

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

OA 02/2023

No. 15339379W Sep Naveen Chandra Singh Jeena (Retd)

S/o Shri Veer Singh Jeena,

C/o 97 DSC Platoon,

Attached to Ordinance Factory Khamariya,

Jabalpur (M.P)

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary,
Ministry of Defence,
Government of India, New Delhi.
- 2. COAS,**
IHQ of MoD (Army),
DHQ Post Office,
New Delhi.
- 3. OIC,**
DSC Records,
C/o 56 APO
- 4. OIC**
97 DSC Platoon,
Attached to Ordinance Factory Khamariya,
Jabalpur (MP)
- 5. Commandant,**
Military Hospital,
Jabalpur

.....Respondents

For Applicant : Mr HC Singh, Mr Pradeep Dwivedi
& Mr Aditya Veer Singh, Advocates

For Respondents : Mr Vikram Singh, CGSC

ORDER

1. The applicant after his first spell of service in the Army of 17 years and 24 days, had been discharged on 31.01.2018 in the rank of Sepoy and had been granted Service Pension. The individual had re-enrolled for a second spell of service in DSC, on 08.01.2019. The applicant had been admitted in MH, Jabalpur on 28.05.2022 for alcohol intoxication while on duty and for absenteeism while being posted with 97 DSC Platoon attached to Ordnance Factory, Khamariya, Jabalpur. As per the **AFMSF 10** dated 28.05.2022 (Report on Case Requiring Psychiatric Examination/Follow up) initiated by the OC of unit, the individual was **unpunctual, indisciplined, heavy drinker with alcohol related misbehaviour**. The individual was medically downgraded to medical category S3 (T-24) with effect from 04.07.2022 on account of **ALCOHOL DEPENDENCE SYNDROME (ADS)**. The individual was discharged from MH on 05.07.2022 and the date of next medical review was on 19.12.2022. A perusal of the case history as recorded in the initial medical downgradation board reveals that the individual was consuming alcohol in large quantities while in the first spell with the Army and by the year 2015, had started consuming 6-8 pegs of Rum daily.

2. The applicant had been issued discharge order with effect from 31.03.2023, vide DSC Records letter No CA-1/1612/LMC/DO/Ser-154/2022 dated 03.10.2022, under provisions of AR 13 (3) Item III (iii) (a) (i) for being placed in Low Medical Category. Based on the same, the Release Medical Board was done in MH Jabalpur, wherein he was placed in Low Medical Category S2 (P) for his psychiatric disability of ADS, vide RMB proceedings dated 09.12.2022. Perusal of the AFMSF 10 initiated by the Unit OC dated 06.12.2022 before the RMB, reveals that despite medically ordered

abstinence from alcohol, the individual was consuming alcohol with tendency to consume excessive quantity, when not checked.

3. Feeling aggrieved by the issue of discharge order dated 03.10.2022, despite the fact that his S3 (T-24) low medical categorisation review was due only on 19.12.2022 and as per existing rules, he could serve upto 57 years of age, the OA has been preferred for quashing the discharge order dated 03.10.2022 as well as the Release Medical Board Proceedings dated 09.12.2022.

4. Having heard both the parties and perused the documents placed on record, we find that the following key and critical issues/questions remain to be answered:-

(a) Stay on the operation of the discharge order dated 03.10.2022 and directions to the respondents to permit the individual to continue in employment during pendency of the OA, as an interim measure.

(b) The legality of issuing discharge order dated 03.10.2022 when the individual had only been placed for the first time in S 3 (T-24) for ADS with effect from 04.07.2022 as well as the manner of discharge.

(c) Entitlement to serve upto 57 years.

5. Since the individual has already retired on 31.03.2023, the issue of interim order is not being considered. With regard to the legal tenability of the discharge order dated 03.10.2022, we find that:-

(a) S 2 (T-24) medical category on account of ADS is an unacceptable medical category for further retention in service in DSC as per policy laid down by IHQ of MoD (Army), AG branch letter No B/10185/DSC/MP-3 dated 03.05.2018 wherein Para 2 (b) states *“Services of all pers declared ADS (S-Cat) after obsn of two months*

will be terminated while serving in DSC during contract or extension period". From the above, it is clear that any DSC personnel downgraded on account of ADS in 'S' Category, irrespective of whether Temporary or Permanent will come under the ambit for termination of service.

(b) The same gets reiterated in Para 1 (b) of IHQ of MoD, DDG DSC letter No A/00585/LMC/Policy/DSC-1/57 dated 20.11.2018.

6. The legality of discharge on becoming LMC in DSC either on contract or during extension period has been upheld in the case of Ex Sep Raghawandra Kumar Singh Vs UoI (OA No. 409/2020) decided on 10.08.2021 and in the case of Ex Sep Badam Singh Vs UoI (OA 110/2020) decided on 02.09.2021 by AFT, Lucknow. We also tend to agree with the rationale as stated by the Respondents with regard to the discharge of low medical category personnel i.e, DSC entrusted with task of guarding vital and sensitive installations and authorisation of man power being based on the number of posts to be guarded, the requirement is of medically fit personnel. With the man power authorized and posted, if any personnel gets medically downgraded and found unfit for duty, given sheltered appointment, leads to extra burden on other fit personnel which causes stress and strain on them affecting operational efficiency. In the absence of provisions for sheltered appointment, the discharge has been done rightfully under statutory provisions of AR 13 (3) Item III (iii) (a) (i).

7. With regard to the issue of serving upto age of 57 years, the initial terms of engagement on re-enrolment in DSC as per Record Office Instructions (ROI) 06/2018 is 10 years for Other Ranks. Subsequent extension granted to only those personnel who are found in medical category SHAPE-1 on screening. Hence it cannot be assumed that anybody re-enrols in DSC is entitled to serve upto 57 years of age.

8. Before discharge, due process of law had been observed by issuing Show Cause Notice, consideration of the reply followed by reasoned speaking order had been issued to the applicant.
9. In view of the above, we do not see any ground for interference. Hence, the OA is dismissed.
10. No order as to costs.

Pronounced in Open Court on 18th July 2023

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN GOPAL R)
MEMBER (A)

A/L