

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

O.A No. 2000 of 2012

Kuldip Singh	...	Petitioner
v.		
Union of India and others	...	Respondents
For the Petitioner	...	Mr. Rajeev Anand, Advocate
For the Respondents	...	Mr.Suveer Sheokand, CGC

**Coram : Justice Prakash Kirshna, Judicial Member
Lt Gen (Retd) N.S.Brar, Administrative Member**

**ORDER
27.02.2014**

This petition seeks setting aside of the order dated 11.01.2012 (Annexure A8) by which the discharge of the petitioner from service was ordered, being permanent low medical category.

The petitioner was enrolled in the Army on 28.11.2000 and in the year 2009, being unwell, he was put under medical treatment and was thereafter placed in low medical category with certain employment restrictions. The petitioner remained on preventive medication and was diagnosed as a case of 'Moderate Depressive Episode' and placed in Low Medical Category (Temporary) and in Permanent Low Medical Category on 13.09.2011. (Annexure A4).

The petitioner was issued a show cause notice dated 27.09.2011 (Annexure A5) for discharge for being in permanent low medical category. This was replied vide letter dated 27.09.2011(Annexure A6) wherein it was stated that he was willing to continue in service. The Commanding Officer thereafter did not carry out any further action. However, on 11.01.2012 (Annexure A8), the discharge of the applicant was ordered under Army Rule 13 (3) Item III (v) which is a residual provision dealing with any other class of discharge and was not applicable for discharge on medical ground.

After receipt of discharge order, the report was forwarded by the Commanding Officer on 29.03.2012 (Annexure A9) wherein he recommended retention primarily to let the individual complete minimum pensionable service. He was thereafter brought before Release Medical Board on 24.04.2012 (Annexure A10).

Then other grounds of irregularity are alleged related to the sequence of orders related to his discharge. The petitioner was discharged from service on 30.06.2012 (Annexure A12).

With the above alleged facts, the discharge of the petitioner on medical grounds is said to be in contravention of the relevant Army Orders, Policy Instructions on management of low medical category personnel and Army Rule 13. Army Rule 13 (3) Item III (v) does not deal with discharge on medical grounds nor has the same been amended through SRO 22 dated 13.05.2010 (Annexure A13). Order dated 11.01.2012 (Annexure A8) by which the discharge of the petitioner from service was ordered is thus sought to be set aside.

On notice, written statement has been filed by the respondents and it is stated that the petitioner was enrolled in the Army on 28.11.2000 and was found to be suffering from 'Moderate Depressive Episode' and after due diagnosis, was downgraded to permanent low medical category S2. He was also placed in permanent low medical category P2 for 'Primary Hypertension'. Keeping in view his low medical category, and there being no alternative employment available in conformity with his medical category, show cause notice was issued on 27.11.2011 (Annexure R1). It was replied on 27.11.2011 (Annexure R2) and as no sheltered appointment was available, his discharge was sanctioned under Army Rule 13 (3) Item III (v) through Release Medical Board. Then, amended Army Rule 13 is quoted for justifying the discharge as no sheltered appointment was available and the petitioner was in permanent low medical category. With the above grounds, the discharge was justified.

Learned counsel for the petitioner brought to our notice the case of **Nirmal Singh vs Union of India (OA No 1999 of 2012)** decided on **09.04.2013** where a similar case of discharge was set aside by this Tribunal.

We have heard learned counsel for the parties.

A perusal of the documents shows that the petitioner being in permanent low medical category was provided sheltered appointment to enable him to complete qualifying service for invalid pension. The discharge of the petitioner ordered vide Records, Punjab Regiment letter dated 11.01.2012 (Annexure A8), is under the provisions of Army Rule 13 (3) Item III (v) read in conjunction with Army Rule 13 (2A) and Army Order 46/80. On the other hand, the show cause notice is pre-dated to 27.11.2011 (Annexure R1). Without burdening ourselves with the provisions of Army Order 46/80, Policy Letter for disposal of low medical category dated 30.09.2010 (Annexure A15) and other aspects, we find that the discharge has been ordered under Army Rule 13 (3) Item III (v). We further find that Army Rule 13, as amended vide SRO 22 of 2010, specifically deals with the manner of discharge of permanent low medical category personnel when no sheltered appointment is available in the Unit. The same reads as under

New Delhi, the 13th May, 2010

S.R.O 22.- In exercise of the powers conferred by Section 191 of the Army Act, 1950 (XLVI of 1950), and all other powers enabling in this behalf, the Central Government hereby makes the following rules to amend the Army Rules, 1954, namely,-

1. Short title and commencement.-

- (1) These rules may be called the Army (Amendment) Rules, 2010.
- (2) They shall come into force on the date of their publication in the Official Gazette.

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

- (b) against the category Warrant Officer specified in column 1, in column 2, after item “(II).(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 authorise discharge	Manner of discharge
2	3	4
II.(ii)(a) Having been found to be in permanent medical category SHAPE 2/3 by a medical board and when:- (i) no sheltered appointment is available in the unit, or (ii) is surplus to the organization	Commanding Officer	The individual will be discharged from service on the recommendations of Release Medical Board.

- (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 columns 3 and 4, the following item and entries shall respectively be inserted, -

Grounds of discharge	Competent authority to authorize discharge	Manner of discharge
2	3	4
III.(iii)(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) is surplus to the organization	Commanding Officer	The individual will be discharged from service on the recommendations of Release Medical Board.

[F.No.-A/32395/MP-3/13(1)/2009/D (AG)]
J.ROY CHOWDHURY, Under Secy.

On the other hand, the discharge has been ordered under the residual provision of Army Rule 13 (v) which in our view is inappropriate when a specific statutory provision exists for manner of discharge of low medical category personnel when sheltered appointment is not available.

We find that in the case of **Nirmal Singh (supra)** a similar case of discharge was set aside by this Tribunal.

In view of the fundamental irregularity in ordering the discharge of the petitioner, we consider it appropriate to set aside his discharge and reinstate the petitioner in service. The discharge order dated 11.01.2012 (Annexure A8) and subsequent action of the respondents in respect of the petitioner is accordingly quashed.

The petitioner to be reinstated in service accordingly from the date of discharge ie 30.06.2012. He shall rejoin duty at the place to be nominated by the respondents which shall be done within three months of receipt of certified copy of this order. The period between 30.06.2012 and the actual date of joining service shall count towards qualifying service for all purposes. As he has not physically served for this period, he shall not be entitled to any pay and allowances from the date of discharge till the actual date of his rejoining service. He shall however be entitled to any pension that may have been paid for this period. If he is not reinstated within three months as aforesaid, he shall be entitled to pay and allowances from the date of this order onwards.

However, this order shall not come in the way of the respondents who are at liberty to decide the petitioner's further retention in service on its own merits, rules, regulations and orders on the subject.

The petition is disposed of with the above directions.

A copy of this order to be sent to the Adjutant General, Army Headquarters for appropriate remedial action to curtail such irregular discharge.

[Justice Prakash Kirshna]

[Lt Gen (Retd) N.S.Brar]

27.02.2014

RS

Whether the judgment for reference is to be put on Internet? Yes