

(2002) 09 DEL CK 0031
In the Delhi High Court
Case No : CWP. No. 4814 of 2000

Sepoy Bijender Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Army Act, 1950 — Section 23
Army Rules, 1954 — Rule 12, 13(3)

Citation : (2003) 3 SLJ 244

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : H.S. Raghav, for the Appellant; Jyoti Singh, for the Respondent

Judgement

A.K. Sikri, J.—The facts of this case are in narrow compass and mostly undisputed. The petitioner was enrolled in the Army on 3.3.1980 in the Regiment of Grenadiers. While performing his duties on 11.8.1995 and doing rocket launcher fire he suffered bleeding from both ears and he was admitted in Command Hospital at Lucknow. He was diagnosed as a case of blast injury of both ears. His medical examination was conducted and on 21.8.1995 he was placed in low medical category CEE (temporary) for a period of six months. Thereafter, however, his discharge from service on 31.3.1996 was sanctioned and on that date he was discharged from service. By that time he rendered 16 years service in the Army. The case of the petitioner is that as per the policy in the Army, the Release Medical Board proceedings are not provided to the individuals. He was released on the basis of Release Medical Board and discharge certificate of the petitioner was prepared in accordance with provisions of Section 23 of the Army Act read with Rule 12 of the Army Rules.

2. However, on 13.11.99 the petitioner was re-enrolled in defense Service Corps (i.e. DSC) after he was medically examined and was found fit in medical category 'AYE'. At that time his age was 38 years. Retirement age of DSC personnel is 55 years. Therefore, the petitioner was expecting that he would be retired only after

he attains the age of 55 years. To his dismay, however, on 17.5.2000 a show cause notice was served for discharge under Army Rule 13 (3), Item-III (V). In this show cause notice it was, inter alia, stated:

1. "Whereas you were posted with 221 DSE PI att to AFCC Transmitting Station, Alwar Road, Gurgaon. On scrutiny of your service documents, it is intimated by DSC Records, that at the time of discharge from former Army Services you were placed in Low Medical Category CEE (Permt) after which contrary to the instructions contained in Govt. of India, Min. of Def. letter No.65730 / DSC-2 /390-C /D(GS-IV) dated 15th Dec.1985, you have been for enrolled into DSC on 13 Nov.99.

2. A show cause notice is issued herewith, calling upon you to explain as to why suitable administrative action should not be taken against you to discharge you from the service under the provisions of Army Rule 13(3) item III(V)."

3. Army Rule 13 which relates to 'Authorities empowered to authorize discharge' sub-rule (3), item-III(V) is in the following term:

-----	Category	Grounds of		
Competent authority	Manner	discharge to authorize	discharge	discharge
-----			1	2
-----			3	4
-----			(v)	All other classes
Brigade/Sub-	The Brigade or Sub-	of discharge	Area Commander	Area
Commander	before ordering the discharge	shall, if the circum-	stances of the	
case permit	give to the person whose discharge is contemplated	an opportunity		
to show cause	against the contemplated discharge.			

4.The main reason for giving this show cause notice was that he was treated as a case of irregular re-enrolment. The petitioner filed reply to show cause vide his representation dated 25.7.2000 submitting that when he was re-enrolled he was medically examined and found medically fit in category 'AYE' and on the basis of which he was enrolled. He even pointed out that in fact in his discharge book also 'AYE' was mentioned which came to notice at the time of re-enrolment when the discharge book was sent to record (DSC) and on enquiry it was found to be correct. He further stated in the reply that he was prepared for medical examination once again and if he was classified in category CEE he was prepared to be sent to that category with the medical benefits and on the other hand if he was found in category 'AYE' he should be permitted to serve further.

5.However, before this reply could reach and to be considered by the respondents (as reply was not submitted within 20 days as stipulated in the show cause notice dated 17.5.2000) discharge order dated 10.7.2000 was passed on the ground that it was a case of irregular enrolment.

6. The petitioner approached this court thereafter and filed instant petition which came up for hearing on 29.8.2000. The petitioner also prayed for interim stay while issuing show cause notice in this petition. The court, inter alia, passed

order of status quo arson that date recording the statement of counsel for the petitioner to the effect that the petitioner was still discharging duties and had not been discharged till that date pursuant to the impugned order dated 10.7.2000. This interim order was continued from time to time.

7. Learned counsel for the petitioner during arguments submitted that the reason, given in the impugned order dated 10.7.2000 discharging the petitioner on the ground that it was a case of irregular enrolment, was clearly incorrect, illegal and arbitrary. He tried to demonstrate this on the basis of following assertions:

(i) At the time of re-enrollment, he committed no irregularity and did not submit any incorrect information to the authorities.

(ii) At the time of re-enrollment, he was physically examined by the medical authority and he was found fit for enrollment as being in medical category 'AYE'.

(iii) During his service in the Army, on 21 August, 1995 he was placed in low medical category CEE (Temporary) for six months, and his further categorization could only have been done by the Reclassification Medical Board which has never been held. The Release Medical Board held in January 1996 had no jurisdiction to change his medical category from CEE (Temporary) to CEE (Permanent), because the only purpose of Release Medical Board is to endorse the existing medical condition of the individual for purpose of assessing pensionary benefits.

(iv) He was never given the findings of Release Medical Board held in January, 1996, which is not disclosed to the individuals as per the policy in the Army. No adverse action can be taken against any individual in the Army on the basis of findings of medical authorities, without service of show cause notice to him. He was never served with any show cause notice on the basis of allegation that he has been placed in medical category CEE (Permanent), which action otherwise also is without jurisdiction of the Release Medical Board.

(v) A time gap of over four years has elapsed between the date of the petitioner having been placed in low medical category CEE (temporary) 21 August, 1995 and his re-enrollment into DSC on 13 November, 1999. No medical authority had the opportunity to re-assess the medical condition of the petitioner during this period, and on 13 November, 1999 he was found medically fit being in Category AYE.

(vi) A person placed in low medical category CEE (temporary) in the DSC is not required to be discharged from service as per existing rules.

8. Ms. Jyoti Singh learned counsel for the respondent on the other hand submitted that after the petitioner suffered injuries on 11.8.95 while on duty he was placed in Low Medical Category CEE (Temporary), he himself offered for discharge on compassionate ground which was sanctioned. At the time of discharge he was brought before Release Medical Board on 3.1.96 at Base Hospital, Lucknow. He was given Low Medical Category CEE (Permanent). This

was approved on 20.1.1996. On this basis he was discharged on 31.3.1996 in CEE(Permanent) Category. It was further submitted that the petitioner got re-enrolled in DSC on 13.11.1999 through Branch Recruiting Office, Meerut. The re-enrolment was on the basis of the discharge certificate issued by Grenadier Regiment wherein his medical category was shown inadvertently as 'AYE' whereas the actual category was CEE(P) which is evident from Release Medical Board. This occurred due to the mistake of the clerical staff. The petitioner was put in CEE(P) due to blast injury to both ears wherein his Tympanic membranes were scarred. This was found by examination by Medical Board which comprised of graded specialist while at the time of re-enrolment the Primary Medical Examination cannot detect all disabilities as Medical Officer is not a graded specialist. As per the policy dated 15.12.1985 one of the essential conditions for re-enrolment into DSC is that the person should be in Medical Category 'AYE'. Further it is submitted that the irregularity in re-enrolment of the petitioner came to light when his former service data sheet was received in DSC Records from Jabalpur vide letter dated 22.2.2000. Since he did not have the required Medical Category and his re-enrolment was contrary to the policy, the petitioner was issued a show cause notice dated 17.5.2000 under Army Rule 13(3)III(V). It was argued that admittedly, the show cause notice was received by the petitioner on 20.5.2000 and instead of replying within 20 days as stipulated in the notice the petitioner replied only on 25.7.2000. Hence when the reply did not come in the 20 days period, his discharge was approved by the competent authority and before the final discharge order could be passed, the petitioner approached this Court and obtained a status quo order on 29.8.2000. Since the final order is yet to be passed, the present petition is premature.

9. On considering the rival submissions, it is clear that the petitioner was in fact re-enrolled on 13.11.99 after his medical examination. It is not denied that in the medical examination he was given 'AYE' category and only because of that he was enrolled. The respondents have tried to argue that at the time of his discharge he was put in CEE(Permanent) category i.e. permanent disabled due to blast injury to both ears and after the Release Medical Board graded him so which comprised of graded specialist while at the time of re-enrolment the Primary Medical Examination cannot detect all disabilities as Medical Officer is not a graded specialist. This may be so. Whether this contention is correct or not, it is not necessary to decide inasmuch as there are certain peculiar facts emerging in this case because of which the case is to be given peculiar treatment. These are:

(A) The discharge certificate of the petitioner shows that he has been given 'AYE' category (this according to the respondents is a case of mistake and this category is shown inadvertently).

(B) The petitioner was examined at the time of re-enrolment and was given 'AYE' category once again (this according to the respondents was a result of Primary Medical Examination wherein all the disabilities could not have been

detected).

(C) The petitioner was re-enrolled in November,1999 and has been performing his duties for the last three years; albeit as a result of the statuesque order granted by this court. Fact remains that when the discharge order was issued on 10.7.2000 the petitioner was not discharged immediately and till 29.8.2000 when he approached this court he was granted status quo order.

10. In view of the aforesaid and when the petitioner is ready and willing to face the Medical Board once again, it would meet the ends of justice if the petitioner is examined by the Medical Board which may consist of experts as well. Whether the petitioner is to be continued in service or be discharged would depend upon the result of such medical examination. If the Medical Board puts him into the category of CEE(Permanent) he can be discharged from service and in that eventuality he would be entitled to same pensionary benefits which he was drawing when he was discharged earlier and on the other hand if the Medical Board finds him medically fit he should be allowed to continue in service. Such a medical examination be done within a period of two months from the date of receipt of a copy of this order.

11. The writ petition stands disposed of in the aforesaid terms. No orders as to costs.