

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH AT
CHANDIMANDIR**

OA 299 of 2012

Surender Kumar ... Petitioner

Vs

Union of India and others ... Respondents

ORDER

7.2.2012

Coram : Justice NP Gupta, Judicial Member.

Lt Gen H S Panag (Retd), Administrative Member.

For the Applicant (s) : Mr. Rajeev Anand, Advocate.

For the respondent(s) : Mr. Umesh P Wadhwani, CGC.

Lt Gen (Retd) H S Panag

1. This application has been filed under Section 14 of the Armed Forces Act, 2007 in which the applicant prays for the following reliefs :-

(a) Quashing of order dated 12.6.2011 wherein the Commanding Officer of the applicant recommended the applicant's discharge from service and the order dated 14.6.2011(Annexure A-1) wherein the sanction of the discharge of the applicant from service under Army Rule 13(3) Item III(v) has been passed in utter infringement of the relevant policy dated 28.12.1988 and totally inconsiderate to the psychiatric medical condition of the applicant which he suffering since year 2009.

(b) For issuance of the necessary orders and directions for the re-instatement of the applicant into service with all consequential benefits including Pay and Allowances for the

intervening period of illegal discharge and reinstatement alongwith arrears and continuity of service from the date of illegal discharge i.e. 23.6.2011.

(c) The applicant also sought the alternative relief of grant of disability pensionary benefits for the disability held by the Release Medical Board to be attributable to military service with 40% disability assessed for life as is entitled to the applicant on discharge from service under Rule 13(3)Item III(v).

2. According to the averments, the applicant was enrolled in the JAK RIF on 24.7.2001 of the Regular Indian Army in Medical Category AYE. During the course of his service, he served in various peace and field areas. Since the year 2007 i.e. 6 years of his service the applicant was given punishment of 7 days RI in peace location for being absent without leave under Section 39(a) of the Army Act and further was given punishment of overstaying on leave in September 2008 under Section 39(b) of the Army Act. The applicant was given 14 days RI for intoxication punishable under Section 48 of the punishable under Section 48 of the Army Act in October 2008 and was again given a punishment of 5 days RI under Section 48 in Dec 2009. The applicant while in service also suffered a disability **MODERATE DEPRESSIVE EPISODE** with date of origin as 01.4.2009 during field service at High Altitude Area.

3. The applicant averred that he was having certain domestic problems which coupled with the stress & strain of service in the High Altitude Area that the applicant developed the **MODERATE DEPRESSIVE EPISODE** for which he was placed in Low Medical Classification as also

placed in Low Medical Classification for **ALCOHOL DEPENDENCE SYNDROME** SINCE November 2009. Though the applicant was Low Medical Category at the time of release with 40% disability declared as attributable to service. His papers were not processed for grant of disability pension on the pretext that he was not invalided out but discharged on administrative grounds.

4. The applicant further averred that the applicant while in Low Medical Classification for Moderate Depression was also placed in Low Medical Category for **ALCOHOL DEPENDENCE SYNDROM** and was stated to be a perpetual offender and a negative influence on other soldiers and therefore considered undesirable for retention. The applicant was not issued any Show Cause Notice by the Commanding Officer before recommending his discharge from service and on 12.6.2011 recommendation by the Commanding Officer for terminating service of the applicant was made. Thereafter, the impugned order dated 14.6.2011 sanctioning the discharge of the applicant by competent authority was made under the provisions of Army Rule 13(3) Item (iii)(v) (**Annexure A-1**). In the statement of case, the applicant is proposed to be discharged as undesirable under the provisions of Integrated Headquarters of MoD letter dated 28.12.1988 whereas the requirement of the Army Headquarters letter dated 28.12.1988 for termination of the service of the Personnel Below Officer Rank has not been complied. The holding of the Commanding Officer that the applicant is an undesirable soldier is totally baseless. There is utter non compliance of the provisions of the Policy dated 28.12.1988 especially detailed procedure prescribed in Para 5 o the said letter. There is no domestic enquiry conducted and no report ever furnished to the applicant. There is no Show Cause Notice given to the

applicant by the authority ordering the applicant's discharge which can be apparently found in the record of his case. The applicant has been discharged from service under Army Rule 13(3)(iii)(v) w.e.f. 23.6.2011 and locally discharged from his unit (Annexure A-2).

5. The applicant further alleged that before the discharge of the applicant as an undesirable soldier being in Low Medical Category was brought before the Release Medical Board on 22.6.2011 wherein in the opinion of the Medical Board the Invaliding disease i.e. **MODERATE DEPRESSIVE EPISODE** is held to be attributable to military service and the degree of disablement for the said disability as 40% for life. In spite of the fact that the applicant has been discharged from service under Army Rule 13 on administrative grounds being 'undesirable' or as 'services no longer required' has been made a ground for non processing and non grant of claim for the entitled pensionary benefits. Further more, in spite of the entitlements of the applicant, no claim of the pensionary benefits has been filled and processed. The applicant gave a representation in this regard on 04.7.2011(Annexure A-4) but in spite of the lapsing of the considerable period no action whatsoever has been taken on the same.

6. The petitioner, in support of his submission, placed reliance upon a decision of Hon'ble Supreme Court report in **AIR 1996 S.C. 1368 (Union of India and others Vs. Corporal AK Bakshi and another)**, a judgment of the Punjab and Haryana High Court reported in **2008(5)SLR 143 (P&H) in the case of S C Pandey Vs. Union of India & others**, and judgment dated 11.5.2009 passed by the Punjab and Haryana High Court in **CWP No. 15227 of 2007 titled as Jaggar Singh Vs. Union of India**.

6. On the other hand learned counsel for the respondents argued that as per MoD letter dated 20.7.2006 the PBOR who are discharged prematurely at their own request or on administrative ground after earning four or more red ink entries are not eligible for grant of disability pension and hence the petitioner is not entitled to get disability pension.

7. We considered the submissions of the learned counsel for the parties, as well as the decisions cited above and the instructions of the Ministry of Defence. During the course of the arguments, the counsel for the applicant gave up the prayer for quashing the order for discharge and reinstatement in service and restricted it to grant of disability pension.

8. The consistent view of the Supreme Court as well as the High Court is that the discharge of an individual on earning red ink entries and as a consequence being undesirable is not a punishment for misconduct or stigma. In our considered opinion the claim of the petitioner for disability pension cannot be denied because he was discharged on invoking the provisions of Rule 13(3), Item III (v) of the Army Rules, 1954. We fully concur with the view expressed by Single bench of the Punjab and Haryana High Court in **Jaggar Singh's case (supra)**. The case in hand is fully covered by the aforesaid decision.

9. This application is allowed to the extent that the petitioner is entitled to get disability pension for 50% disability(after giving the benefits of rounding off) against 40%, which was found to be attributable to military service from the date of his discharge(ie. 23.6.2011). The respondents are directed to assess and release the disability pension in favour of the petitioner within four months from the date of receipt of certified copy of this

order. Any delay will invite an interest @ 10% per annum from the date of this order.

[Justice N P Gupta]

[Lt Gen H S Panag(Retd)]

7.2.2012

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