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

OA 1554/2017 WITH MA 1153/2017

Lt Col Girish J Lal (Retd) ... Applicant
Versus
Union of India &Ors. ... Respondents

For Applicant : Mr Rajiv Manglik, Advocate
For Respondents : Mr Anil Gautam, Sr. CGSC

CORAM :

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

ORDER

MA 1153/2017

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1554/2017

3. Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed with following prayers :

> *"(a) To direct the respondents to grant the pension and disability pension of the applicant in the rank of Col (TS) after promoting the applicant to the rank of Col (TS) holding that the effective date of medical classification of the applicant as 'S5' 'Permanently unfit for military duties' shall take effect from the date of release of the applicant from Army Service; and*

(b) To quash and set aside letter dated 23 Feb 2015; and

(c) To direct the respondents to grant the arrears of pension and disability pension of the applicant in the rank of Col (TS).

Brief Facts of the Case

4. The applicant was commissioned in the Indian Army on 17.12.1988 and continued to get his promotions till the rank of Lt Col. The applicant was diagnosed to be suffering from Delusional Disorder and downgraded to medical category S2 in September 2001 and later he was also found to be suffering from Dyslipidemia in November 2007 due to which he was downgraded to P2 from October 2012 to May 2014; thus being placed in dual low medical category of S1H1A1P2E1 for this duration.

5. The applicant was due for promotion to the rank of Col (TS) on completion of 26 years of service in the Army subject to meeting the eligibility criteria as laid down in Army Order 9/2005 and later AO 9/2011/DGMS which laid down functional capacity for various medical categories for military duties under different terrain and service conditions. Later on when his category for Dyslipidemia was upgraded to P1 he remained only in medical category S2 which is

considered promotable to rank of Col (TS) as per provisions of Para 5 & 6 of AO 9/2005 extracted as under:-

> *"Medical Classification*
>
> *5 The following medical classifications are acceptable for grant of substantive rank of Col by Time Scale:-*
>
> *(a) SHAPE 1A*
>
> *(b) SHAPE 1B*
>
> *(c) S2H1A1P1E1 provided they have earned consistently High Average ACRs.*
>
> *(d) All medical classifications of Grade 2 or Grade 3 in any factor of 'HAPE' or combination thereof provided the 'S' factor is not below grade ONE.*
>
> *6. Officers placed in Temporary Low Medical Classification. An officer in temporary low medical category will be considered for the rank of Col (TS) on the same lines as an officer in permanent low medical classification. The 'SHAPE' factors which are valid for the promotion of an officer in permanent classification will be applicable here also."*

6. However, he was not granted promotion to the rank of Col (TS) and invalidated out as per verdict of Invalidment Medical Board (IMB) dated 20.05.2014 which downgraded his category to S5 which implies *"permanently unfit for military service"* and accordingly he was discharged from service on 20.01.2015 in the rank of Lt Col; even when he was approved for promotion as per MS Branch letter No 37852/Col(TS)/2014/II/MS-8A dated 30.12.2014.

Submission on Behalf of Parties

7. It is the grievance of the applicant that he was in promotable medical category as per medical board held in May 2014 and the respondent placed him illegally before the IMB to downgrade him to S5 to deny him his legitimate promotion to the rank of Col (TS) on completion of 26 years of service. The matter had been represented by the office of the applicant vide letter dated 20.12.2014 to inform the competent authority that he was in promotable medical category and therefore he should be promoted as per results of the Selection Board held on 05.12.2014 and he should have held the rank of Col (TS) on 16.12.2014 i.e. the day he completed 26 years of service.

8. Taking us through the dates of various medical re-categorisation boards, IMB and promotion order, Learned Counsel for applicant vehemently argues that the applicant was in promotable category of S2 on the date of completion of 26 years and being in eligible medical category he should have been granted the promotion. He further submits that even if he was downgraded to medical category of S5 , the same was w.e.f 20.01.2015 and therefore the applicant

should have been invalidated out in the rank of Col (TS) thus being legitimately entitled to pension in the rank of Col (TS).

9. Per contra, relying upon the dates of various event submitted through the Counter Affidavit, Learned Counsel for respondents submits that the applicant was downgraded to medical category S5 before the issue of results by MS Branch vide their letter dated 30.12.2014 for grant of promotion to the rank of Col (TS) subject to meeting inter alia condition of medical category. Since the applicant had already been downgraded to medical category S5, his case was processed for invalidment in the rank of Lt Col.

10. As a counter to the argument of Learned Counsel for Respondents, Learned Counsel for applicant once again argues that classification of S5 is effective from the date when an officer is released from the Army being ***'unfit for military duties'*** and therefore cannot take effect from any day prior to date of release and thus it has to be held that he was in medical category S2 till his release; which had been communicated to the applicant only on 14.01.2015. Therefore applicant was entitled to be released in the rank of Col (TS).

ANALYSIS

11. Having heard submissions of Learned Counsels on behalf of the parties and perused the records, we seek to examine if the applicant was eligible for promotion to the rank of Col (TS) before being invalidated out from the Indian Army.

12. From the documents and communications placed before us, the first deduction that we draw is that any officer to be eligible for promotion to Col (TS) as per provisions of AO 9/2005 has to be in medical category of S2 and it cannot be combined with Low Medical Category in any other parameter on the date of promotion and therefore the applicant was required to be only in S2 medical category on 26.12.2014. In this context MS Branch letter dated 30.12.2014 reproduced below is relevant:-

"Telc: 35858 (ASCON)
23019756(Civil)

Military Secretary Branch. MS-8A
Integrated HQ of MoD (Army)
South Block. DHO PO New Delhi-110011

17852/Col (TS)/ 2014/11/MS-8A *30 Dec 2014*

The CO/Immediate Superior Officer
12 CAB

RESULT OF NO 3 SELECTION BOARD FOR COL (TIME SCALE) HELD IN DEC 2014

1. IC48117W Lt Col GJ LAL, ARTY was considered by No 3 Selection Board for promotion to the substantive rank of Col (TS) held on 05 Dec 2014.

2. He has been "APPROVED" for promotion to the said rank and may be informed accordingly by you.

3. Officer will be promoted by his Commanding Officer/Immediate Superior Officer under the provisions of AO 9/2005/PS 'Wearing of Badges of Rank (Officers) Time Scale' subject to fulfilling the following criteria:- : Col by

(a) Should have completed 26 years of reckonable commissioned service (24% yrs for RVC Officers and 28 Yrs for TA officers).

(b) Should be in acceptable medical category as per ibid AO.

(c) No disciplinary/administrative case is pending against the officer.

4. Action to publish the Gazette Notification shall be taken on receipt of DO Part-II Order from the unit notifying the promotion. The same may please be forwarded to MS-SA, Integrated HQ of MoD (Army) within 15 days of the officer wearing the badges of the rank of Col (TS).

Sd/xxxxxx
(Navin Kumar)
Deputy Director MS-8A For Military Secretary"

13. On bare reading of the medical history of the applicant we have observed that he was placed in S2 category w.e.f March 2002 to August 2002 and thereafter in S2(Temporary) category from February to July 2003 and then S-2(Permanent) continuously from January 2004 till the date of conduct of IMB on 20.05.2014 wherein he was downgraded to S5 and accordingly issued with Show Cause Notice by President Medical Board Military Hospital Jodhpur on 26.05.2014. He was also downgraded to

P2(Permanent) from 30.10.2012 to 19.05.2014 for Dyslipidemia. The Medical Board proceeding for invalidment were approved by competent authority i.e Director General Medical Services (Army) on 02.12.2014 and accordingly the same communicated by AG's Branch to concerned addressees including the unit of the applicant i.e HQ 12 Corps Arty Bde vie letter No 76101/1858/DGMS-5A dated 02.12.2014. Therefore we are not inclined to subscribe to view taken by the unit of the officer as per their letter dated 20.12.2014 that the applicant was eligible for promotion. We do not find any illegality in views taken by HQ 12 Corps vide their letter No 551/55(A) dated 18.02.2014 with observation which read as under:

> *"(a) The officer is in LMC wef Sep 2001 in 'S' factor. As per AO 9/2011 if the officer has been observed for more than 05 years and has not been drug free, then should be considered for S5.*
>
> *(b) Opinion of Sr Adv (Psy) to be obtained."*

14. In fact, on perusal of Para 7 of AO 9/2011/DGMS which reads as under :-

> *"7. Most major psychiatric disorders are relapsing in nature and a common example of the same is schizophrenia. In such cases, the final outcome becomes evident only in the longitudinal course of the disease over a period of 4 to 5 years.*

Therefore maximum period of surveillance of 5 years should be given in such cases in the following manner.

(a) Stabilization period: The period of hospitalization and the Temporary classification of S3 for 24 weeks followed by another 24 weeks will be counted against Stabilization period, if the period of hospitalization is 6 months or more. Maximum duration for stabilization should not be more than two years. Temporary S3 will not be awarded for more than 24+24 weeks followed by S2 for 24+24 weeks. However, if hospitalization period (Medical Classification S4) exceeds 24 weeks, then a total period of temporary Medical Classification S3 (T-24+24) followed by S2 (T-24) only will be allowed. If patient remains unstable and shows distinct deterioration despite treatment during initial 2 years he may be considered for being recommended S5.

(b) Consolidation period: If the patient shows continuous improvement and can be upgraded to classification $2 on drugs, a period of further 2 years will be given for consolidation and further improvement. If the patient cannot be made drug free after a total period of 4 years of stabilization and consolidation phase, or he develops multiple relapses of disease requiring hospitalization, he may be considered for being recommended LMC S5. Total observation period from the date of initial admission should not be more than 5 years.

(c) Psychiatric cases that have taken a chronic course and show significant clinical deterioration after stabilization of initial 2 years will be recommended classification S5.

(d) All cases of diagnosed Dementia who have deterioration of cognitive ability on psychometry with IQ of below 70, which also affects his 'activity of daily living (ADL scale) should be invalided out of service.

(e) All cases who are upgraded to classification S1 or S1(B) and who have a relapse of disease will be recommended classification S5.

(f) All cases recommended invalidment (Classification S5) should have an opinion from Sr Adv (Psychiatry).

(g) Cases of major psychiatric illnesses for retention in service at time of the first down gradation to S3 or S2, the concurrence of Sr Adv would be mandatory.

(h) Cases of major psychosis diagnosed during the first 2 years of their service will be recommended classification S5.

(j) In cases of minor psychiatric diseases, who are not on any psychotropic drugs and have not been advised any employability restriction can be advised surveillance in classification S1(B).

(k) Where cognitive abnormalities are due to pure neurological disability and not due to pare psychological disability, prescription of the LMC in S factor could also be done by a neurophysician/neurosurgeon. However, it would be preferable if such a prescription is cone in consultation with a psychiatrist."

we find that observations of HQ 12 Corps in this case is at a belated stage as the applicant has been in Low Medical Category of S2(Permanent) for a continuous duration of more than 10 years whereas he should have been reviewed for invalidment in 2005/2006 itself.

15. In light of our aforesaid analysis we conclude that the applicant did not meet the criteria for promotion to Col (TS)

on completion of 26 years of service and therefore his invalidment in rank of Lt Col is valid and thus upheld.

16. Consequently, the OA is dismissed being bereft of merit.

17. No orders as to cost.

Pronounced in the open Court on 22nd day of May 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

akc/