

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

OA 326/2018

|                              |       |                            |
|------------------------------|-------|----------------------------|
| Sep (TLR) Sumit Kumar Sharma | ..... | Applicant                  |
| Versus                       |       |                            |
| Union of India & Ors.        | ..... | Respondents                |
| For Applicant                | :     | Mr. S.S. Pandey, Advocate  |
| For Respondents              | :     | Mr. Arvind Kumar, Advocate |

Dated: 13 October, 2025

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

By way of this OA filed under Section 14 of the AFT Act 2007, the applicant has impugned the order dated 8<sup>th</sup> August 2017 passed by the respondents discharging him from service. The prayer made in para 8 reads as under:

*“(a) Call for the records including the policy instruction based on which the Respondents have withdrawn the Shelter appointment and on that basis have passed the impugned order dated 08.08.2017 ordering discharge of the Applicant from service w.e.f 31.01.2018 and thereafter quash all such orders including order dated 08.08.2017.*

*(b) Direct the Respondents to retain the Applicant in service and allow him to complete his prescribed term of engagement with all consequential benefits of continuity of service promotion etc.*

*(c) Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.”*

2. After being enrolled in the Army in the year 2005, the applicant underwent rigorous basic military training including weapon training at Mechanised Infantry Regimental Centre, Ahmednagar.

3. Due to fracture suffered in the right ankle during performance of his official duties in the year 2010, the applicant was placed in low Medical Category A2 (T-24) for the disability of **“Fracture Lateral and Posterior Malleolus”**. After a re-categorization Medical Board held in December 2011, the applicant was placed in low Medical Category S<sub>1</sub>H<sub>1</sub>A<sub>2</sub> (P)P<sub>1</sub>E<sub>1</sub>. On being diagnosed to be suffering from Alcohol Dependence Syndrome, the medical category of the applicant was further changed to S<sub>3</sub>(T- 24+T- 24)H<sub>1</sub>A<sub>2</sub>P<sub>1</sub>E<sub>1</sub> in the year 2015 for a period of six months and he continued to be under the same category up to January 2016. He was further upgraded to medical category S<sub>2</sub>(T-24+T-24)H<sub>1</sub>A<sub>2</sub>P<sub>1</sub>E<sub>1</sub> from December 2016.

4. On being placed in permanent low medical category, the Commanding officer, after obtaining sanction of the OIC Record, issued a notice to the applicant to show cause as to why he should not be discharged from service.

5. Vide order dated 8<sup>th</sup> August, 2017 it was communicated to the applicant that he being in lower Medical Category than Shape I and due to non availability of alternative appointment in conformity with his medical category, he will be discharged from service w.e.f. 31<sup>st</sup> January 2018, i.e., before completion of his prescribed period of engagement (**Annexure A-1**).

6. The applicant's Release Medical Board recommended his discharge from service in Low Medical Category A2 (Permanent), hence this OA.

7. Placing reliance on the judgments of the Hon'ble Supreme Court; the contention of the applicant is that administrative instructions cannot override the statutory rules. It is further contended that the statutory rules require holding of an Invalidating Medical Board and only after its coming to the conclusion that an individual is permanently unfit to serve in the Army, the discharge can be ordered. Contention of the applicant is that the statutory rules have not been followed in his case and therefore, he is entitled to the benefit claimed. It is further contended that the action of respondents in discharging the applicant even before holding

the RMB is unfair and unreasonable. It is also contended that none of the conditions, as mentioned in Regulation 167 of the Regulations for the Army, 1987, are applicable in the case of a permanent low medical category individual and no Release Medical Board can be held in such a case.

8. It is also submitted that the applicant has been discharged on the ground that no sheltered appointment was available. If that be so, learned counsel for the applicant contends that the person senior to him could have been discharged first, therefore, his discharge is highly illegal and outside the purview of Policy Instructions dated 30<sup>th</sup> September, 2010.

9. Learned counsel for the applicant further contended that as per the existing rule position, a low medical category personnel cannot be discharged before completion of his term of engagement and without convening of an Invalidating Medical Board whereas in the applicant's case it has not been followed. In support of his contentions learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Rajpal Singh ([2009] 1 SCC 216).

10. It is further contended that respondents were duty bound to conduct an Invalid Medical Board before ordering his discharge and in the absence of an opinion of the Invalid Medical Board, the discharge of the applicant is illegal and arbitrary. It is inter alia contended that since the Medical Board was not constituted as per the prescribed Rules and Regulations, its opinion is contrary to existing policy.

11. Respondents have filed their counter affidavit and in addition to other grounds have sought dismissal of the OA on the ground of lack of jurisdiction as well. They have also contended that the applicant has not exhausted the statutory remedies available to him.

12. Their further contention is that since the applicant was placed in Low Medical Category and no sheltered appointment was available, he was discharged from service under Army Rule 13(3)III(iii)(A)(i) read with IHQ of MoD (Army) letter NO. B/1201/Vol/VI/MP-3 (PBOR) dated 30<sup>th</sup> September, 2010 with the approval of the OIC Records based on the recommendations of applicant's Commanding Officer. It is further submitted that in the cases of individuals who are in low medical category and have an

indifferent or casual attitude to work, as is the case of the applicant herein, in terms of the letter dated 30<sup>th</sup> September, 2010, there is no requirement of following a special procedure.

13. Learned counsel for the respondents, however, submitted that the judgment in the case of the *Rajpal Singh* (supra) relied upon by the applicant's counsel is not applicable in the present case as Army Rule 13 stood amended vide Gazette notification dated 29<sup>th</sup> May, 2010, SRO No.22, (Army) Amendment) Rules 2010.

14. Learned counsel for the respondents further contends that the applicant was diagnosed "Alcohol Dependence Syndrome" from November 2015 and during his service he was awarded four red ink and two black ink entries for intoxication only.

15. We have given a patient hearing to learned counsel on both sides. The only issue that needs to be decided by us is *"as to whether the applicant is entitled to the reliefs claimed and whether the respondents are justified in discharging the applicant after following due procedure and policies?"*

16. There is no dispute with regard to the facts pertaining to the accident, the injury sustained and resultantly the applicant being placed in low medical category. The details of applicant's medical category during his service tenure are as under:

| <i>Date</i> | <i>Medical Category</i> | <i>Permanent/ Temporary</i> | <i>Period</i> |           | <i>Hospital</i> | <i>Diagnosis</i>                              |
|-------------|-------------------------|-----------------------------|---------------|-----------|-----------------|-----------------------------------------------|
|             |                         |                             | <i>From</i>   | <i>To</i> |                 |                                               |
| 10 Dec 10   | A3 (T-24)               | Temporary                   | 10 Dec 10     | 26 May 11 | MH Doda         | Fracture Lateral And Posterior Malleolus (RT) |
| 26 May 11   | A2 (T-24)               | Temporary                   | 26 May 11     | 10 Nov 11 | 301 Fd Hosp     | -do-                                          |
| 10 Nov 11   | A2 (P)                  | Permanent                   | 10 Nov 11     | 10 Nov 13 | MH Patiala      | -do-                                          |
| 10 Nov 13   | A2 (P)                  | Permanent                   | 10 Nov 13     | 10 nov 15 | MH Ambala       | -do-                                          |
| 10 Nov 15   | A2 (P)                  | Permanent                   | 10 Nov 15     | 10 Nov 17 | 176 Mil Hosp    | -do-                                          |

| <i>Date</i> | <i>Medical Category</i> | <i>Permanent/ Temporary</i> | <i>Period</i> |           | <i>Hospital</i> | <i>Diagnosis</i>            |
|-------------|-------------------------|-----------------------------|---------------|-----------|-----------------|-----------------------------|
|             |                         |                             | <i>From</i>   | <i>To</i> |                 |                             |
| 03 Jan 16   | S3 (T-24)               | Temporary                   | 03 Jan 16     | 19 Jun 16 | 176 Mil Hosp    | Alcohol Dependence Syndrome |
| 19 Jun 16   | S3 (T-24)               | Temporary                   | 19 Jun 16     | 04 Dec 16 | 176 Mil Hosp    | -do-                        |
| 04 Dec 16   | S2 (T-24)               | Temporary                   | 04 Dec 16     | 21 May 17 | 176 Mil Hosp    | -do-                        |
| 21 May 17   | S2 (T-24)               | Temporary                   | 21 May 17     | 05 Nov 17 | 167 Mil Hosp    | -do-                        |

17. Before proceeding further to decide the issue, we think it appropriate to refer to the relevant Policy, MoD

(Army) letter No.B/10201/Vol-VI/MP-3 (PBOR)

dated 30<sup>th</sup> September, 2010 regarding retention of a low medical category personnel by grant of sheltered appointment, on which the whole case of the applicant is based, which reads as under:

"Sheltered Appointments:

5. *Army Order 46/80 lays down instructions for disposal of permanent LMC personnel. The retention of such personnel is now subject to the following conditions:*

(a) *Availability of suitable alternative appointments commensurate with their medical category;*

(b) *Such retention will not exceed the sanctioned strength of the Regiment/Corps.*

6. Guiding Principles:

*The guiding principles that should be considered by the Commanding Officers and OIC Records for retention/discharge of permanent LMC personnel are as under:*

(a) *All endeavor should be made to allow such personnel to complete their minimum pensionable service in their present rank as under:*

(i) *Personnel in Shape 5: The minimum period of qualifying service actually rendered and required for an invalid pension is 10 years.*

(ii) *Personnel in Shape 2/3: The minimum period of qualifying service actually rendered and required for earning service pension will be 15 years (Auth Para 5.1.2 of MoD, Department of Ex Servicemen Welfare Letter No.17(4)/2008(2)/U(Pen)/Pol dated 12 November 2008).*

(b) *Take into consideration the nature of disability and capability of the individual to look after himself outside the service and the need to continue treatment of Services Hospitals which may not be located in the vicinity of the individuals' home station.*

Sanctioning Authorities

7. *Under the provisions of Army Rule 13, as amended based on the recommendations of the Release Medical*

Board/Invaliding Medical Board as applicable, the Commanding Officer is the 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. In the existing circumstances, the sanctioning authority would rest with the Commanding Officer who would obtain the approval of the following authorities prior to sanction of actual discharge:

- (a) Battle Casualties (willing to serve) -  
Head of Arm/Service
- (b) Battle casualties (unwilling to service) -  
OIC Records
- (c) Non-battle Casualties (willing to serve) -  
OIC Records
- (d) Non-battle Casualties (unwilling to serve) -  
OIC Records
- (e) In case of Regiment/Corps Centres being commanded by officers below the rank of Brigadier, case will be forwarded to MP Directorate for obtaining sanction of Deputy Director General (Manpower Planning).

8. Disciplinary/Indifferent Cases:

No special provision is necessary for discharge of permanent LMCs who become disciplinary case or adopt an indifferent or casual attitude to work. In such cases necessary disciplinary or administrative action, and if required, discharge proceedings, may be initiated by the Commanding Officer in accordance with existing orders/procedures. These cases will, therefore, not be governed by the provisions of this letter.

9. Withdrawal of Sheltered Appointment

Sheltered appointment will be formally withdrawn with effect from the date of approval for discharge by the competent authorities given at para 7 above. Discharge of the individual will be carried out within six months of the date of approval.

Procedure

10. Authority:

Under the authority of Army Rule 13, as amended vide SRO 22 dated 13 May 2010, the discharge of permanent LMC personnel below officer rank is to be sanctioned as under:

| Ser No. | Medical category of PBOR | Competent Medical Board to recommend Discharge | Sanctioning Authority | Remarks         |
|---------|--------------------------|------------------------------------------------|-----------------------|-----------------|
| (a)     | Shape 2/3                | Release                                        | Commanding            | Approval of the |

|            |                |                      |                   |                        |
|------------|----------------|----------------------|-------------------|------------------------|
|            |                | <i>Medical Board</i> | <i>Officer</i>    | <i>Authority given</i> |
| <i>(b)</i> | <i>Shape 5</i> | <i>Invaliding</i>    | <i>Commanding</i> | <i>in Para 7 above</i> |
|            |                | <i>Medical Board</i> | <i>Officer</i>    | <i>to be obtained</i>  |
|            |                |                      |                   | <i>prior to</i>        |
|            |                |                      |                   | <i>sanction of</i>     |
|            |                |                      |                   | <i>actual</i>          |
|            |                |                      |                   | <i>discharge.</i>      |

18. It is also pertinent to refer to Army Rule 13 which stood amended vide Gazette notification dated 29<sup>th</sup> May, 2010, SRO No.22, (Army) Amendment) Rules 2010 and as per amended rule, which is quoted herein below, a Commanding officer is competent enough to sanction discharge of a personnel in low medical category and where suitable sheltered appointment is not available:

“(a)                      xx                      xx  
xx  
(b)                      xx                      xx  
xx  
(c)                      against the category persons enrolled under the Act who have been attested specified in column 1, in Column 2 after item ‘III(iii)’ and the entries relating thereto in Column 3 and 4, the following item and entries shall respectively be inserted, namely:-

| <i>Grounds for discharge</i>                                                                      | <i>Competent Authority to authorize discharge</i> | <i>Manner of Discharge</i>                                                                            |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <i>III(iii)(a) Having been found to be in permanent LMC SHAPE 2/3 by a medical board and when</i> | <i>Commanding Officer</i>                         | <i>The individual will be discharged from service on the recommendations of Release Medical Board</i> |
| <i>(i) no sheltered appointment is available in the</i>                                           |                                                   |                                                                                                       |

|                                            |  |  |
|--------------------------------------------|--|--|
| <i>unit, or</i>                            |  |  |
| <i>(ii) is surplus to the organization</i> |  |  |

19. From the above it is crystal clear that as per the Policy Letter dated 30<sup>th</sup> September, 2010, reproduced herein above, the retention of permanent Low Medical Category personnel is subject to availability of suitable alternative appointment corresponding to his medical category and that it does not exceeds the sanctioned strength of the Regiment/Corps. In the cases of such low medical category personnel, if no sheltered appointment is available, they are allowed to be discharged irrespective of service put in by them. Since the Commanding Officer of the applicant on the basis of the opinion of the Release Medical Board confirmed that no sheltered appointment commensurate with the medical category of the applicant was available, we do not find any infirmity in the procedure and action taken by the respondents and, therefore, the discharge the applicant is in conformity with the aforesaid policy and guidelines. We may also note that with the amendment of Army Rule 13, the Commanding Officer, in the case of army personnel in low medical category and non availability of sheltered

appointment commensurate with his medical condition, is competent enough to sanction discharge. We find no force in the submission of the learned counsel for the applicant that the action of the respondents is illegal, unreasonable, arbitrary or contrary to the policy instructions.

20. We, therefore, find no merit in the OA and the same accordingly stands dismissed.

Pronounced in open Court on this <sup>14</sup>13 day of October, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[RASIKA CHAUBE]  
MEMBER (A)

/vks/