

(2021) 06 AFT CK 0008

In the Armed Forces Tribunal

Case No : OA 870 Of 2021 with MA 911 Of 2021

Rfn Ravi Kumar

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 10-06-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Army Act, 1950 — Section 177

Army Rule 1954 — Rule 13, 13(2A), 13(3), 13(3)(i)(ii), 13(3)(I)(iii)(c), 13(3)(iii)(a)(i)

Citation : (2021) 06 AFT CK 0008

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

Bench : Division Bench

Advocate : B.P. Vaishnav, V.S. ?Tomar

Final Decision : Dismissed/ Disposed Of

Judgement

''''

1. This original application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant, a serving soldier with five years''''

service, is aggrieved on being discharged from service being a permanent low medical category (LMC), for an injury sustained by performing bona''''

fide military duty on 12.05.2017. The applicant has made the following prayers :''''

(a) Â To direct the respondents to quash the discharge order issued wide RAC/4/2/med/II/102 dated 24.12.2020 by which applicant has been discharged from the''''

service on 31.05.2021.'''''

(b) Â To direct the respondents to give suitable sheltered appointment to applicant.'''''

(c) Â Any other order/s as this Hon'ble Court may deem fit and proper in the interest of justice and fairness.,,,,

(d) In the interim, stay the execution of the impugned order till the finalization of the present OA, and issue directions to the respondents accordingly." ,,,,

Brief Facts of the Case.,,,,

2. The brief facts of the case as per the applicant is that he was enrolled into the Army on 28.03.2016 and since then, has served with great dedication" ,,,,

and sincerity. On 12.05.2017 the applicant was performing the duties of a co-driver in a military 2.5-ton vehicle. The vehicle met with an accident with ,,,,

a civil dumper and the applicant sustained traumatic injuries. Court of enquiry was conducted which opined that the accident took place due to reasons ,,,,

beyond the control of the driver and that no military personal were to be blamed for the accident. It also opined that the injury sustained by the ,,,,

applicant who was travelling as the co-driver was attributable to military service as they were on a bona fide military duty. The findings and opinion of ,,,,

the court of enquiry were concurred by the competent authority As a result of this accident, the applicant suffered the following injuries: -" ,,,,

(a) Â Closed globe injury left eye (Tarsorrhaphy lid construction done with vitreous hemorrhage), Traumatic cataract left eye (Optd), Traumatic optic neuropathy left" ,,,,

eye ,,,,

(b) Closed head injury with open globe injury (It) eye and fracture left zygomatic complex (Optd) ,,,,

(c) Â Fracture head of femur Lt (Optd) ,,,,

3. Consequent to the initial hospitalisation, surgery and sick leave, the applicant was initially placed in temporary medical category E3,P3,A3" ,,,,

respectively for the above injuries, for 24 weeks. In the Recategorisation Medical Board held at MH Jaipur in August 2018, he was placed in" ,,,,

E3(Permanent) for disability at Para 2 (a), in A2 (Permanent) for disability at Para 2 (c) and was upgraded to PI for the disability at Para 2 (b). His" ,,,,

final medical category was S1H1A2P1E3 and his next Recategorisation medical board was to be conducted on 10.08.2020. His disability then was ,,,,

recorded as 30% and 40% for the disabilities at Para 2 (a) and (c) respectively. The next re-cat medical board was held at RR Hospital in September ,,,,

2020 and the applicant was recommended to continue in the same category of

S1H1A2P1E3 with the next re-cat medical board scheduled on,,,,

17.09.2022.,,,,,

4. Â Respondent No. 3 issued the impugned letter dated 24.12.2020 (Annexure A1), 'Disposal of Permanent Low Med Cat Pers: JCOs/NCOs/OR"',,,,,

vide which the applicant was to be discharged from service on 31.05.2021, being in permanent low med cat and no sheltered appointment being",,,,,

available. Aggrieved by the discharge order, the applicant made a representation to his Commanding Officer and Respondents 2 & 3 to retain him in",,,,,

service and employ him on suitable sedentary duties; considering the fact that he had only five years' service, that the injury was sustained whilst on",,,,,

bona fide military duty and that the injuries were attributable to military service. Since there has been no response from the Respondents, the applicant",,,,,

filed the OA.,,,,,

Arguments by the Counsel for the Applicant,,,,

5. The Learned Counsel for the applicant briefly recapitulated the circumstances of the vehicle accident which caused grievous and traumatic injury to,,,,

the applicant resulting in the applicant being a permanent LMC. He further reiterated that the applicant had been in good health and free from any,,,,

disability on his initial enrollment into the army and that the current disabilities arising from the vehicle accident were attributable to military service as,,,,

determined by the Court of Inquiry (Col) conducted to investigate the accident. The Counsel further added that although the applicant had given his,,,,

willingness to continue in service, the Respondents had withdrawn the sheltered appointment, found the applicant unfit for further service and had",,,,,

issued the discharge order without any prior intimation. The Counsel then emphasised that it was the plea of the applicant that he be provided a,,,,

sheltered appointment and be permitted to serve till the min pensionable service. To this end, the Counsel stated that the Respondents should consider",,,,,

withdrawing sheltered appointment from those LMC personnel who have completed min service so that personnel like the applicant can be provided,,,,

requisite relief and be permitted to continue in service.,,,,,

6. The Counsel further added, that contrary to the existing rules where it was mandatory for LMC personnel to be brought before an Invalidating",,,,,

Medical Board prior to deciding on their discharge, no such board had been held in the case of the applicant. The Counsel relied on Hon'ble Supreme",,,,,

Court judgement dated 07.11.2008 in Union of India & Ors. Vs Rajpal Singh /"[Civil Appeal No. 6578 of 2008] (2009) 1 SCC 216 and AFT,",,,,

Regional Bench, Chandigarh judgement in RK Patel Uoi Ors. in TA 27 of 2013 dated 02.11.2017 in support of his stance that the discharge order",,,,

could only have been issued after the applicant was brought before the Invalidating Medical Board and based on its recommendation.,,,,

Arguments by the Counsel for the Respondents,,,,

7. The Counsel for the Respondents briefly took us through the vehicle accident of May 2017 in which the applicant was injured and added that,,,,

consequent to his treatment he was placed in LMC and had been given a sheltered appointment. The Counsel took us through the Army Rule 13 as it,,,,

existed in 2008 based on which the Hon'ble Supreme Court had given its judgement in the case of Rajpal Singh (supra), where the Hon'ble Apex",,,,

Court had ruled that a LMC personnel cannot be discharged prior to his completion of his term of engagement without having been brought before an,,,,

Invalidating Medical Board.,,,,

8. Â The Counsel then elaborated on the subsequent amendment made to Army Rule 13 in 2010 through Gazette of India dated 29.05.2010 vide SRO,,,,

No 22 (Annexure R-I). He further added that as per the amendment of 2010, a Commanding Officer could now discharge a soldier who is a",,,,

permanent LMC SHAPE 2/3 and where no sheltered appointment was available in the unit to gainfully employ him, or he became surplus to the",,,,

organisation. The Counsel further added that consequent to the issue of the amendment to AR 13, AG's Branch, IHQ of MoD(Army) issued a",,,,

detailed policy letter incorporating all the amendments vide their letter No B/10210/Pt-IV-3(PBOR) dated 30.09.2010; 'Disposal of Permanent LMC,,,,

Personnel Below Officer Rank'; he then explained in detail the contents of Para 5 and 6 of the letter dated 30.09.2010.,,,,

9. Â The Leaned Counsel then explained that while the applicant after his initial surgery and treatment had been first placed in temporary LMC for 24,,,,

weeks. The applicant was placed in permanent LMC in Aug 18 and was in a sheltered appointment. However, when Unit of the applicant received",,,,

orders for its move to Siachen Glacier, the Unit had to approach the Records of the Regiment to seek the disposal of the LMC personnel in the unit.",,,,

Accordingly a Show Cause Notice dated 25.07.2020 was issued to the applicant

as to why he should not be discharged from Service as per Rule,,,,
13(3) Part III(iii)(a)(i) of Army Rule 1954 (Annexure R-3). The applicant in his
reply (Annexure R-4) stated that he wished to continue in service as,,,,
he was the sole earning member of his family, that his parents and wife were
dependent on him. The case was then processed for sanction of the",,,,,
Category,Grounds for Discharge,"Competent Authority to
authorize discharge",Manner of Discharge,
Junior
Commissioned
officers",XXX,XXXX,XXXX,
Warrant Officers,XXXX,XXXXX,XXXXXX,
Persons enrolled under the
Act who have been attested",III (i) to (ii) xxxxxx,,,
,"III(iii) Having been found
medically unfit for further
service","Commanding
Officer","To be carried out only on the
recommendations of an
invalidating Board",
,"III (iv) xxxxxx,,,
,"III (v) AH other classes of
discharge","Brigade/Sub
Area
Commander","The Brigade or Sub area Cdr
before ordering the
discharge shall, if the
circumstances of the case
permit give to the person
whose discharge is
contemplated an opportunity

to show cause against the contemplated discharge",
Persons enrolled under the Act but not attested",XXX,XXX,XXX,
Grounds for Discharge,"Competent Authority to authorize discharge",Manner of Discharge,,
III(iii)(a) Having been found to be in permanent LMC SHAPE 2/3 by a medical board and when
(i) no sheltered appointment is available in the unit, or
(ii) is surplus to the organisation",Commanding Officer,"The individual will be discharged from service on the recommendations of Release Medical Board",,
Ser No.,"Medical No Category ofPBOR", "Competent Medical Board to recommend Discharge", "Sanctioning Authority",Remarks
(a),SHAPE 2/3,"Release Medical Board.",Commanding Officer,"Approval of the Authority given at Para 7 above to be obtained prior to sanction of actual discharge.
(b),SHAPE 5,"Invaliding Medical Board.", "Commanding

Officer",

12. Â Non-Battle Casualties (Willing to Serve). The procedure will be as above except that OIC Records will be the approving authority.,,,,

13. Â LMC Unwilling to Serve. Permanent LMC personnel, whether Battle Casualties or otherwise, unwilling to continue in service will sign an unwillingness",,,,

certificate which shall be forwarded to OIC Records along with other documents for necessary approval. The individual will thereafter be brought before an.,,,,

Invaliding/ Release Medical Board as applicable and discharge carried out as per laid down instruction. Copy of approval by the OIC Records will be submitted.,,,,

to the Medical Board along with the medical documents.,,,,

Date of Effectiveness.,,,,

14. Â These orders will be effective from the date of signing of this letter.,,,,

Conclusion.,,,,

15. This letter supersedes all previous correspondence on the subject.,,,,

16. Â HQ Commands are requested to disseminate this letter down to unit level and instruct legal cells affiliated to the respective Hon'ble AFT to bring to the.,,,,

notice of the Hon'ble AFT the contents of the subject Gazette Notification.""" ,,,,

20. The petitioners in Sub Lakshmi Kant Mishra and Ors Vs Union of India & Ors. in O.A. No. 228 of 2012 had challenged the validity and legality of.,,,,

the Gazette notification dated 29.05.2010 as well the Army HQ letter dated 30.09.2010 on the grounds that the said notification and letter are contrary.,,,,

to Army Rule 30 read with Paras 421 and 424 (C) of Medical Regulations and judgement of the Hon'ble Supreme Court in the case of Rajpal Singh.,,,,

(supra) and the judgement of the Delhi High Court in the case of Sub Puttan Lai (supra), and also contrary to Para 162 of Regulations of the Army",,,,

1987 edition. The matter was referred to a large bench which examined the issue and upheld the validity of the Gazette notification dated 29.05.2010.,,,,

and the Army HQ letter dated 30.09.2010; and concluded the following in its Order dated 24.09.2014:-.,,,,

51. We may sum up as under ;-" ,,,,

(i) Â Hon'ble Supreme Court in Raj pa I Singh case and Hon'ble Delhi High Court for the last case held that Army personnel medically unfit for further service can.,,,,

be released on recommendation of invalidating medical board. Set position is not been altered by the newly inserted clause (ii) (a) at various places on the table,,,, appended to rule 13.,,,,

(ii) Â Clause (ii) (a) as applicable to Army personnel for whom no shelter the appointment is available in the unit or is surplus to the organisation and who is,,,, also in medical category SHAPE 2/3. Placing the Army personnel in medical category SHAPE 2/3 the procedure has not been changed by newly inserted clause.,,,,

The personnel in medical category SHAPE 2/3 is not required to be examined by the invalidating medical board.,,,,

(Hi) Predominant reason for discharge under clause Clause (ii) (a) is not the medical ground as was in the cases of Rajpai Singh and Sub Puttan Lai. The Clause.,,,,

(ii)(a) is a new provision inserted by the impugned amendment with an object to maintain the strength in service within the sanctioned strength as well as to,,,,

accommodate SHAPE 2/3 army personnel in sheltered appointment to the required strength and to discharge the army personnel who cannot be accommodated.,,,,

in the sheltered appointment and who is surplus to the organisation.,,,,

(iv) Â Insertion of the above Clause (ii) (a) by the impugned amendment cannot be held to be ma/a fide nor it has created two classes, or gives discriminatory",,,,

treatment to similarly situated person and is not in violation of Article 14 of the Constitution of India.,,,,

(v) Â The Clause (ii) (a) has been added in the rule with the legislative competence is admitted legal position as has been admitted by the Ld. Counsel for the.,,,,

parties and we found that so has been done as per the legal position.,,,,

(vi) Â Consequently, the validity of the Gazette notification dated 13.05.2010 is upheld and therefore the communication dated 30.09.2010 suffers from no",,,,

illegality."",,,,

21. The employment of permanent LMC 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 the regiment/corps, they will be discharged irrespective of the service put in by them. Thus, in the",,,,

spirit of AO 46/1980 and the latest policy letter dated 30.09.2010, it always remains the endeavour of the Commanding Officer of a Unit and OIC",,,,

Records to ensure that permanent LMC personnel are retained and allowed to complete their minimum pensionable service in the present rank. As in,,,,

this case the applicant was held in a sheltered appointment from the time of his initial discharge till now. However, it was no longer possible for the",,,,

Unit provide a sheltered appointment as the Unit is now scheduled to move to an operational area in extreme high-altitude area; Siachen. Under these,,,,

circumstances, the Unit is entirely justified in seeking management of their LMC personnel from their Records Office. Given the current security",,,,

situation along our Northern borders and the fact that most of the infantry battalions are continuously employed in operational/ counter insurgency,,,,

areas, the",,,,

Records too have no other option but to discharge such permanent LMC personnel, so that the operational efficiency of the battalions are not",,,,

compromised. As seen from the Appendix of the impugned letter, there are other personnel who are similarly placed and are also being discharged.",,,,

22. Â From the documents furnished by the Applicant and the Respondents, it is also seen that due process has been followed in ordering the",,,,

discharge of the applicant. The applicant was last brought before a re-categorisation medical board in September 2020 at the Army RR Hospital. The,,,,

applicant was recommended to continue in the same permanent category of S1H1A2P1E3 with the next re-cat medical board due in September 2022.,,,,

With regard to the percentage of disability, the medical board has stated at Para 20 of the Board proceedings that it will be decided at the time of the",,,,

Release Medical Board. Under the provisions of the amended Army Rule 13, since the medical board held at RR Hospital in September 2020 had",,,,

placed the applicant in permanent category of S1H1A2P1E3 and the fact that there is no sheltered appointment available, as the Unit is scheduled to",,,,

move to an operational area, the Commanding officer is now authorized to seek the discharge of the applicant.",,,,

23. Â Towards this end, the applicant was issued a Show Cause Notice as to why he should not be discharged being a permanent LMC and the fact",,,,

that no sheltered appointment was available. Being a non-battle casualty case who was willing to serve, the CO obtained the sanction of the OIC",,,,

Record as prescribed in Para 7(c) of the policy letter dated 30.09.2010. The sanction has been accorded on 19.12.2020 in which the sanctioning,,,,

authority has mentioned that while the individual is willing is continue to serve, the sheltered appointment given earlier has been withdrawn due to",,,,

op/trg commitment and the fact that suitable alternative sheltered appointment commensurate with the applicant's LMC is not available in the unit.,,,,

Based on this the impugned Discharge Order (Annexure A-I) was issued. The order stipulates that the individual will be brought before a Release,,,,

Medical Board which will decide the final disability factor and it's attributability/ aggravation, based on which the individual will then be entitled to",,,,

disability pension.,,,,

24. Considering all aspects of the case, as the Unit is scheduled to move to an extreme high altitude operational area, the Unit is justified in seeking",,,,

discharge of the applicant who is a permanent LMC and since a suitable sheltered appointment is no longer available. The process of seeking the,,,,

discharge has been done as per the laid down policy and procedure and there is no mala fide in the action. Therefore, we do not find any merit in the",,,,

OA and, accordingly, the same stands dismissed. M.A. No. 911 of 2021 also stands disposed of. No order as to costs.",,,,

Pronounced in open Court on this the day of June, 2021.",,,,