
(2014) 05 P&H CK 0222
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 988 of 2012 (O&M)

Subedar Manjit Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Citation : (2014) 176 PLR 396

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Bhim Sen Sehgal, Advocate for the Appellant; I.P.S. Doabia, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (for short "the Tribunal") on 06.09.2011 whereby the challenge to the order of discharge of the petitioner remained unsuccessful.

2. The petitioner was enrolled in Sikh Regiment of Indian Army on 05.02.1985. While deputed in CI Operation (O.P. Rhino), the petitioner suffered a knee injury when he slipped from a stone at night. The petitioner was put in Permanent Low Medical Category w.e.f. 20.11.2010. It was on 09.03.2011, the petitioner was ordered to be discharged being in Permanent Low Medical Category. The order of discharge reads as under:-

2. Disch in r/o. u/m. JCOs are hereby approved wef 30 June 2011 (AN) under AR 13(3), item 1(ii) (a) (i). The cause of disch will be "having been found to be in permanent low medical category as noted against their named by a medical board & no sheltered appt is available in the unit, and are being disch before completion of their period of engagement/service limit.

3. They will be brought before release med board imdt. as reqd. vide A03/2001. They will be desp. to Depot Coy, SRC by 05 Jun. 2011 and SOS wef 01 Jul. 2011.

Please ensure that the following actions are taken prior to despatch them to Depot Copy.

(a) Discharge is sanctioned by the competent authority on IAFY-1948a.

(b) Instructions contained in ROI 01/2004 DT 31 Jan. 22004 for completion of discharge document. Are complied with.

(c) All discharge document alongwith release medical board proceedings/document should reach this office by 25 March 2011.

(d) Notify all personal occurrences outstanding in unit Part II orders and copies of relevant extracts thereof be forwarded with discharge document.

(e) Forward certificate regarding non-involvement in discharge. Criminal and vigilance case along with the discharge document.

3. The challenge to the said petition remained unsuccessful for the reason that he has been placed in Permanent Low Medical Category and no shelter apartment being available, therefore, he has been rightly discharged.

4. We have heard learned counsel for the parties and find that the order of discharge suffers from patent illegality. The petitioner even if he was in Permanent Low Medical Category cannot be discharged without submitting him to the Release Medical Board. A perusal of the discharge order reproduced above shows that decision was taken to discharge w.e.f. 30.06.2011 under Army Rule 13(3), item I (ii) (a) (i). He was brought before Release Medical Board on 09.05.2011 wherein the injury was found to be attributable to service but also that the injury not connected with service.

5. We find that the opinion of the Medical Board was obtained after it was decided to discharge the petitioner which is apparent from the communication dated 09.03.2011 when it is stated that discharge of the petitioner is approved w.e.f. 30.06.2011 and also Struck Off Service (SOS) w.e.f. 01.07.2011. In fact, the opinion of the Medical Board is a post decisional report to discharge whereas the Medical Board should have examined the petitioner before the decision to discharge the petitioner has been taken on 09.03.2011.

6. In view of the said fact, the order of discharge taken without opinion of the Release Medical Board cannot be sustained and consequently the same is set aside. The respondents shall treat the petitioner to be in service and grant all the consequential benefits in accordance with law within three months. However, it shall be open to the respondents, to subject the petitioner for medical examination with the purpose to determine his suitability to army service.

7. Disposed of.