

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.37 of 2013

Monday, the 07<sup>th</sup> day of October, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

K. Radhakrishnan,  
No.55/87, 3<sup>rd</sup> Main Road,  
Mamsapuram-Post,  
Srivilliputtur-Taluk,  
Virudhunagar District.

... Applicant

By Legal Practitioner:  
M/s. A.S. Mujibur Rahman,  
K. Sivakumar & S.I. Eusuff

Vs.

1. Union of India,  
Represented by its Secretary to Government,  
Ministry of Defence,  
Department of Pension A&AC,  
New Delhi 110011.
2. The Additional Director General,  
Personnel Service,  
Adjutant General's Branch,  
Integrated Head Quarters of Ministry of Defence (Army),  
Delhi Head Quarters Post Office,  
New Delhi-110 011.

3. The Senior Major/Record Officer,  
Ministry of defence,  
EME Records,  
Secunderabad-500 021.

... Respondents

By Mr. B. Shanthakumar, SPC

### **ORDER**

[Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiah,  
Member(Judicial)]

1. This application is filed by the applicant praying to set aside the impugned order dated 17.12.2004 passed by the 3<sup>rd</sup> respondent, on the basis of the Order of Hon'ble High Court, Delhi, made in batch cases, which includes WP(C) No.5946/2007 dated 20.11.2008, coupled with the notification issued by the 1<sup>st</sup> respondent dated December, 2008, and thereby to direct the respondents to take the petitioner into the strength of Indian Army with all consequential benefits or in the alternative direct the respondents to pay the Military Disability Pension for the services rendered by the applicant and for other reliefs.

2. The factual matrix of the applicant's case as stated in the application would be as follows :-

The applicant was enrolled in the Army (EME) Corps on 22.11.2001 and was discharged from army on 31.3.2005 due to the invaliding disability occurred while on service. The applicant was granted one month leave from 27.1.2003 and during the said leave, he met with an accident on 3.2.2003 at his home town on 3.2.2003 and he was immediately admitted in the nearest Military Hospital at Chennai on 5.2.2003. Thereafter, he was shifted to Airport Command Hospital, Bangalore, on 8.3.2003 and his Fracture Shaft Femur (Right) and head injury were treated. The applicant took treatment in the said Hospital at Bangalore for about four months and surgery was done and he was thereafter allowed to serve in the unit in the field area of Eastern Sector. The applicant was placed under Low Medical Category due to the said disability and the willingness or unwillingness of the applicant was sought for further service and the applicant gave willingness certificate for further service. The applicant was, however, not allowed and was sent on compulsory discharge by reasoning his disability without any pensionary benefit. The applicant was informed that the invalidating disability sustained by him was not attributable and not related to service and he was denied with the disability pension. The applicant opted to dedicate his service to the army, but the respondents did not consider the same. The applicant is now facing financial hardship to lead his individual life. The 2<sup>nd</sup> respondent rejected the appeal for the grant of disability pension. The Hon'ble High Court of New Delhi, disposed a batch of Writ Petitions filed by the army

personnel, on 20.11.2008 directing the respondents to reinstate the applicants of those Writ Petitions since they were boarded out of service without constituting the Invaliding Medical Board. Accordingly the applicants in those petitions were reinstated and the 1<sup>st</sup> respondent had issued a notification during December, 2008, with a direction to get those individuals into service and further directed that the personnel who were boarded out from service similar to the case of the petitioners in those petitions can also be reinstated if they have filed case before the Court or appropriate forums. The applicant was denied the disability pension and the request of the applicant for reinstatement as per Delhi High Court Judgement was also not considered. Therefore, the applicant prays for setting aside the impugned order passed by the 3<sup>rd</sup> respondent dated 17.12.2004, and to reinstate the applicant into service as per the Judgement passed in the batch cases by the Delhi High Court dated 20.11.2008, and to pay all the benefits with back wages and thus the application be allowed.

3. The objections raised by the respondents in their Reply Statement would be as follows :-

The applicant was enrolled in the army on 22.11.2001 and was invalided out from service with effect from 31.3.2005 (AN) on being placed in low medical category P (Permanent) since he was not upto the prescribed military physical standard as per sub-clause 2A of Rule-13(3) III (v) of Army

Rules, 1954, due to his disabilities, namely "Fracture Shaft Femur (RT) Operated" and head injury. The said disabilities were considered by the Release Medical Board as neither attributable to nor aggravated by military service and not connected with military service since the accident took place at his home town during Annual Leave. The disabilities of the applicant were also assessed as (i) 20% for life, and (ii) less than 20% for life respectively, but the composite disability was assessed at 30% for life. Therefore, the applicant was given a sum of Rs.1,12,500/- under the caption 'Regular Disability benefits under AGIF' and the Invalid Gratuity for a sum of Rs.18,735/-. The qualifying service of the applicant was only 03 years 04 months and 09 days and, therefore, the applicant is not entitled for service pension. The applicant did not fulfil the conditions laid down in Para-173 of Pension Regulations for the Army, 1961 (Part-I) and, therefore, the claim of the applicant for payment of disability pension was rejected by PCDA (P), Allahabad. The said fact was communicated to the applicant. The first appeal preferred against the said order was dismissed, which was also informed to the applicant. The second appeal preferred on 18.1.2007 was also dismissed by the Defence Minister's Appellate Committee on Pensions on 2.7.2008. The said rejection of disability pension claim of the applicant is just and legal and according to law. The earlier application filed by the applicant in O.A.No.87 of 2012 for before this Tribunal for reinstatement into service was dismissed as withdrawn with liberty given to the petitioner to file

a fresh O.A. on the same cause of action. The applicant was issued with a Show Cause Notice on 11.6.2004 and a reply was submitted by the applicant on 12.6.2004, in which he was willing to continue in service. As the retention of the applicant in the military service was not recommended by CO/OC of his unit, the applicant was rightly invalided out from service with effect from 31.3.2005 (AN). The Judgement of Hon'ble Apex Court in **Union of India & Others Vs. Rajpal Singh** dated 7.11.2008, would direct the applicant concerned be reinstated in service. Similarly the batch Judgement of Delhi High Court dated 20.11.2008 would also direct the applicants of those applications shall be reinstated into service. The said Judgement would not apply to the applicant's case. Therefore, the respondents would request for the dismissal of the application after rejecting both the reliefs sought for by the applicant.

4. On the above pleadings, the following points have been found emerged for disposal in this application :-

- 1) Whether the Order of discharge of the applicant with effect from 31.3.2005 is liable to be set aside and the applicant be reinstated in service as per the Circular of the respondents in B/10201/06-08/Vol-II/MP-3 (PBOR) dated December, 2008, and the Delhi High Court Order in batch of Writ Petitions WP(C) No.5946 of 2007 etc. dated 20.11.2008 ?

- 2) If so, whether the applicant is entitled for consequential benefits with back wages and other allowances payable to him ?
- 3) Whether the respondents are liable to pay military disability pension for the services rendered by the applicant as prayed for in the alternative relief ?
- 4) To what relief the applicant is entitled for ?

5. Heard Mr. A.S. Mujibur Rahman, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Mr. M. Dennison, representative of Legal Cell (Army), appearing for the respondents.

6. The Learned Counsel Mr. A.S. Mujibur Rahman, appearing for the applicant would submit in his argument that the facts of applicant's enrolment in the army and the discharge from service were not disputed. The sustenance of disability by the applicant in an accident during the annual leave at his home town and the treatment taken for the fracture of shaft femur right and the head injury sustained in the said accident, in the Military Hospital, Chennai, and Airport Command Hospital, Bangalore, are also not disputed. He would further submit that the disability arose from the said fracture and head injury sustained in an accident was considered to

keep the applicant in Low Medical Category by the various Categorisation and Re-Categorisation Medical Boards and finally the Release Medical Board was constituted to give opinion for the release of the applicant. He would further submit that the Release Medical Board constituted had also recommended for the release of the applicant from service and the applicant ought to have been boarded out of service by convening an Invaliding Medical Board, which was not done by the respondents. Per contra, the respondents opted to issue Show Cause Notice against the applicant to discharge him from service on being placed under Low Medical Category to which the applicant replied that he was willing to serve the army, but the said willingness given was not accepted by the respondents and, therefore, he was discharged from service. He would further submit that the applicant having no other way relying upon the said discharge and claimed for disability pension, but the said disability pension was also rejected by holding that the disability sustained by the applicant was not attributable to or aggravated by military service and it was confirmed both in the first appeal and second appeal preferred by the applicant as per law. He would further submit that the Hon'ble Delhi High Court has pronounced an Order on 20.11.2008 in a batch of Writ Petitions filed before it, in which the principle laid down in **Rajpal Singh's case** by the Hon'ble Apex Court of India was followed and all the applicants of those batch Writ Petitions were directed to be reinstated into service since the respondents did not follow



the rules by constituting Invaliding Medical Board, to board out the personnel who were placed under Low Medical Category. Consequent upon the said Judgement of Hon'ble Delhi High Court, the respondents themselves have issued a Circular No.B/10201/06-08/Vol-II/MP-3 (PBOR) dated December, 2008, to reinstate the applicants in the batch Writ Petitions ordered by Hon'ble Delhi High Court and those personnel discharged prior to the said Order also be reinstated after observation of certain formalities. He would further submit that the subsequently discharged persons to whom the decision of Delhi High Court in the said batch Writ Petitions is applicable, shall also be reinstated provided they file a Court case and it is pending. He would also submit that the said direction issued by the respondents in its aforesaid Circular issued in pursuance of Delhi High Court Judgement would squarely be applicable to the applicant and the said statutory right cannot be taken away merely because the applicant had pursued the disability pension for his early discharge due to disability. He would further submit in his argument that the applicant having lived with the said disability is now hale and healthy and he can perform his trade or if any alternative trade be given after reinstatement into service. He would further submit that the applicant should have been given an opportunity to serve the nation as his case is squarely attracted by Delhi High Court Judgement in batch cases coupled with the Circular issued by the respondents dated December, 2008. He

would also submit that in view of pressing the reinstatement prayer, the applicant is not opting for disability pension.

7. The Learned Senior Panel Counsel would submit in his argument that the disability pension as sought for by the applicant cannot be granted since the disability sustained by the applicant was not in conformity with the provisions of Regulation-173 of Pension Regulations for the Army, 1961 (Part-I). Moreover, the said disability sustained by the applicant during holidays in an accident happened on his own negligence would not be covered by attributability or aggravability due to military service. He would further submit that the applicant was rightly discharged from service since the Release Medical Board had opined that the applicant was not fit to perform his trade. He would further submit that the applicant was discharged from service under Rule-13(3) III (v) of Army Rules, 1954, after issuance of Show Cause Notice and considering his reply to continue in service in the army. He would also submit that the applicant was being placed in Low Medical Category as he was not upto the prescribed military physical standard as per Army Order 46/80 and Army HQ letter No.B/10122/LMC/MP-3 (PBOR) dated 15.3.2000 and, therefore, he is not eligible for reinstatement into the service. Since the applicant was not fit to be reinstated, the applicant cannot resort the help of Delhi High Court's

Judgement and the Circular issued by the respondents. Therefore, he would request us to dismiss the application.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the records.

9. **Points 1 & 2:** The indisputable facts on the basis of the pleadings and records would be that the applicant was originally enrolled in Army on 22.11.2001 and while he was granted one month leave from 27.1.2003, he sustained an accident on 3.2.2003 and suffered a fracture on his shaft femur (right) and head injury in an accident and he was treated at Military Hospital, Chennai. Thereafter, he was shifted to Airport Command Hospital, Bangalore. He was also subjected to Categorisation and Re-Categorisation Boards and his disability was slowly cured and reduced and finally the Re-Categorisation Board held on 28.6.2004 placed him in the medical category S1H1A2(Perm)P1E1. So, on the basis of the said Re-Categorisation Board, a Release Medical Board was constituted on 31.12.2004 and the said Release Medical Board had opined that the applicant was fit to be released in LMC-A2(Perm) and P2(Perm). It is also the case of the respondents that the applicant was issued with a Show Cause Notice on the basis of the report of Release Medical Board that he was placed under Low Medical Category and, therefore, to discharge him from service. However, in the reply to such

Show Cause Notice, the applicant opted for continuance of his service, but it was not considered and he was discharged from service with effect from 31.3.2005. The said order of discharge from service is being challenged by the applicant in this application. In the alternative, the applicant claimed for disability pension.

10. The Learned Counsel for the applicant, however, did not press for the claim of disability pension as he has pressed the main relief of reinstatement into service on the basis of the Delhi High Court Judgement passed in batch of Writ Petitions dated 20.11.2008, supported by the Circular of the respondents dated December, 2008. Now, we need not go into the question of the rejection of disability pension by the PCDA (P), Allahabad and the rejection of the appeals preferred by the applicant before the competent forums, as it was not pressed by the applicant's Counsel.

11. Now the only point before this Tribunal is whether the order of discharge passed by the respondents against the applicant on 31.3.2005, discharging him from service is violative of the principles laid down in the Judgement of the Delhi High Court passed in batch of Writ Petitions dated 20.11.2008. When we perused the Judgement cited by the Learned Counsel for the applicant for the purpose of disposal of his claim, we find the relevant

passage in WP(C) No.5946/2007 and batch cases dated 20.11.2008, runs as follows :-

*"2. The Supreme Court has delivered a judgment in Civil Appeal No.6587/2008 in Union of India & Ors v. Rajpal Singh on 07.11.2008. The question which has been decided has been succinctly set out in para 2 of the Order itself as to whether the holding of an IMB is a condition precedent for discharge of a Junior Commissioner Officer ('JCO') on account of low medical category.*

*3. We may add here that this principle would actually apply not only to the JCOs alone, but also to all the Personnel Below Officers Rank ('PBORs' for short). The conclusion of the Supreme Court is that the High Court was correct in holding that the PBORs could not be discharged from service without holding an IMB."*

12. The aforesaid finding of the Delhi High Court was rendered relying upon the Judgement of **Rajpal Singh's case** reported in **(2009) 1 SCC 216**, and thus all the applicants in the batch cases were ordered to be reinstated. Based upon the Judgement of Delhi High Court as aforesaid, the 1<sup>st</sup> respondent had also issued a Circular to be followed by all the

administrative authorities in respect of the discharged personnel who were permanently placed in low medical category below officer rank of Indian army. The said Order was issued on the basis of the above referred Judgement of Delhi High Court dated 20.11.2008. In this case, the applicant herein was discharged from service on 31.3.2005, which is prior in point of time to the said Circular. For those PBOR discharged prior to the issuance of policy letter dated 12.4.2007 and 27.6.2007, who approached the competent court by filing a petition and paragraph-9 was framed and made applicable. The contents of relevant paras-9 and 10 would be as follows :-

**"PBOR Discharged Earlier Prior to Issuance of Policy dated 12 Apr 07 and 27 Jun 07 and Who Have Approached the Competent Court by Filing a Petition**

9. *In respect of such personnel the Record Office should approach the Legal Cell concerned to have the case listed at the earliest and decided in terms of Delhi High Court order dt 20 Nov 08.*

10. *The cases of personnel stated at Para 7 to 9 would be governed by the respective court order and if decided in terms of Delhi High Court Order dt 20 Nov 08, than the instructions of this letter shall apply mutatis mutandis to those*

*cases. In case of any doubt the matter should be referred to this Directorate through the Line Directorate."*

13. The tenor of the provisions made therein shows the Record Office should approach the Legal Cell concerned to have the case listed at the earliest and decide in terms of Delhi High Court Order dated 20.11.2008 and the case of those personnel would be governed by respective Court Order and if decided in terms of Delhi High Court Order dated 20.11.2008, the instructions of this letter shall apply '*mutatis mutandis*' to their cases. The said instruction to follow the directions issued in the Judgement of Delhi High Court dated 20.11.2008 was made mandatory to the respondents by the 1<sup>st</sup> respondent's Circular dated December, 2008. However, it was contended by the respondents that the Delhi High Court Judgement was not applicable to the present case since the applicant was pursuing the disability pension.

14. The claim of the applicant for reinstatement as per the directions issued in Delhi High Court's Judgement dated 20.11.2008 and the Circular of 1<sup>st</sup> respondent dated December, 2008 is a right accrued to the applicant in pursuance of a legal order. A right accrued under a legal provision or a lawful order cannot be prevented and the applicant is not estopped from claiming such a right flowing from a lawful order. Furthermore, the 1<sup>st</sup> respondent itself had conferred benefits on the PBORs in pursuance of the

Delhi High Court Judgement dated 20.11.2008, who were discharged even prior to the issuance of policy letter. As far as this case is concerned, even though the Release Medical Board has certified that the applicant be discharged since he was placed under Low Medical Category, there was no Invaliding Medical Board convened for invaliding the applicant for boarding him out from service. A Show Cause notice which was not provided under Rule-13 (3) III (v) of Army Rules, 1954, as envisaged when the said personnel was placed under Low Medical Category. The obligation of the respondents was to hold Invaliding Medical Board for such personnel who were placed under Low Medical Category and to pass an order of discharge under Rule-13(3) III (iii) of Army Rules, 1954. Therefore, the discharge of the applicant under Rule-13 (3) III (v) of Army Rules, 1954, by issuing Show Cause Notice would not be in accordance with law as laid down in R.P. Singh's case by Hon'ble Apex Court. Therefore, the cases disposed by Hon'ble Delhi High Court in the batch Writ Petitions dated 20.11.2008 are squarely applicable to the present case. Since the applicant has been attracted under paras-9 and 10 of the Circular of the 1<sup>st</sup> respondent dated December, 2008, this applicant is also under the same footing like that of the applicants in batch Writ Petitions disposed by Delhi High Court on 20.11.2008. Therefore, the applicant is also entitled to the same reliefs as granted by the Delhi High Court in the batch of Writ Petitions on 20.11.2008. Accordingly, both the points are decided in favour of the applicant.



15. **Point No.3:** In the earlier points we have come to a conclusion that the applicant is entitled to a relief similar to that of the applicants in batch of Writ Petitions before the Delhi High Court and the Order of Delhi High Court dated 20.11.2008 is benefitting to the applicant. When the applicant is found entitled for the benefit of reinstatement, there would not be any grant of pension to the applicant, much less, a disability pension. The Learned Counsel for the applicant had also not pressed the claim for disability pension which was prayed alternatively by the applicant. Therefore, the claim of disability pension as sought for by the applicant in the alternative relief paragraph is liable to be rejected. Accordingly this point is decided.

16. **Point No.4:** We have already reached a conclusion that the applicant is entitled to the relief similar to the relief of the applicants in the Writ Petition disposed by the Hon'ble Delhi High Court in WP(C) Nos.5946/2007 and other connected cases dated 20.11.2008. We have directed the applicant to be present in Tribunal so as to verify his fitness to be reinstated in service, in case, he is entitled to. He was also present. We found him that he is, well built, hale and healthy and is willing to join service if he succeeds in the application and to do the trade what he did at the time of his discharge. As per records, the applicant was serving as a 'Safaiwala' in the army. We feel that the Low Medical Category on the basis of

S1H1A2(Perm) P1E1, would not be a hindrance to do the said trade. The petitioner who was discharged on 31.3.2005 is, therefore, entitled to be reinstated with all consequential benefits including continuity of service, pay and allowances and seniority as per rules. The applicant would report to his respective regimental centre from where he was discharged, within a period of 30 days from today for joining. The pay and allowance and other such benefits to the applicant shall be remitted within a period of three months from today provided it would be applicable to the applicant only if he joins within the aforesaid time. Since there was no pension granted to the applicant, there is no question of any remittance of such payment by the applicant. However, if the applicant is paid with any money at the time of his discharge, as stated in para-2 of the Counter Affidavit, the said payment shall be adjusted by the respondents in the pay and allowances payable to the applicant as directed in the earlier paragraph. With the aforesaid observations, the applicant is directed to be reinstated in service and this point is accordingly decided in favour of the applicant.

17. In fine, the application filed by the applicant for the main relief is ordered. The impugned order dated 17.12.2004 passed by the 3<sup>rd</sup> respondent in lieu of AFMSF-18 (ver 2002) is hereby set aside and the applicant is directed to be reinstated in service on his appearing before the respective regimental centre from where he was discharged, within a period

of 30 days from today for joining and the respondents are directed to take the applicant into the strength of Indian army with all consequential benefits as indicated above. No order as to costs.

Sd/-  
LT GEN ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Sd/-  
JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

**7.10.2013**  
(True Copy)

**Member (J)** – Index : Yes / No  
**Member (A)** – Index : Yes / No

Internet : Yes / No  
Internet : Yes / No

NCS

To,

1. The Secretary to Government,  
Ministry of Defence,  
Department of Pension A&AC,  
New Delhi 110 011.
2. The Additional Director General,  
Personnel Service,  
Adjutant General's Branch,  
Integrated Head Quarters of Ministry of Defence (Army),  
Delhi Head Quarters Post Office,  
New Delhi-110 011.
3. The Senior Major/Record Officer,  
Ministry of defence,  
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Secunderabad-500 021.
4. M/s. A.S. Mujibur Rahman,  
K. Sivakumar & S.I. Eusuff  
Counsel for applicant.
5. Mr. B. Shanthakumar, SPC  
Counsel for respondents.
6. OIC, Legal Cell (Army),  
ATNK& K Area HQ,  
Chennai-9.
7. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN ANAND MOHAN VERMA  
MEMBER (ADMINISTRATIVE)**

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