

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

**T.A.No.258 of 2009
(arising out of CWP No.9844 of 2009)**

Sepoy Pawan Kumar

Vs

U.O.I & ors.

ORDER

Present: For the applicant: Mr. Naresh Ghai, Advocate

For the respondents: Mr. Sandeep Bansal, CGC

Justice Ghanshyam Prasad

This case has been received on transfer from Hon'ble Punjab and Haryana High Court and it has been treated as application under Section 14 of the Armed Forces Tribunal Act, 2007.

This application has been filed for quashing the discharge order of the petitioner dated 30th September, 2007 (Annexure P-3) and seeking reinstatement in service with pay and allowances w.e.f. 30th September, 2007.

Admitted fact is that the petitioner is personnel of Territorial Army. He was personnel below the officer rank. He was discharged from the service without holding of Invaliding Medical Board. Para 58 (ii) of the Territorial Army Regulations provides that the discharge of other Ranks of Territorial Army on medical grounds under Rule 14(b)(iv) read with TA Rule 15 will be carried out on the recommendation of an

Invalidating Medical Board. This provision is similar to Rule 13(3)(iii) of the Army Rules.

The learned counsel for the petitioner submits that the matter has already been settled by the Hon'ble Supreme Court in the case **Union of India and others Vs. Rajpal Singh, reported in 2009 (2) RSJ 233**, holding that the personnel below officer ranks cannot be discharged on the medical grounds without holding Invalidating Medical Board. The case of the petitioner is fully covered under the aforesaid decision of the Apex Court and, therefore, he is entitled to be reinstated in service after quashing the impugned order of discharge. A large number of decisions of Punjab and Haryana High Court based on the above referred decision of the Supreme Court have also been filed by the learned counsel for the petitioner in support of his contention.

We have gone through the aforesaid decision of Hon'ble Supreme Court as well as the decisions of the Punjab and Haryana High Court passed in CWP 17911 of 2007 (Hav Ram Chandra Udevania vs. Union of India & others) and CWP No.9256 of 2008 (L NK Teka Singh Vs. UOI and others). CWP No.9256 of 2008 is in respect of Territorial Army personnel, who has also been reinstated on the same ground after quashing the order of discharge.

Thus, we find no reason to differ from the opinion expressed by the Apex Court as well as the Punjab and Haryana High Court. The case of the petitioner is clearly covered under the aforesaid decisions.

Accordingly, we allow this application. It is held that the discharge of the petitioner was not in accordance with the prescribed procedure laid down in TA Regulations and hence the impugned order of discharge is hereby set aside and we direct the respondents to reinstate the petitioner in service with all consequential benefits from the date of his discharge i.e.30-09-2007. However, the respondents are not precluded from holding the Invalidating Medical Board after joining of the petitioner in accordance with law and as per TA.Regulations.

(Justice Ghanshyam Prasad)

(Lt Gen N.S. Brar(Retd)

11-02-2010
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