

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

T.A. No.568 OF 2009

W.P.(C) No.8279 of 2009 of Delhi High Court

IN THE MATTER OF:

EX. GNR. KAMAL SINGH**APPLICANT**
Through: Mr. S.R. Kalkal, counsel for the applicant

VERSUS

UNION OF INDIA AND OTHERS**RESPONDENTS**
Through: Mr. Anil Gautam, counsel for the respondents

CORAM:

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 08.05.2012

1. This case was filed in the Hon'ble High Court and registered as W.P.(C) No.8279/2009 on 20.04.2009. It was subsequently transferred to this Tribunal and registered as T.A. No.568/2009 on 15.12.2009.
2. Vide the petition the applicant has sought directions to the respondents to reinstate the applicant with all consequential benefits as per the judgment dated 20.11.2008 passed in the case of ***Sub. (SKT) Puttan Lal Vs. Union of India & Ors.*** W.P.(C) No.5946/2007 on 20.11.2008 by the Hon'ble Delhi High Court.

3. Brief facts of the case are that the applicant was enrolled on 21.02.1994 in the Army as a combatant soldier; during his service he suffered health problems and was treated by the medical authorities. However, he was placed in a low medical category for disease "Sensori Neural Hearing Loss (Bilateral)" in H-3(P) w.e.f. 13.08.2007; the Army headquarter vide its order dated 12.04.2007 directed that all low medical category personnel serving in the Army will be discharged from service; the applicant was issued with a show cause notice and finally discharged on 01.08.2008 being low medical category (**Annexure P-1**); the Hon'ble Supreme Court vide the judgment passed in **Union of India Vs. Nb. Sub. Rajpal Singh** on 07.11.2008 declaring that Invading Medical Board (IMB) is pre-requisite for being discharged from military service under Army Rule 13. The Hon'ble High Court of Delhi in case of **Sub. (SKT) Puttan Lal** (supra) gave specific orders to reinstate all those personnel who had been discharged under the administrative order of 12.04.2007; in fact their lordships ordered that in addition to those who are included in the batch matter should be sent a recall notice within two months of the order and notice also be published in the national newspaper. Though the applicant has not challenged the discharge order, he was discharged on 31.08.2008, having put in approximately thirteen and a half year of service.

4. It is further contended that based on the direction of the Hon'ble High Court the respondents issued the option letter to all concerned

dated 02.12.2008 (**Annexure P-2**); various option letters were issued to the affected individuals on 19.12.2008 (**Annexure P-3**); however, respondent No.3 did not issue any such option letter to the applicant. Therefore, a legal notice was issued to the respondent No.3 on 09.01.2009 by the applicant for compliance of the said judgment; the applicant after waiting for response of legal notice reported personally to the Artillery Centre, Nasik along with the copy of the judgment and expressed his desire to rejoin duty; the applicant was interviewed by Lt. Col. Tiwari, Chief Record Officer, Maj. H. Rehman and Col. Vinod Kumar, C.O. of the Depot Battalion; having stayed at the regimental centre for 7 days and without receiving any positive response from the respondents, the applicant was forced to return back to his village and, thus, he has filed the petition.

5. Learned counsel for the applicant stated that the applicant, based on the policy letter dated 12.04.2007, was released from Army before completion of his terms of engagement, since he was LMC H-3(P) and no IMB was held. He further contended that at various posts having passed the requisite tests it was not understandable as to how he was not taken back into service.

6. Learned counsel for the respondents states that the applicant was placed under LMC CEE (T) w.e.f. 09.01.1998 due to disability "Sensori Neural Hearing Loss (Bilateral)"; subsequently he was downgraded to CEE (Permanent) and was further downgraded to LMC

S1 H3 (P) A1 P2 (P) E1 w.e.f. 28.07.2003 due to another disability "CNS (INV) Seizure"; since the applicant was LMC S1 H3 (P) A1 P2 (P) E1, his discharged order was issued on the grounds being placed in medical category lower than SHAPE 1 and not upto the prescribed military physical standard under item III (V) of table annexed to Army Rule 13(3) read in conjunction with Army Rule 13 (2A). Learned counsel for the respondents argued that management of permanent LMC category is dependent on the employment restriction as also suitable alternate appointments commensurate with their medical category; retention of such persons can be justified only in public interest and it is also laid down that retention will not accede the sanctioned strength of the regiment/corps. Therefore, when such appointment is not entitled or where the retention is neither considered necessary in the services or exceeds the sanction of the regiment/corps, they will be discharged from service by giving six months' notice on approval of the competent authority irrespective of the services put in by them as per Army Rules laid down in Army Order 46 of 1980. He argued that the retention of the applicant was not recommended by the Commanding Officer (**Annexure R-1**), accordingly, the discharge order was issued to the applicant w.e.f. 31.07.2008 under the provisions of the Army Order 46 of 1980.

7. Learned counsel for the respondents argued that the applicant was examined by Release Medical Board on 21.04.2008 and his

composite degree of disablement was given 30% for life. Accordingly, he was paid the dues. Learned counsel for the respondents stated that the judgment given by Hon'ble Delhi High Court was for those affected individuals who have been discharged under the policy of 12.04.2007 and since the applicant was not governed by that policy, therefore, recall option letter was not sent to him. He further argued that the applicant has not approached the Court and he approached the Court for the first time only on 20.04.2009. Thus, his case is excluded vide para 7(iv) of the **Puttan Lal's** case (supra).

8. We have examined the record brought before us. We are of the opinion that the applicant was discharged under AO 46/1980 vide letter of 25.01.2008 and was not discharged under the policy letter of 12.04.2007. Further he has approached the Court for the first time on 20.04.2009. Therefore, the applicant is not covered by the order dated 20.11.2008 of the Hon'ble Delhi High Court in **Puttan Lal's** case (supra). Relevant portion of the judgment passed in **Puttan Lal's** case (supra) is reproduced hereunder for ready reference:

“5(i) The order passed by the Chief of Army Staff dated 12.04.2007 directing discharge of all the personnel in Low Medical Category without holding the IMB is quashed.

.....
.....

7(iv). *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.”*

9. We are also of the opinion that after the judgment of the Apex Court given in case of **Nb. Sub. Rajpal Singh** (supra) on 07.11.2008 Hon'ble Delhi High Court in case of **Sub. (SKT) Puttan Lal Vs. Union of India & Ors.** W.P.(C) No.5946/2007 passed on 20.11.2008 is excluding the applicant's case. Thus, the judgment of **Nb. Sub. Rajpal Singh's** case (supra) and of **Sub. (SKT) Puttan Lal's** case (supra) will not help the applicant.

10. Our view is also supported by the judgment dated 17.02.2011 of Hon'ble Apex Court passed in Civil Appeal Nos.4369/2006 and 4370/2006 in “**BSNL Vs. Ghanshyam Singh and Chidu Singh**”, respectively. Their lordships have observed “**Where only the affected parties approach the Court and relief is given to those parties, the fence sitters who did not approach the Court cannot joint that relief**”.

11. Further, we have also considered the judgment of Hon'ble High Court of Delhi in WP(C) No.548/12 in the case of Risaldar Ram Karan Singh Vs Union of India wherein their Lordships have upheld the decisions of Armed Forces Tribunal (PB) in TA No.229/09 and OA

No.262/2010 Nk Narender Kumar Vs Union of India. In both these cases, the petitioners were not discharged under the policy of 12.04.2007. Therefore, benefit of **Puttan Lal's** judgment (supra) did not accrue. Same view has been taken by the Hon'ble Allahabad High Court (DB) in Special Appeal No.964 of 2009 NK/OPR Rajeshwar Singh Vs Union of India dated 08.09.2009. The facts of this case is similar to those cases.

12. In view of the directions of the Hon'ble Delhi High Court, we are of the opinion that there is no case for us to interfere and, accordingly, 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 08th day of May, 2012**