

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 1376 / 2023

Ex Sep Dharamvir Kumar ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Amit Kumar, Advocate  
For Respondents : Mr. Y.P. Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

The applicant vide the present OA 1376/2023 filed under Section 14 of the Armed Forces Tribunal Act, 2007, has prayed for his reinstatement vide following prayers in Para 8 of the OA

- (i) To reinstate the applicant Shri Dharamvir Kumar without any delay in the services of Indian Army.*
- (ii) To grant him pay and allowances since the date of his retirement/discharge till the order of this Hon'ble Tribunal.*
- (iii) To grant to the Applicant all the terminal benefits for which he is eligible.*
- (iv) To pay the Litigation expenses to the Applicant.*
- (v) Any other order just and fair in the interest of justice.*

2. The applicant was enrolled as a Sepoy in EME Branch of Indian Army on 15.03.2011 and discharged on 31.05.2022 under Rule 13(3) Item III(iii)(a)(i) of Army Rules, 1954 on the ground of applicant being in permanent low medical category

P2(P) for disability - Primary Hypertension and no sheltered appointment was available.

**Submissions on behalf of Applicant**

3. It is the case of the applicant that he was willing to continue in service, but the retention in service was not recommended by the competent authority on the ground that he was in low medical category P2(P), but the applicant being a 'Cook' was fit to perform the duties of his trade involving cooking, and administrative work.

4. Appearing in person, applicant submits that he was discharged without following due process, and he was not given the proper opportunity of being heard, while he being a soldier spent his life for the cause and security of nation, even wrote a letter to the Commandant, MCEME, Secunderabad requesting him to grant him an opportunity to serve the Army.

5. It is further submitted by the applicant that he wrote a letter dated 06.09.2022 to the Directorate of Army Veterans, Rehabilitation and Welfare Department, submitting to the effect that the applicant was a patient of blood pressure fluctuation during his service in Rashtriya Rifles, and that he was discharged without any medical examination/Release Medical Board. He submits that he received the discharge book nine days after discharge and it was mentioned as Duplicate Discharge

Book and Non-ex-servicemen, while he was asked to vacate the family quarter within 5 days which was against Army Rules.

6. Subsequently, the applicant wrote a letter dated 13.10.2022 to the Directorate of Army Veterans, Rehabilitation and Welfare Department, complaining that he was discharged by Col. Adm Col V.K. Mishra, and when he did not receive any reply, he wrote another letter to DG EME, complaining that the Col Adm Col V.K. Mishra had threatened the applicant that he would make the applicant's life miserable. He wrote another letter dated 07.11.2022, this time to the Chief of Army Staff, with a request to reinstate him without any delay since he has to look after his wife, two children and ailing mother.

7. The applicant submits that since none of the letter/representation written by the applicant was replied by the Indian Army Authorities, the applicant also wrote letters to Defence Minister, Home Minister and Prime Minister as well, and after getting no response, he sent a Legal Notice dated 19.01.2023 through his Advocate to the Col Adm Col V.K. Mishra for reinstatement. However, he received no response.

8. The applicant further submits that it is clear that the applicant was discharged without following procedure established by law and that his discharge should be set aside as

being illegal and he should be reinstated in the service without any further delay.

**Submissions on behalf of Respondents**

9. Per Contra, respondents have submitted a detailed counter affidavit dated 04.04.2024, wherein it is submitted that the applicant was placed in the Low Medical Category P3(T-24) for diagnosis of 'Essential Primary Hypertension' wef 28.12.2019, and later he was downgraded to Low Medical Category P2(P) wef 25.01.2021, which was published vide MCEME Part II Order no. 0/0176/2021, and since, the applicant was in Permanent Low Medical Category, and no sheltered appointment was available to accommodate the applicant in the unit, a show cause notice was issued to the applicant vide MCEME letter no 21001/'A' Coy dated 24.11.2021 to show cause as to why he should not be discharged from service being permanent low medical category.

10. Accordingly, reply to the show cause notice was received vide applicant's petition dated 25.11.2021 showing his willingness to continue in service. However, since the applicant had indifferent attitude to trade work/administrative work, he was not recommended for retention in service in the public interest, and had been recommended for discharge from service by the OC Unit vide 'Appx DE' to Para 1223(c), 1228 and 1230

of EME ROI 11/2006. Subsequently, the applicant was ordered for discharge wef 31.05.2022 vide EME Records Discharge Order no. 1529/T-9/03/LMC Disch/CA-2(MP) dated 11.01.2022.

11. It is submitted by the Respondents that the discharge order was read out twice to the applicant on 25.01.2022 and 31.01.2022 respectively and briefed in the language he could understand, but the applicant declined to sign the pension documents and vehemently argued to proceed on leave without processing the pension documents and undergoing Release Medical Board, and hence, the allegation of the applicant that he was forcefully discharged from service is baseless and devoid of merit.

12. It is additionally submitted that the copy of advance pension documents and the Release Medical Board documents duly prepared were handed over to the individual on 04.02.2022 for his signatures so that the same could be processed well in time to the EME Records, but the applicant himself refused to sign the same, and accordingly, a Board of Officers was detailed to process his advance pension and Release Medical Documents, but the applicant again refused to sign these documents in the presence of Board of Officers on 06.04.2022. Thus, the advance pension documents along

with denial to sign the document certificate of the applicant given before the Board of Officers were received from MCEME vide their letter no. 23201/A Coy dated 09.04.2022.

13. With respect to the conduct of RMB, it has been submitted by the Respondents that the RMB documents in respect of the applicant were returned by MH Secunderabad with a request to direct the applicant to report to the concerned specialist of the hospital for holding RMB vide MH Secunderabad letter no. MB/400/6/RMB/Offrs/2022 dated 16.04.2022. MCEME vide their letter no 23201/ 'A' Coy dated 26.04.2022 specified that the applicant has been declining to sign the pension documents as well as RMB documents and he has also refused to report to MH Secunderabad for processing the RMB documents and to obtain the opinion of specialists.

14. It is submitted by the Respondents that the EME Records vide their letter no 17013259N/DP/Pen dated 02.05.2022 intimated MCEME that without completion of RMB documents, the applicant's case could not be considered for any type of pensionary benefits due to shortfall of pensionable service in accordance with Para 132 of the Pension Regulations for the Army, 1961, and accordingly, MCEME vide their letter No.23201/ 'A'/Coy dated 28.05.2022 had informed the same to the applicant.

15. It is the case of the Respondents that even after all out efforts made by MCEME and EME Records, Secunderabad, the applicant refused to sign his pension and RMB documents and to undergo Release Medical Board which is mandatory to decide his final medical category and entitlement of disability pension/service element, based on the attributability/aggravation factors and percentage of disability. However, consequent to discharge, the applicant was paid Rs. 2,09,504/- as Credit Balance, Rs. 52,869/- as AFPP Fund Balance and Rs. 3,73,978/- as Regular Maturity Benefits under AGIF, but for any pensionary benefits, the applicant has to sign pension documents.

16. Bringing to our notice about the second round of efforts put in by the respondents, learned counsel submits that on receipt of the Statement of Case and delayed justification in respect of the applicant for obtaining sanction of the competent authority for Post Discharge Release Medical Board, the same was processed to IHQ of MoD (Army) (EME Pers) along with recommendations of Col Records and OIC Records for obtaining necessary sanction vide EME Records letter No.3057/DP Coord/IHQ/Pen dated 09.02.2023.

17. In reply to EME Records letter, IHQ of MoD (Army) (MP-8) (I of R) vide their letter No. A/20037/Pen/MP-8(I of R)

(A1) dated 14.02.2023 had directed to give a suitable reply to the applicant with reference to his request for reinstatement into service and also directed to resolve the case of the applicant at the earliest. Further the applicant was also directed to report to EME Records for necessary documentation, and in compliance, EME Records vide letter no. 17013259N/Pen dated 20.02.2023 had requested MCEME to dispatch the set of pension documents to the applicant for his signatures and submit the same duly countersigned by them on receipt of the same from the applicant.

18. In necessary compliance, MCEME had forwarded the pension documents to the applicant for his signatures vide EME Records letter no 22801/ 'A' Coy dated 04.03.2023. Reminders to this effect were issued to the applicant for early return of the pension documents duly signed vide EME Records letter No.2429/May 22/LD/R&D Cell dated 31.03.2023 and letter No.2429/May 22/LD/R&D Cell dated 06.05.2023, but the documents have not been received from the applicant till date, hence, pension claim could not be processed by the EME Records.

19. It has been brought to our cognizance by the Respondents that the sanction of competent authority for holding delayed/belated Release Medical Board in respect of the

applicant was accorded vide IHQ of MoD (Army) {AG/PS-4 (Imp)} letter no. B/12605/AG/PC/DK/ESMHL/EME Pers/MP-14/42/2023/AG/PS-4(Imp) dated 24.05.2023, and the same was forwarded to MCEME along with blank RMB documents for preparing a fresh RMB documents and forwarding the same to the nearest Military Hospital to the location of the applicant holding RMB of the applicant vide EME Records letter no. 17013259N/DP/Pen dated 14.06.2023, while the said fact has been intimated to the applicant vide EME Records letter no 17013259N/DP/Pen dated 16.06.2023, but in view of the refusal of the applicant to sign, his case for grant of pensionary benefits cannot be processed and thus, the OA should be dismissed and the applicant be directed to return the duly signed pension documents and to undergo the Release Medical Board at the earliest so that he can get pensionary benefits related to disability, if found eligible post RMB.

### **Consideration**

20. We have heard the applicant who has argued in person as well as the learned counsel for the respondents and perused the documents available on record along with the relevant Regulations.

21. We find that during the service of the applicant at MCEME, the applicant has been awarded with three

punishments, which includes 1 Red Ink Entry and two Black Ink Entries, details of which are reproduced herein:

*“(a) Awarded 7 days pay fine on 08 October 2020 under Army Act Section 39 (d) & Army Act Section 63 for the following offences:*

*(i) At MCEME, Secunderabad on 26 September 2020 applicant failed without sufficient cause to appear at OAT, MCEME at 1645 hr, the place appointed for the Sainik Sammelan of Col Adm & OC Troops.*

*(ii) At MCEME, Secunderabad on 27 September 2020 applicant was detailed to proceed on temp duty along with Course Serial No BAC AvnTech (AE) -01/2019-2020 ALS to Bangalore, disobeyed the order of CoyCdr and absented himself from duty without sufficient cause.*

*(b) Awarded Seven Days Rigorous Imprisonment and Seven Days Pay Fine on 13 May 2021 under Army Act Sec 63 for the following offences:*

*(i) At MCEME, Secunderabad at 1340 Hrs on 06 May 2021, while talking on the mobile phone to Sub Ramesh Yadav, Sr JCO of HQ Coy, improperly used the following insubordinate language. "SADA HUA CHOR OC KE LIYE AAP ITNA PUCH RAHE HO MUJHSE, USKA AATM VISWAS HAI MERE SAMNE KUSH" or words to the effect.*

*(ii) At 1340 Hrs, on 06 May 2021, the applicant failed to obey order of Col Adm & OC Troops to meet DC & CI, MCEME in his office.”*

22. We find that it is undisputed that the applicant was in Permanent Low Medical Category P2(P) for disability - Primary Hypertension since 25.01.2021 and before that, he was in temporary Low Medical Category P3(T-24) from 28.12.2019 to 25.01.2021, while the show cause notice was issued on 24.11.2021, which means that the show cause notice was

issued almost after a period of 2 years, from the date the applicant was diagnosed as a case of 'Essential Hypertension'.

23. On a cursory look at the report on ORs downgraded to Permanent LMC on which the willingness of the applicant is sought, we find that the applicant has rendered his willingness to continue in service despite being in LMC, but he has been 'Not Recommended' by his OC Unit on the question whether his retention is required in exceptional circumstances, and similarly, with respect to the question of suitability of alternative employment, the response remains the same to the effect as 'Not Recommended'. We find the probable cause of non-recommendation by the OC unit in response to the next question wherein it has been asked that if further retention is not recommended, what are the reasons for such non-recommendation, to which we find that reply of OC Unit as "Indifferent attitude to trade work/Adm work" and the same report has been subsequently, countersigned by the Brigadier, Dean, FEME, MCEME with the remarks of "Not Recommended".

24. We observe that in response dated 06.10.2022 to the applicant's mercy petition, addressed to Dte Gen of EME, the detailed justification for non-retention of the applicant can be ascertained from the remarks of the Col Adm & ORC Tps, wherein it has been stated that the individual has displayed

recurring instances of indiscipline which included regular acts such as disobedience of orders, appearing at the residence of Dean, FEME and Col Adm & OC Troops with his entire family without prior information, threatening to call at the residence of Dy Cmdt & Chief Instructor and Commandant without any information to anyone in hierarchy etc and also has displayed a totally indifferent attitude to his trade work/adm work since he reported to MCEME. Subsequent remarks by the Col Adm specify that the individual was a liability to the org and portrayed a bad example for all ranks.

25. We observe that the similar indifferent attitude of the applicant is visible post his discharge as well, wherein even after repeated efforts of the authorities, which includes a special 'Board of Officers', he has still refused to sign the pension documents, and not reporting for conduct of Release Medical Board, which clearly shows his consistent approach of disobeying the lawful orders of his superiors as well as the authorities.

26. We are conscious of the importance of the role performed by the Armed Forces and the discipline level required by these services. Without discipline, a military force is nothing more than a mass of volunteers, incapable of uniting for a collaborative defence or achieving any task in battle. Discipline

is the glue which binds soldiers together under the orders of the commanding officers. The setting in which the Armed Forces operate makes it a unique workplace. Discipline among the members of the Force is a matter which is indispensable. Any member of the armed forces is expected to uphold principles of discipline to the utmost. There can never be any resistance shown to the superior or higher officer. The command is a command and should be followed even at the cause of personal suffering.

27. In the above background, we examined the discharge of the applicant, and we find that as per the under the provisions of Army Rule 13, as amended latest by letter dated 15.06.2020, it is clear that based on recommendations of the Release Medical Board/ Invaliding Medical Board as applicable, the Commanding Officer is competent authority to sanction discharge of JCO/OR who are in SHAPE 2/3 or have been found to be unfit for further service, i.e. in SHAPE 5, and in the existing circumstances, the sanctioning authority has been the Commanding Officer, and recommended by the Brigadier rank officer, who is Dean, FEME. We also find that the approval of OIC EME Records has been taken as well, who is again a Brigadier rank officer. Therefore, we are of the opinion that the

necessary procedure for the discharge of the applicant has been complied with, at every stage.

28. We further observe that the applicant being a case of personnel in LMC discharged on medical grounds due to non-availability of sheltered appointment could have been considered as a 'Deemed Invalidation' case in line with the Rule 95 of the Pension Regulations for Army, 2008, and the judgement of Hon'ble Supreme Court in Sukhvinder Singh Vs. UOI & Ors. [2014 (14) SCC 364]. However, due to applicant's own actions of not signing the pension documents and not appearing before the Release Medical Board for his medical examination, his case could not be considered, and that in case where an individual if is not willing to fulfil certain conditions for his own benefit, this Tribunal cannot exercise judicial activism in cases where applicant is himself not conscious of his actions.

29. In view of the aforesaid discussion, we are of the considered opinion that in absence of any procedural or legal infirmities in the discharge of the applicant, the interference of this Tribunal in the decision of the competent authority is not warranted, and hence, being devoid of merits, the prayers made by the applicant cannot be granted in any case.

30. However, noting the fact that the applicant has been discharged as a 'Sepoy', without any pensionary benefits, we are inclined to take a compassionate view with respect to the issue of pensionary benefits, and therefore, we direct the Respondents to consider the case of applicant favourably for grant of disability element of pension or invalid pension being a case of deemed invalidation, as per the existing rules and regulations, if the applicant appears before the Release Medical Board for assessment of his disabilities and duly signs the pension documents.

31. In view of the aforesaid directions, this OA is disposed of.

32. No order as to costs.

33. Pending miscellaneous application(s), if any, stand closed.

Pronounced in an open Court on 30<sup>th</sup> day of August, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

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