

(2012) 01 DEL CK 0428

In the Delhi High Court

Case No : Writ Petition (C) No. 548 of 2012

Risaldar Ram Karan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Army Rules, 1954 — Rule 13
Constitution of India, 1950 — Article 226

Citation : (2012) 01 DEL CK 0428

Hon'ble Judges : J.R. Midha, J;Anil Kumar, J

Bench : Division Bench

Advocate : K. Ramesh, for the Appellant; Satya Saharawat, Advocate for Mr. Ankur Chhibber, Advocate., for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought the quashing of discharge order dated 17th August, 2005 made operative from 31st January, 2006 and the order dated 21st September, 2011 passed by the Armed Forces Tribunal, Principal Bench in T.A No.229/2009 titled as "Risaldar Ram Karan Singh v. Union of India & Ors." dismissing the petition of the petitioner on the ground of delay since the petitioner was discharged from the service on 31st January 2006 while he has filed the petition in April, 2009.

2. The petitioner has filed the writ petition challenging the order of discharge effective from 31st January, 2006 on the ground that it is contrary to the Rule 13 of the Army Rules, 1954 and Para 424 (C) of the Regulations for the Medical Services of the Armed Forces, 1983. The petitioner has sought reinstatement with all consequential benefits and direction that the petitioner be considered for promotion to the rank of Risaldar Major as on 1st March, 2009 on account of being the senior most Risaldar in the Unit 63 Cavalry.

3. The discharge order had been passed, since the petitioner was diagnosed with Hyperthyroidism and consequently he was downgraded to the Low Medical

Category. Before the Tribunal, the petitioner had asserted that despite being downgraded to the Low Medical Category, the petitioner was promoted as Risaldar on 1st November, 2004.

4. The petitioner relied on the decision of this Court in the matter of *Nb. Sub. Raj Pal Singh Vs. Union of India (UOI) and Others*, which was later affirmed by the Supreme Court in *Union of India (UOI) and Others Vs. Rajpal Singh, ;* and the judgment of W.P(C) No.5946/2007, "*Subedar (SKT) Puttan Lal v. Union of India & Ors*" decided on 20th November, 2008 to contend that it was mandatory that before the discharge of any individual, his discharge should have been recommended by a properly constituted Invaliding Medical Board. The petitioner pleaded that in his case no Invaliding Medical Board (IMB) was held.

5. The respondents had refuted the pleas of the petitioner by contending that though the petitioner was placed in the Low Medical Category at various stages, he was promoted on the recommendations of the Commanding Officer in terms of the Army Order 46/80 in "public interest" as the Commanding Officer was able to provide the petitioner with sheltered appointment which commensurate with his medical category. It was further contended that the retention of permanent Low Medical Category Personnel is subject to the availability of suitable alternative appointments that commensurate with the medical category, and that the same has to be justified in public interest and also that the retention should not exceed the sanctioned strength of regiments/Corps. The claim of the petitioner for disability pension was turned down since the disability was neither attributable to nor aggravated by military service. The ratio of *Puttan Lal (supra)* was stated to be not applicable to the case of the petitioner in terms of the conditions laid down by para 7(iv) of the judgment which reads as under:

(iv) The general directions are applicable only to search of the persons who have been discharged or proposed to be discharge under the policy letter dated 12th April, 2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition.

6. The Tribunal has held that the limitation prescribed under *Puttan Lal (supra)* is applicable to the case of the petitioner as he was discharged from the service on 31st January, 2006 and he had approached the Court only on 24th February, 2009 i.e. after three years from his discharge from the service. Meanwhile he had not made any protest against the denial of the disability pension. Therefore, the Tribunal dismissed the petition.

7. In the present writ petition the learned counsel for the petitioner has reiterated that his discharge from the service was contrary to Rule 13 of the Army Rules, 1954 and Para 424 (c) of the Regulation for the Armed Forces, 1983. The learned counsel also contended that the discharge of the petitioner was invalid as it was not recommended by an Invaliding Medical Board in view of the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Rajpal Singh, .* The learned counsel for the petitioner has further contended that

the merit of the case and the position of law are far more supreme than the technicalities of delay and laches by relying on the judgment of Union of India (UOI) and Others Vs. Tarsem Singh, .

8. The Tribunal in the impugned order had noted the decisions in the case of Naik Subedar Rajpal Singh (supra) and Subedar Puttan Lal (supra) and held that the petition suffers from delay since the cause of action of the petitioner's had arisen on 31st January, 2006 when he was discharged from the service, however the petitioner had approached the Tribunal only on 24th February, 2009. Therefore it was held that such inordinate delay could not be condoned and thus the petition was dismissed. The Tribunal in paragraphs 18, 19, 20 & 21 of the impugned order dated 21st September, 2011 had held as under:

18. Having heard both the parties in detail and examined the documents, we are of the opinion that this case comes under the limitations imposed by Subedar Puttan Lal's Judgement (supra), wherein as per para 7(iv) the directions are applicable only to those persons who have been discharged or proposed to be discharged under the policy letter dated 12.4.2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition. In this case the applicant was discharged from service on 31.1.2006. He for the first time approached the Court only on 24.2.2009 i.e. after three years from his discharge from the service. Puttan Lal's Judgment was pronounced on 20.11.2008. Thus, in this case Puttan Lal's and other Judgments will be of no help to the applicant.

19. In view of this, we have set ourselves to consider the case on its merits. The applicant has put in 24 years, 04 months and 14 days of service before he was discharged from service on medical grounds. We have also noted that the applicant was a permanent Low Medical Category since 04 Apr 2001. Despite that he was given two promotions i.e. Nb Subedar on 02.5.2002 and as Risaldar on 01.11.2004. Admittedly, he was given a sheltered appointment in his regiment. The applicant was, therefore, entitled to have normal pension having put in 24 years, 04 months and 14 days of service.

20. The Commanding Officer in the overall public interest and availability of commensurate sheltered appointment was unable to provide a sheltered appointment to the individual and therefore, the individual had to be discharged. The applicant was thus discharged under the prevalent rules and conditions at that time. The applicant had not made any protest after his discharge from service on 31.1.2006 till he filed a case in April 2009 nor he has made any protest against denial of disability pension.

21. In view of the forgoing discussion, we have found no merit in the present case. The TA is dismissed accordingly. No orders as to costs.

9. The learned counsel for the petitioner has also contended that though there is a delay of three years, however, the same can be condoned. The learned counsel for the petitioner is, however, unable to show any sufficient reason to condone

the delay or to get the relief contrary to the ratio of Puttan Lal (supra). In the said decision this Court had held as under:-

6. We would have disposed of all these writ petitions with the aforesaid directions alone, but we are conscious of the fact that there are a large number of personnel who have been discharged under the policy which has been held to be illegal by the Supreme Court. This has already started resulting in a spate of petitions before this Court. Such policy decision was taken on 12.04.2007 and is in proximity of time. In order to give option to such other persons who may not have approached the Court till now arising as a consequence of the judgment of the Supreme Court and to avoid such unnecessary spate of litigation before this Court, it has become necessary to issue certain further general directions even in respect of the PBORs who have not approached any Court till date. This is not only in the interest of such persons but also in the interest of the respondents and to avoid unnecessary huge litigation.

7. Insofar as the aforesaid persons are concerned, the following directions are issued:

i). Individual options will be sent by the respondents to such persons within two months making an offer to them to rejoin if they so desire as per the aforesaid directions passed in the present writ petitions. The option letter will indicate that such option has to be exercised within a period of 30 days of the receipt of the letter and in case the retiral and pensionary benefits have been paid to them, such persons must rejoin along with the amount liable to be refunded by them to the respondents which shall also be indicated in the option letter.

ii). The respondents will also give a public notice/advertisement apart from issuing the individual notice in a suitable manner preferably in national newspapers

iii). It is made clear that such persons will also be governed by all the directions made in respect of the petitioners herein insofar as applicable.

iv). The general directions are applicable only to such of the persons who have been discharged or proposed to be discharged under the policy letter dated 12.04.2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition.

v). It is pointed out that there may be certain PBORs, which may also include some petitioners, whose normal date of superannuation has already arrived or would arrive before the aforesaid option is issued. In such cases, the persons would be entitled to only the benefit of pay and allowances for the differential period after adjusting any additional benefit arising from the premature discharge. Needless to say that those who decide not to rejoin after their premature discharge would neither be entitled to any pay and allowances nor would be required to repay the amount, if any, paid to them after their premature discharge.

10. This is not disputed by the learned counsel for the petitioner that the petitioner was discharged on 31st January, 2006 prior to the policy dated 12th April, 2007 which was declared illegal by the Court in Puttan Lal (supra). In para 7(iv) of Puttan Lal (supra) it was clearly held that the directions given in Rajpal Singh (supra) by the Supreme Court would be applicable only to such persons who had already been discharged prior to policy dated 12th April, 2007 or those who had been discharged earlier but had already approached the competent Court by filing a petition. This is not disputed that the petitioner had not filed any petition till the decision in the case of Puttan Lal (Supra) was rendered on 20th November, 2008 as the petition was filed by the petitioner on 24th February, 2009.

11. The Tribunal had carefully considered the case of the petitioner and had observed that he had put in a total of 24 years, 4 months and 14 days of service before he was discharged from the service on medical grounds. It was also observed that despite belonging to the Low Medical Category since 4th April, 2001, the petitioner had been given two promotions i.e. to the post of Nb Subedar and Risaldar. Therefore, he wasn't denied shelter appointment in his regiment. Subsequently the petitioner had been discharged as per the prevalent rules and conditions of service and the petitioner did not make any protests regarding his discharge till he filed his case in April, 2009. Therefore, on account of the delay and the condition prescribed under Para 7 (iv) of the Puttan Lal (supra), the claim of the petitioner was denied by the Tribunal. In the circumstances, the decision of the Tribunal for not finding any reason to condone the delay and dismissing the petition, cannot be faulted.

12. The learned counsel for the petitioner has also relied on Union of India & Ors. v. Tarsem Singh, (supra). He contended that boarding out the petitioner without an Invalidation Medical Board is a recurring successive wrong. He further contended that even if it is not a recurring successive wrong, not holding an Invalidation Medical Board before boarding out the petitioner is a single wrongful act which causes a continuing injury to the petitioner.

13. This plea of the petitioner is also not sustainable. Continuing wrong was explained by the Supreme Court in Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others, as under:-

31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.

14. The plea of the petitioner is that boarding him out without an Invalidating Medical Board is causing him continuing injury and so it is a "continuing wrong". However, this allegedly wrongful act was complete when the petitioner was boarded out without an Invalidating Medical Board. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In *Tarsem Singh (supra)* the official was invalidated out from army service, in medical category on 13.11.1983 and he had approached the Court in 1999. A single judge had granted arrears of disability pension for thirty eight months before filing the writ petition which decision was not challenged by the authorities. The official was however, not satisfied and had filed a Letters Patent Appeal where it was held that the official was entitled for disability pension from the date it fell due. The Supreme Court had set aside the decision in appeal and had held that delay of sixteen years would affect the consequential claim for arrears and justified granting of arrears only for three years before the writ petition. Relying on *M.R. Gupta Vs. Union of India and others*, it was held that claim for recovery of the arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable and similarly any other consequential relief claimed such as promotion etc. would also be subject to the defense of laches etc. to disentitle such reliefs. It was held by the Supreme Court in para 5 as under:

"5...Similarly, any other consequential relief claimed by him, such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time-barred....

15. Therefore, it cannot be held that the defense of laches will not be applicable for the claim that the petitioner could not be boarded out without holding an Invalidation Medical Board. The case of *Tarsem Singh (supra)* is apparently distinguishable and the petitioner cannot place reliance on the same to claim his relief.

16. In the circumstances, the decision of the Tribunal not to find any reason to condone the delay and dismissing the petition, cannot be faulted.

17. The learned counsel for the petitioner has not been able to make out any such grounds in the facts and circumstances which will show any illegality, irregularity or perversity in the order of the Tribunal which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and it is, therefore, dismissed.