

(2002) 09 DEL CK 0205

In the Delhi High Court

Case No : Civil Writ Petition No. 3838 of 1997

Ptr. Mukesh Chandra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Army Orders — Order 46, Order 80
Army Rules, 1954 — Rule 13, 13(2A), 13(3)

Citation : (2002) 09 DEL CK 0205

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : C.P. Singh, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Khan, J.—Petitioner is challenging his order of discharge and wants to be reinstated in service. He was enrolled as Paratrooper in the Parachute Regiment on 15.3.1987. He suffered some disability thereafter and was placed in medical category "BEE(P)". While he was expecting his upgradation to category A(Aye), he received a show cause notice proposing his termination from service in view of his low medical category BEE(P). He was eventually discharged and his discharge certificate indicated that it was done under AR 13(iii)(v).

2. Petitioner's case is that his discharge emanated from malafide considerations as his discharge emanated from malafide considerations as his Commanding Officer Col. S.S. Randhawa harboured bias and grudge against him. It was also discriminatory because other personnel with low medical category were retained while he was discharged, so much so his status was not even shown as "ex-serviceman" in the discharge certificate. He lastly asserts that both his show cause notice and order of discharge were incompetent as his Commanding Officer was not empowered to do it under AR 13(iii)(v).

3. All this is refuted by respondents in their counter. It is explained by them that

petitioner was placed in BEE(P) on 23.7.1992 and was directed for the next Medical Board on 23.7.1994. On completion of his second review in BEE(P), he was again placed in the same category for two years. It is denied that his ex-commanding officer Col. Randhawa had anything to do with his discharge. On the contrary, it was under the instructions of the Army Headquarters that review of lower medical category personnel was undertaken and he was one of them. He also failed to reply to the show cause notice and that is how his Release Medical Board was approved on 28.6.1995 resulting in his discharge from service from 31.10.1995 where after he was offered a sheltered appointment.

4. It is also pointed out that since petitioner was not discharged compulsorily, as such there was no requirement of obtaining sanction of Brigade Commander or equivalent as his discharge was not on administrative grounds. His case for grant of disability pension was also forwarded to CCDA (P) Allahabad and he was granted service element @ Rs. 375/- per month from 1.11.1995 on completion of eight years 7 months and 17 days service, besides he was granted gratuity of Rs. 8708/- which he received without any prejudice. His disability element was later assessed at less than 20% by a duly constituted board which was conveyed to him. It is also submitted that he had not represented for his classification as ex-serviceman.

5. All that remained to be examined was whether petitioner was discharged in conformity with the relevant rules and whether his Commanding Officer was competent to pass his order of discharge.

6. There is no dispute that petitioner was discharged in exercise of power by the Commanding Officer under Rule 13(III)(v). Rule 13 provides for discharge from service of persons subject to the Army Act by the specified authorities and on the specified grounds. Clause (3) of this Rule deals with the persons enrolled under the Act who have been attested. Dealing with this category, Sub-clause (iii) again provides for discharge of persons by the Commanding Officer who have been found medically unfit for further service. In this case, the discharge was to be carried out only on the recommendations of an Invalidating Board. Sub-clause (v) which is relevant for our purposes pertains to all other clauses of discharge including that of low medical category persons and in this the order of discharge is to be passed by the Brigade/Sub Area Commander and before doing so, he is required to give to the person, whose discharge is contemplated, an opportunity to show cause. It transpires that this stands supplemented by some Army Orders and policies. AO 46/80 which contains instructions regarding permanent low medical category JCO's/other ranks in terms of defense Ministry letter No. A/32395/VIII/ORG dated 10.5.1977 as amended by Corrigendum dated 26.11.1979. Amongst other things, this provides that employment of permanent low medical category personnel would be subject to availability of suitable alternative appointment commensurate with their medical category and that their retention will not exceed the sanctioned strength of Regiment/Corps. Ordinarily permanent low medical category personnel would be retained in service till

completion of 15 years in case of JCOs and 10 years in case of other ranks where after they are to be discharged.

7. The Policy dated 5.3.2000 then refers to the sanctioning authorities under Army Rule 13 and provides that while Commanding Officer was the competent authority to sanction discharge of JCO/OR on the recommendation of Invalidating Board, but on review, it was now decided that the sanctioning of discharge authority would be the Commanding Officer, as laid down in Army Rule 13 and that he would have to obtain prior sanction for discharge from higher specified authorities only in some cases.

8. Reference in this regard is also made to Army Rule 13(2A) which lays down that Commanding Officer shall also be competent authority to pass order of discharge where Central Government or the Chief of the Army Staff decides to discharge a person or classes of persons.

9. It is submitted by learned counsel for respondents that by Army Order 46/80 and Policy dated 5.3.2000, both Central Government and Chief of the Army Staff had decided to discharge low medical category personnel in accordance with the procedure laid down therein and, Therefore, Commanding Officer was competent to discharge petitioner under Army Rule 13(2A) also.

10. This thesis is advanced to show that Commanding Officer was competent to discharge the petitioner under Army Rule 13(3)(v) though he was neither a Brigade Commander nor a Sub-Area Commander. Though we find it difficult to accept this position on the first blush because of the confusion and mess-up created by terms of various Army Orders and policies, we find that in substance Commanding Officer was also empowered to pass an order of discharge despite his omission in the list of authorities given in the table appended to Rule 13 which only specified Brigade/Sub Area Commander to be the Authority for discharging attested personnel in "all other classes" of discharge. Therefore, even when we hold the impugned order valid in the present case, we fail to appreciate what prevents respondents from enlisting the Commanding Officer in the requisite table as competent authority which would have cleared all the confusion and saved them from unnecessary litigation.

11. Apart from this, it is also noticed that petitioner also received the service element of disability and also gratuity, etc. without any protest or prejudice to his rights and had accordingly submitted and reconciled to the impugned action. His petition accordingly fails and is dismissed. He may, however, submit a representation to the competent authority for change of his classification as ex-serviceman within one month and the concerned authority in that case shall examine his plea and pass appropriate orders thereon within four months from receipt of the same.