

(2022) 03 AFT CK 0015
In the Armed Forces Tribunal
Case No : OA 383 Of 2020

Ex Sep Prithvi Nath Singh

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Rules, 1954 — Rule 13(3)

Citation : (2022) 03 AFT CK 0015

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Narender Kaushik, Pankaj Kaushik, V.S. Tomar

Final Decision : Disposed Of

Judgement

1. This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant who is a retired Sepoy of the Army and is aggrieved on being discharged from service of DSC without holding an invalidating medical board, on becoming a permanent low medical category. The applicant has made the following prayers :-

- (a) Reinstate the applicant with all consequential benefits.
- (b) Pass any other order deemed fit and proper in the facts of the case.
- (c) Direct the respondents to supply all the medical documents.

2. The brief facts of the case as per the applicant are that after serving 17 years of pensionable service in the Army, he had joined DSC in 2015. In 2017 the applicant was diagnosed with 'Chronic Suppurative Otitis Media (Left)' and placed in temporary LMC H2(T-24) for twenty four weeks. The Reclassification Medical Board held in 2018 placed the applicant in permanent LMC H2 (P) for two years. Accordingly, since there are no sheltered appointment in DSC, a Show Cause Notice was issued in April 2019 as to why the applicant should not be discharged

under Army Rule 13(3) Item III (a) (i), being a permanent LMC, with effect from 30.09.2019. The applicant filed writ petition being, W.P. (C) No.17206/2019 in Rajasthan High Court against the discharge Order dated 23.10.2019 which was dismissed by the Hon'ble High Court vide its Order dated 28.11.2019, upholding the discharge.

3. We thus find that the present OA is filed for the same relief based on the same facts. Moreover, though the Hon'ble Rajasthan High Court dismissed the case on 28.11.2019, the applicant filed this OA without disclosing the details of the Writ Petition filed and its disposal at Para 7 of the OA.

4. In the WP filed before the Hon'ble Rajasthan High Court, the applicant had prayed that the discharge order dated 23.10.2019 be quashed in view of the fact that the applicant had been discharged without the invaliding medical board having been held. The Court in its order has upheld the discharge since it met the twin conditions that there was no sheltered appointment and that a medical board had already given a certificate of unfitness. In the OA, the applicant has once again prayed that the discharge order be quashed and he be reinstated with all consequential benefits. In addition, he has also raised the issue of not being given the requisite certificate for civil employment. Needless to say that he had the opportunity to raise all these additional issues as part of his WP filed in 2019.

5. Thus, in view of the Order of the Hon'ble Rajasthan High Court dated 28.11.2019 which dismissed the case, we have no hesitation in dismissing this OA on the doctrine of 'res judicata' and 'constructive res judicata'.

6. Accordingly, OA stands disposed of. No order as to costs.