

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

O. A. No. 800 of 2011

Gurdial Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Sandeep Bansal, CGC.

O. A. No. 957 of 2011

Kuldip Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Ms. Renu Bala Sharma, CGC.

O. A. No. 884 of 2011

Balbir Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Col(Retd) MS Jaswal, CGC.

O. A. No. 801 of 2011

Sukhwinder ingh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Anil Khurana, CGC.

O. A. No. 802 of 2011

Pardeep Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Ms. Urmil Gupta, CGC.

O. A. No. 804 of 2011

Gurtej Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. S K Sharma, Sr. PC CGC.

O. A. No. 806 of 2011

Harphool Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Gurpreet Singh, Sr. PC

O. A. No. 805 of 2011

Satnam Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Umesh Wadhwani, CGC.

O. A. No. 807 of 2011

Talvir Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Anant Kataria, CGC.

O. A. No. 885 of 2011

Santokh Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Suveer Sheokand, CGC.

O. A. No. 803 of 2011

Joginder Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mr. Rajesh Sehgal, CGC.

O. A. No. 958 of 2011

Paramjit Singh	: Petitioner
Vs.	
UOI & Ors.	: Respondents
For the Petitioner (s)	: Mr. Rajeev Anand, Advocate
For the respondent (s)	: Mrs. Geeta Singhwal, Sr. PC.

O R D E R
08.11.2011

Coram: Justice Ghanshyam Prasad, Judicial Member

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

JUSTICE GHANSHYAM PRASAD:

In all the above OAs, there is a common question of law and therefore, they all are taken together and being disposed off by the common order.

All the applications have been filed seeking setting aside of the order dated 12.03.2011 (Annexure A-5) wherein the petitioners have been ordered to be discharged from service prematurely w.e.f. 31.08.2011 being in permanent Low Medical Category as well as a Show Cause Notice dated 22.03.2011 (Annexure A-6).

It appears from the record that vide order dated 29.08.2011 of this Bench, the discharge of the petitioner w.e.f. 31.08.2011 has been stayed till further order.

The petitioners were enrolled in the Indian Army on different dates mentioned in Annexure A-5, in different trades and in Medical

Category SHAPE-1. However, during the service, they all acquired some disabilities and therefore, they all have been placed in Permanent Low Medical Category with dates mentioned in Annexure A-5. Thereafter, they all have been given sheltered appointment in their unit as mentioned in Annexure A-5 against their respective names. However, later on, their respective unit Commanding Officer recommended their discharge under Army Rule 13(3) read in conjunction with Army Rule 13(2A) as amended vide Army (Amendment) Rule 2010 on the ground of non-availability of sheltered appointment much before completion of minimum service of 15 years for grant of pensionary benefits. The recommendations of the Commanding Officer was approved by OIC Records vide Annexure A-4, though, all the petitioners are willing to continue in service.

Accordingly, the Commanding Officer of unit issued a Show Cause Notice to the petitioners calling upon to show cause as to why their services should not be terminated under the provision of Item III (v) of the Table annexed to Army Rule 13(3) read in conjunction with Army Rule 13(2A) w.e.f. 31.08.2011 being in permanent Low Medical Category and not up to the prescribed military physical standard.

All the petitioners have challenged the impugned order of discharge w.e.f. 31.08.2011 in the light of Army Amendment Rule 2010 read with AO No. 46/80 and prayed that they should be allowed to remain in sheltered appointment till completion of pensionable period i.e. 15 years.

Written statement has been filed on behalf of the respondents which is on the record.

Several grounds have been taken against the case of petitioners. However, main ground is that in view of the Army Amendment Rules 2010 in Rule 13 of Army Rule 1954, the Commanding Officer can discharge an individual who is placed in permanent Low Medical Category on the recommendations of the Release Medical Board, if there is no sheltered appointment available in the unit or the individual is surplus to the organization. The same is also reflected in Policy letter issued by IHQ of MoD vide their letter dated 30.09.2010 which has been annexed as Annexure R-2 in OA No. 800 of 2011.

It is further averred that accordingly, the discharge order of the petitioners were issued vide Artillery Records letter dated 12.03.2011 (Annexure A-5) quoting the date of discharge from service as 31.08.2011, after availing of the procedure as per MoD Policy letter dated 30.09.2010, due to non-availability of sheltered appointment in the regiment and on approval of the Competent Authority.

In the meantime, one important development occurred and the discharge order of one of the petitioners namely **Santokh Singh (OA885 of 2011)** was cancelled vide Artillery Records letter dated 03.08.2011. The copy of the discharge order is on the record.

Heard learned counsel for both the parties and perused the documents on record.

Annexure A-5 is Artillery Records letter dated 12.03.2011 which contains the name of 22 persons including petitioners who are in permanent Low Medical Category and are in sheltered appointment to be discharged from service we.f. 31.08.2011. The relevant portion of the letter are in paragraph 1,2 and 3 which are as follows :

“DISCHARGE OF PERMT LOW MED CAT : JCOs/OR

- 1. Ref AO 46/80 and Integrated HQ of MoD(Army) letter No B/10201/Vol-VI/MP-3 (PBOR) dt 30 Sep 2010.**
- 2. The pers mentioned at the apex have been placed in permt low med cat SHAPE 2/3 and are willing to continue in service and their retention in service have not recommended by COs unit. Approval of OIC Records has been accorded to disch them on med grounds in terms of Para 7© & 10(a) of Integrated HQ of MoD(Army) letter quoted at Para 1 above. They will report to Arty Depot Regt on 05 Aug 2011 for disch drill and will be finally disch from service /Army wef 31 Aug 2011(AN). They will be served with a ‘SHOW CAUSE NOTICE” by COs unit before sanctioning their disch & copy of the same and its reply to be fwd to this office (ER Gp) alongwith adv pension docu and RMB.**
- 3. Cause of the disch will be recorded in IAFY-1948A (Disch Roll) as under :-**

NCOs/OR

Discharged being placed in medical category lower than SHAPE-1 and not upto the prescribed military physical standard under item III(v) of the table annexed to Army Rule 13(3) read in conjunction with Army Rule 13(2A) as amended vide Army (Amendment) Rules 2010”

Show Cause Notice issued to the petitioner is Annexure

A-6. Show Cause Notice dated 22.03.2011 is as follows :-

“You have been placed in medical category lower than SHAPE-1 viz P2(P) w.e.f. 08 Mar 09 as per dim issued by Integrated HQ of MoD(Army) letter No. B/10201/ Vol-VI/MP3 (PBOR) dt 30 Sep 2010 and not upto the prescribed military physical standard under item III(v) of the table annexed to Army Rule 13(3) read in conjunction with Army Rule 13(3) read in conjunction with Army Rule 13(2A) as amended vide Army (Amendment) Rule 2010, you are reqd to be discharged from service wef 31 Aug 11 (AN)

You are hereby called upon to show cause as to why your service should not be terminated under the provn of item III(v) of the table annexed to Army Rule 13(3) read in conjunction with Army Rule 13(2A), your reply to this Show Cause Notice should reach this office by 26 Mar 2011”.

The relevant Army (amendment) Rules 2010 is at Annexure A-8 which contains the ground of discharge. The relevant amendment Rules is as follows :-

“2. Amendment of rule 13 – In rule 13 of the Army Rules, 1954 in the Table :-

(a) Against the category Junior Commissioned Officer specified in column 1, in column 2, after item “1 (ii)” and the entries relating thereto in columns 3 and 4, the following item and entries shall respectively be inserted, namely :-

Grounds of discharge	Competent authority to authorize discharge	Manner of discharge
2	3	4
“1(ii)(a) Having been found to be in permanent low medical category SHAPE 2/3 by a medical board and when :- (I) no sheltered appointment is available in the unit, or (II) (II) Is surplus to the organization.	Commanding Officer	The individual will be discharged from service on the recommendations of Release Medical Board”

The other important document is AO 46/80. The aim of this Army Order is to lay down instructions for the disposal of permanent Low Medical Category personnel. Rule 2 of the above AO is as follows :-

“General Principles

- (a)The employment of permanent low medical category personnel, at all times, is subject to the availability of suitable alternative appointments commensurate with their medical category and also to the proviso that this can be justified in the public interest, and that their retention will not exceed the sanctioned strength of the regiment corps. When such an appointment is not available or when their retention is either not considered necessary in the interest of the service or it exceeds the sanctioned strength of regiment/corps, they will be discharged irrespective of the service put in by them.
- (b)Ordinarily, permanent low medical category personnel will be retained in service till completion of 15 years service in the case of JCOs and 10 years in the case of OR

(including NCOs). However, such personnel may continue to be retained in service beyond the above period until they become due for discharge in the normal manner subject to their willingness and the fulfillment of the stipulation laid in Sub-Para (a) above.

Annexure R-2 is the ADG Manpower/MP-3(PBOR) letter dated 30.09.2010 which is in respect of disposal of permanent Low Medical Category personnel below officers rank. It lays down guidelines for disposal of permanent Low Medical Category personnel. The relevant para of the letter is as follows :

“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 endeavour 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)/D(PEN/Pol)dated 12 November 2008)”

It is submitted by the learned counsel for the petitioner that in view of the amendment made in Army Rule as well as in view of AO 46/80 read with Army Rule -2, the petitioners are entitled to be retained in sheltered appointment till completion of minimum period for pension ie. 15 years. Most of the petitioners have also already

completed more than 12 years of service. In support of their contention, they have also relied upon the decision of **Rajasthan High Court passed in CWC No 5179 of 1994 decided on 12.12.2006 “Sube Singh Vs. UOI and others”**.

The AO No 46/80 which lays down the instructions regarding the disposal of permanent Medical Category personnel clearly says that ordinarily permanent Low Medical Category personnel will be retained in service till completion of 15 years. Such persons may also continue to be retained beyond the above period until they become due for discharge in the normal manner subject to their willingness and fulfillment of the stipulation laid in sub para (a) above. The above Army Order has further been clarified in Army Rule -2 dated 30.09.2010.

The above decision cited by the learned counsel for the petitioner is also relevant for decision of this case. In that very decision the petitioner claimed to be retained in service in a sheltered appointment as per the prevailing policy incorporated in AO No. 46/80. However, the request of the petitioner had been turned down on the ground of non-availability of sheltered appointment. The Hon'ble Court ultimately held that the petitioner is entitled for sheltered appointment and the respondents were directed to accommodate the petitioner on suitable employment as per Army Rule 1954 forthwith, as the petitioner is fit to be appointed as per the policy of sheltered appointment.

The petitioners can also get help from another decision of Rajasthan High Court dated 12.12.1996 **Union of India Vs. Ex L/Nk**

Kishan Singh (DB). In para 6 of the decision, it has been held as follows :-

“6. We have considered the rival submissions. Stand of the appellant does not appear to be well founded. If a harmonious construction is given to the two Army Orders, referred to above, then it cannot be said that there is any prohibition that if a person becomes a low medical category after referred four years in Army Order No 24/25 then he cannot be re-employed. The spirit of both the Army Orders is that if a Army personnel becomes low medical category during the period of service then if he can be accommodated otherwise then he should not be refused that accommodation and a suitable employment should be offered to him. In the instant case, the learned Single Judge has taken this view and we do not feel any illegality in the view taken by learned Single Judge. Thus, we find no merit in this appeal.”

On the other hand, learned counsel for the respondents vehemently challenged the submissions of the learned counsel for the petitioner and submitted that the petitioner has rightly been served with the letter for discharged being in permanent Low Medical Category as there is no vacancy in the sheltered appointment. The decision has been taken in true spirit of guidelines issued by MoD vide the aforesaid letter dated 30.09.2010 as well as OA No. 46/80.

Here we would like to mention that admittedly all the petitioners are already on sheltered appointment. Therefore, the question of non-availability of sheltered appointment for the petitioners does not arise. It is non-existent and lame excuse for discharge of the petitioners. Apart from it, the concept of sheltered appointment is purely

for the purpose of consideration to retain low medical category. There is no hard and fast rule regarding number of such posts. It is flexible. However, in these cases petitioners are already on sheltered appointment and are in medical SHAPE 2/3.

In course of the hearing, we made repeated queries to the learned counsel for the respondents as to whether there is any difference between the case of Santokh Singh (OA No. 885 of 2010) and other petitioners. However, the learned counsel for the respondents failed to point out any material difference in between the case of Santokh Singh and others petitioners. It is important to mention here that the discharge order in respect of Santokh Singh has already been cancelled by the respondents vide letter dated 30.08.2011. No specific reason has been assigned for cancellation of discharge order in respect of Santokh Singh in order to distinguish his case from others. The name of Santokh Singh appears in Annexure A-5 alongwith other petitioners.

In the facts and circumstances, we find no justification to discriminate in between Santokh Singh and other petitioners having similar and identical case. The respondent authorities are bound to treat all the petitioners on similar footings and in the light of order passed in respect of petitioner Santokh Singh, the discharge order in respect of other petitioners must also be cancelled/recalled.

Accordingly, we allow above applications and set aside the Annexure A-5 and A-6 only in respect of those petitioners who have not yet completed 15 years in service. Respondents are

directed to retain such petitioners in supernumerary post (sheltered appointment) until their service of 15 years is completed so that they could earn their minimum pension as all these petitioners are in medical SHAPE – 2/3. However, it is subject to the provision contained in paragraph 8 of the letter dated 30.09.2011 (Annexure R-2). So far as case of petitioners who have already completed more than 15 years in service is concerned, the respondents are at liberty to reconsider their case for further retention in the light of O.A. No. 46/80.

(Justice Ghanshyam Prasad)

[(Lt Gen H S Panag (Retd))]

08.11.2011

‘sns’