's (supra) case. Para 7(iv) is reproduced 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."*

17. The contention raised by the applicant to claim that he had been discharged under policy dated 12.04.2007 is incorrect. He has been discharged by the order of 31.01.2007, which was made effective

31.07.2007 (Annexure P-1). Further he has intimated vide letter dated 16.02.2009 (Annexure P-6) in response to the RTI preferred by his wife. Relevant paras are reproduced as under:

**“Para 3.** JC-419300 Ex Sub Shiv Ram Babu was discharged from service under Army Rule 13(3) I (iii) read in conjunction with Army Rule 13(2A) on having been placed in Permanent Low Medical Category other than Shape-I and Commanding Officer 25 MECH INF has not recommended for retention in service against shelter appointment in spite of willingness of the individual. Therefore he was discharged from service on 31 Jul 2007.

**Para 4.** It is intimated that your husband Ex Sub Shiv Ram Babu was not reinstated in Army as he was discharged under Army Rule 13 (3) I (iii) and not as per Management of permanent Low Medical Category personal vide IHQ of MoD (Army) MP-3 (PBOR) letter No B/10201/06-08/Vol-I/MP-3 dated 12 Apr 2007. However personnel referred in your said Para have been recalled for Army service as directed by Delhi High Court order dated 20 Nov 2008. Your husband was not discharged under Management of permanent Low Medical Category personal vide IHQ of MoD (Army) MP-3 (PBOR) letter No B10201/06-08/Vol-1/MP-3 dated 12 Apr 2007. Therefore his discharge not covered said court order. He is not eligible for reinstatement in service as per above court order. A copy of discharged order of your husband is enclosed herewith as asked vide your petition under reference.”



18. We also note that the applicant has not challenged the discharge order dated 31.07.2007 while he has challenged the letter of 16.02.2009 (Annexure P-6).

19. We have taken similar view in a catena of cases i.e. **OA No.262/2010 Nk Narendra Kumar Vs Union of India** wherein persons were discharged in 2005 as LMC(P) case and petition was filed by him on 21.04.2010. The petition was dismissed by the Hon'ble Tribunal on 08.11.2010. In another case of **Risaldar Ram Karan Singh Vs. Union of India & Ors.** TA No.229/2009 where the person was discharged on LMC (P) on 31.01.2006 and he filed the petition on 24.02.2009. The Hon'ble Tribunal dismissed the petition on delay and laches and holding that judgments given in **Nb. Sub. Rajpal Singh's** case (supra) and in the case of **Sub. (SKT) Puttan Lal Vs. Union of India & Ors.** W.P.(C) No.5946/2007 decided by Hon'ble Delhi High Court on 20.11.2008 would not help his case and the decision of the Hon'ble Tribunal is upheld by the Hon'ble High Court of Delhi in WP(C) No.548/12 in the case of **Risaldar Ram Karan Singh Vs. Union of India** vide order of 25.01.2012., where a person is discharged as LMC case and there was no case pending on his behalf before any Court, than as per the directions given in **Puttan Lal's** case (supra) the person is not entitled for reinstatement. In this case also as discussed above the applicant was not discharged under the policy of 12.04.2007 by the respondent as cleared stated in reply given to applicant by way

of letter dated 16.02.2009 (**Annexure P-6**) and no case was pending on that day. Thus, the applicant was not entitled to be reinstated as per directions. Thus, there is no justified ground for direction to respondents to implement the judgment given in ***Puttan Lal's*** case (supra) as prayed.

20. In view of the foregoing, we are not inclined to interfere in the case. The application is dismissed. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

**(MANAK MOHTA)**  
**(Judicial Member)**

**Announced in the open Court  
on this 16<sup>th</sup> day of May, 2012.**