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

OA 1216/2019

Hav Karan Pal (Retd.) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Sitikanth Nayak, Advocate
For Respondents : Mr. Arvind Patel, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

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ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has challenged the tenability of the order dated 19.02.2018 (Annexure A8), by which he was discharged from service on the ground that he had been placed in the Low Medical Category and no sheltered appointment was available.

2. The applicant was enrolled in the Indian Army on 24.04.1996 in 5 Rajputana Rifles. He claims to have had an exemplary and unblemished service record and was awarded various medals during the course of his service. The applicant submits that he served in

three different operational theatres, including Operation Rakshak (1997–1999), Operation Parakram (2002) and Operation Rhino (2008–2011). It is further contended that between 27.07.2015 and 10.02.2016, he was deployed in Congo (Africa) as part of the Indian Army contingent in the UN Peacekeeping Mission. During this deployment, the applicant was diagnosed with Naso-Bronchial Allergy in November 2015. The Categorization Medical Board considered his case on 01.08.2016 and concluded that the applicant was medically disabled due to Naso- Bronchial Allergy (Z-09), which was aggravated by military service. He was accordingly awarded benefits in accordance with Para 5, Chapter VI of GMO (Military) Pen- 2008 and placed in Low Medical Category P3 (T-24) with effect from 01.08.2016. His next Re-categorization Medical Board was scheduled for 17.01.2017. When the applicant appeared before the Re-categorization Medical Board on 24.01.2017, his medical category was upgraded to P2(T-24) for the same disability of Naso-Bronchial Allergy. At that time, he was assessed as asymptomatic and placed under medication. The next Re-categorization Medical Board was scheduled for 10.07.2017. Upon evaluation on 10.07.2017, he was placed in permanent Low Medical Category P2(P) and the following observation was recorded:

> *"42 yrs. Old serving soldier in a k/c/o Naso Bronchial Allergic which was predominantly nocturnal and associated with wheeze while reported at Level III Hosp at Congo. Has been observed in LMC and presently due for Recat. Has occasional sneezing and breathlessness.*

The next Re-categorization Medical Board was scheduled for 10.07.2019. In the meanwhile on account of his ailment a show cause notice dated 07.10.2017 (Annexure A5) was issued to the applicant directing him to show cause as to why his services should not be terminated since he was in the Low Medical Category and no sheltered appointment in his trade commensurate with his medical condition was available and further retention in service was not considered feasible. The applicant submitted his reply to the show cause notice on 12.10.2017 (Annexure A6). Thereafter, by the impugned speaking order dated 25.01.2018 (Annexure A7) he was discharged from service and the discharge order was formally issued vide Annexure A8 on 19.02.2018. It is the applicant's case that in his reply to the show cause notice he expressed his willingness to continue in service and requested that he may be retained. However, his request was arbitrarily rejected solely on the ground of non-availability of a suitable sheltered appointment. The applicant was subsequently examined by the Release Medical Board on 04.05.2018 which confirmed that he was suffering from Naso-Bronchial Allergy and made certain observations. His disability was assessed at 30% for

life and it is an admitted position that the applicant is receiving disability benefits as per the applicable rules. However, the applicant challenges the respondents' action in not granting him a sheltered appointment and discharging him while in Low Medical Category. He contends that the Medical Board's opinion suggested that with proper treatment the disability could have been cured or at least reduced in percentage thereby enabling him to continue in service. It is further submitted that several similarly situated individuals were granted sheltered appointments but no such appointment was provided to the applicant. The applicant maintains that he had an unblemished service record, had participated in three major operations and that the Medical Board had opined that with proper treatment and maintenance of lifestyle the condition could be managed. Despite this and although others with comparable ailments were retained through sheltered appointments he was not granted the same opportunity.

3. The learned counsel for the applicant took us through various documents particularly the medical records available on record and argued that the respondents, particularly the Commanding Officer, have taken an arbitrary decision by issuing the impugned order. It was contended that proper consideration was not given and that the applicant has been treated in an arbitrary, unreasonable and

discriminatory manner, thereby warranting interference by this Tribunal.

4. The respondents have filed a detailed counter affidavit wherein they have pointed out with reference to the medical records that the applicant was initially placed in Low Medical Category on a temporary basis and was eventually categorized as permanent Low Medical Category. Considering his medical condition and the fact that no sheltered appointment was available action was taken in accordance with Rule 13 of the Army Rules, 1954 and the relevant Army Instructions, particularly the amendment to Rule 13 made by the Central Government through Gazette Notification published on 13.05.2010 and subsequently notified by the Integrated Headquarters of MoD (Army) letter No. B/10201/VOLL-VI/MP-3 (PBOR) dated 30.09.2010. These provisions authorize the Commanding Officer to discharge a person found to be in permanent Low Medical Category Shape 2/3 by the Medical Board where no sheltered appointment can be granted. The respondents have submitted that in the case of the applicant, the discharge was effected under the aforesaid provisions and since no sheltered appointment was available the action taken was in accordance with the rules. It is their case that a sheltered appointment cannot be claimed as a matter of right. The decision to grant such an

appointment depends on multiple factors including the medical condition of the individual, the working requirements of the unit or regiment, the availability of a suitable appointment commensurate with the medical category and whether the individual can be accommodated in light of service needs and security considerations. Accordingly, the respondents assert that the administrative decision was made in accordance with statutory rules and regulations without any element of mala fide or bias and does not warrant interference. The learned counsel for the respondents also took us through the medical records to demonstrate that the applicant's condition prevented his posting in high altitude areas, cold regions, dusty environments and areas with environmental pollution. Since no sheltered appointment was available the action taken was justified. The learned counsel further drew our attention to a Full Bench judgment of this Tribunal dated 24.09.2014 in ***Sub Laxmikant Mishra v. Union of India and Others*** (OA No. 228/2012 decided along with other connected matters), to support the respondents' contentions and justify the action taken. It is thus the case of the respondents that the applicant's claim has been duly considered and rejected. Except for vague allegations of mala fide and bias, the applicant has not produced any concrete evidence of

arbitrariness, unreasonableness or mala fide action that would warrant interference by this Tribunal.

5. We have heard the learned counsel for the parties and find that under Rule 13 of the Army Rules, 1954 various provisions have been made for the discharge of personnel as indicated in the said Rule. The table attached to the Rule categorizes the types of personnel to whom it applies, the grounds for discharge, the competent authority empowered to discharge them and the manner of discharge. Clauses 13(ii)(a) and 13(iii)(a) were inserted by an amendment notified in the Official Gazette on 13.05.2010 and brought into force with effect from 29.05.2010. Clause 13(ii)(a) pertains to Junior Commissioned Officers while Clause 13(iii)(a) pertains to persons enrolled under the Act who have been adjusted. Both clauses contemplate that a person found to be permanently in the Low Medical Category that is, Shape II or III by the Medical Board may be discharged by the Commanding Officer if no sheltered appointment is available in the unit or if the individual is surplus to the organization. Discharge may also occur, on his own request, before fulfilling the terms of enrolment. It is evident that the action taken against the applicant was in accordance with the aforesaid provisions. As revealed from the records the applicant was first diagnosed with the aforesaid ailment in November 2015 while

deployed as part of the Indian Army Contingent in the UN Peacekeeping Mission in Congo. He was subjected to medical assessment at that time and the Medical Board in November 2015 found him to be suffering from Naso-Bronchial Allergy (Z.09) placing him in Low Medical Category P3(T-24) with effect from 01.08.2016. He was further investigated at the 155 Base Hospital on 30.07.2016 where he was again found to suffer from the same ailment. He was again categorized as Low Medical Category P3(T-24) and the medical opinion indicated he was unfit to serve in high altitude and cold areas. Additionally advice was given that he should not be exposed to fumes, dust, smoke or environmental climatic conditions (ECC). He was again subjected to the Re-categorization Medical Board on 24.01.2017 which reaffirmed the diagnosis and placed him in Shape P2. The same medical assessment continued and he remained in Low Medical Category. The medical records show that the applicant is a 42-year-old soldier suffering from Naso- Bronchial Allergy which was predominantly noncturnal and associated with wheeze while reported at Level III Hosp at Congo and it was further noted that he is unfit for high altitude postings. He was advised to avoid dust, fumes, cold weather, smoking and alcohol and remained in Low Medical Category. This medical finding was consistent across all subsequent categorization

boards and he was ultimately found to be in Shape II. After the issuance of the show cause notice and the passing of the speaking order, the applicant underwent medical examination by the Release Medical Board. At the time of discharge it was confirmed that he had been suffering from the same ailment since November 2015, which had been aggravated by military service. It was also concluded that he was unfit for further military service and his disability was assessed at 30% for life.

6. On perusal of the medical records it is clear that the applicant was found to be in Low Medical Category, unfit for retention in service and as no sheltered appointment was available he was discharged. As far as the medical categorization of the applicant and his placement in Low Medical Category is concerned, the same stands established. The records further indicate that he is unfit for duties in hilly terrain, high altitude or extremely cold areas and should not be exposed to dust, fumes and other environmental hazards. It is in the backdrop of these circumstances that the grievance of the applicant is to be considered.

7. As far as the applicant's placement in the Low Medical Category is concerned the same is established from the medical records available and his medical condition falls within the purview of the provisions of Rule 13 of the Army Rules, 1954. The ground

for discharge, when a person who is found to be in the permanent LMC, i.e. Shape II or III by the Medical Board stands established in the case of the applicant. The next condition to be fulfilled under this Rule is that no sheltered appointment should be available. On this point, it was the vehement contention of the learned counsel for the applicant that sheltered appointments were in fact available and that the denial of such an appointment to the applicant was arbitrary and unreasonable. However, except for making a bald and vague assertion in this regard nothing has been brought on record to substantiate the aforesaid contention of arbitrariness, unreasonableness or improper exercise of discretion. At this stage we may take note of the principles of law laid down by a Full Bench of this Tribunal in the case of *Sub Laxmikant Mishra* (supra). In that decision rendered by the Hon'ble Larger Bench the notification dated 13.05.2010 issued by the Central Government whereby, in the exercise of powers conferred under Section 191 of the Army Act, the provisions of Rule 13 of the Army Rules, 1954 were amended through the Army (Amendment) Rules, 2010 was considered. The amendment included modifications to the table under Rule 13(ii)(a) and Rule 13(iii)(a). While deliberating on the issue of this amendment and the related question of granting sheltered appointments the Bench upheld the amended provisions. It held that

while Army Order 46/1980 previously provided for the discharge of personnel and there was no corresponding provision under Rule 13 of the Army Rules, 1954. The amendment to Rule 13 which specifically deals with the discharge of personnel in service, thus introduced one of the grounds for discharge namely, that a person becomes medically unfit for further service and no sheltered appointment is available. While examining the constitutional validity of the amended provision, the Bench, in paragraph 42 of its judgment, analysed these provisions and stated that the discharge of persons categorized under Shape II and Shape III requires two mandatory conditions to be fulfilled:

(i) that no sheltered appointment is available in the unit, and
(ii) that the individual is surplus to the organization.

It was clarified that both the medical condition and the non-availability of a sheltered appointment are the predominant reasons for discharge. The Bench further observed that even when a person is eligible for a sheltered appointment if no such position is available and the person is surplus to the organization he cannot claim continuation in service as a matter of right. The employer i.e. the Government cannot create more sheltered appointments than are feasible or required by the service nor can anyone in the Armed

Forces claim continuation or extension of service as a matter of right, particularly when he is medically unfit and no sheltered appointment is available. The Court also emphasized that the Defence Services are not ordinary civil employment. There are distinct differences in the service conditions of various cadres. Service in the Armed Forces is governed by the Defence Service Regulations which prescribe minimum periods of service. Taking note of these circumstances the Bench, in paragraph 42, made the following observations:

> *"This clearly indicate that in Armed services in the lower cadre more physical fitness and the strength of a person is given high weightage and as one goes higher in rank he gets more benefit of service by serving in more years in the army. Therefore, keeping more physically fit persons in service and releasing the persons in lower medical category which is a medical category specified by rules then in that situation the Government policy to manage the service strength cannot be condemned. As we have already noticed that by this amendment it has not been provided that the SHAPE 2 and 3 persons will be released from service irrespective of the fact that shelter appointment is available and irrespective of the fact that they are not surplus in the organization. Therefore, clause ii(a) is in the Table under Rule 13 is not a clause for discharge of person from service only on the ground of his being "medically unfit for further service"*

After taking note of the aforesaid provisions the amended rule was upheld and thereafter, in paragraph 43, the following observations were also made:

> *"However, it is true that a person in medical category SHAPE 2 and 3 undisputedly cannot get entry in the service and merely because one coming into medical category SHAPE 2 and 3, after his entry in the service, he cannot be discharged from service. But at the same time no person in low medical category SHAPE 2 and 3 has vested right to claim his continuity in service when he is surplus to the strength of the organization and he cannot be even given sheltered appointment in the unit. It is duty of the country to keep the healthy persons in the military service in preference to the medically weak persons and who even cannot be given sheltered appointment commensurate to their disease or who are surplus to the organization."*

From the aforesaid enunciation of law by the Full Bench, it is clear that the grant of a sheltered appointment is not a right. The power to grant or deny sheltered appointment is vested in the Commanding Officer and is exercised based on various factors.

8. In the instant case we find that by the impugned action taken by the respondents around 34 soldiers in the Low Medical Category primarily in P2/P3 categories had been discharged on account of their medical categorization and the non-availability of sheltered appointments. It is not an isolated case of the applicant alone being discharged. On the contrary the impugned discharge order on medical grounds Annexure A8 produced by the applicant indicates that a list of soldiers, who were in the permanent medical category, was enclosed therein and these individuals were selected for

discharge due to their Low Medical Category status. In the case of the applicant his name appears in the said list at Sl. No. 19 and he is shown to have been discharged from service under the LMC P2 (Permanent) category.

9. It is therefore clear that the applicant has been discharged from service in accordance with the rules as no sheltered appointment was available. Except for canvassing a contention before us that the decision taken is arbitrary and unjustified the applicant has not produced any material on record to show how or on what basis the decision not to grant him a sheltered appointment is arbitrary or legally unsustainable. As indicated hereinabove the grant of a sheltered appointment depends upon various conditions such as the availability of vacancies, the nature of appointments and other service requirements. The applicant has attempted to indicate by producing Annexure A11 that the persons named therein have been granted sheltered appointments, whereas he was not and thus claimed to have been discriminated against. In our considered view merely providing details of such persons who are said to have been granted sheltered appointments does not by itself establish a case of discrimination, arbitrariness or unreasonableness. Each individual's case must be examined independently and analysed based on relevant factors.

10. In exercising its statutory jurisdiction this Tribunal will not sit in appeal over administrative decisions made in the matter of granting sheltered appointments unless specific grounds of discrimination, unreasonableness or arbitrariness are clearly established in the pleadings on record. Except for making vague allegations and furnishing a list of certain individuals who have been granted sheltered appointments, the applicant has not made out a case warranting interference. A roving inquiry into administrative discretion cannot be conducted on such a basis. The respondents have categorically stated that considering the medical condition of the applicant and the nature of work available, no sheltered appointment was feasible in his case. In the absence of any material to show that this statement is factually incorrect or tainted with mala fides or arbitrariness this Tribunal finds no ground to interfere.

11. Accordingly, in the facts and circumstances of the case and finding that the grant of a sheltered appointment is not a right available to the applicant and as the action taken against the applicant is in accordance with the applicable statutory rules, we see no reason to interfere in the matter. The application is dismissed by devoid of merit.

12. No order as to costs.

13. Pronounced in open Court on this the 22nd day of July, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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