

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , REGIONAL BENCH, KOLKATA

O. A NO. 2/2016

ON THIS 4TH DAY OF APRIL, 2016

**CORAM : HON'BLE JUSTICE N.K. AGARWAL , MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(ADMINISTRATIVE)**

Subodh Kumar Singh, Son of Late Kamlesh Prasad Singh,
Permanently residing at No.1, Silthakur Bari Road,
Kolkata -700 038, P.S. New Alipore, Post Saharanpur Unit
No. 152AAD Regd. C/O 56 APO at present posted at Unit
AAD Depot (BTY), AAD Centre and Records, C/o 99 APO

.....Applicant

-VS-

1. Union of India, Service through the Secretary,
Department of Defence, Govt of India, New Delhi,
Sena Bhawan, New Delhi – 110 011
2. The Chief of the Army Staff, IHQ of MOD (Army) DHQ,
New Delhi – 110 011
3. The Commandant & OIC Record, AAD Centre of Record,
C/o 99 APO, PIN 908803
4. The Commanding Officer, 152 AD Regt, C/o 56 APO
PIN 926152
5. The Commanding Officer AAD Depot BTY, C/o 99 APO,
PIN 908803

.... Respondents.

For the Applicant : Mr. Ashok Kumar Pandey, Advocate

For the respondents : Mr. S.K. Bhattacharyya, Advocate

ORDER**PER LT GEN GAUTAM MOORTHY , MEMBER (ADMINISTRATIVE)**

This is an application filed by Subodh Kumar Singh, No.15772736 F Rank Havildar (OFC) of Army Air Defence Corps against the order dated 8 September, 2015, which is a call up order for discharge from service w.e.f. 29 February 2016 due to Low Medical Category (S2 permanent) with effect from 19 November, 2014. The brief facts of the case are as under :

2. The applicant was enrolled in the Indian Army, Army Air Defence Corps on 23 March, 2000 and was performing his duties satisfactorily. While posted at Bhuj (Gujarat State) in December 2012 he suffered from chest pain. He was treated at Military Hospital, Bhuj. Thereafter he was transferred to Mumbai, INHS Aswini and after extensive tests nothing so serious was found with him. On 15 December, 2012 he was diagnosed with SOMATOFORM AUTONOMIC DYSFUNCTION (ICD F 45.3) (Heart and Cardiovascular system) and placed in Low Medical Category S3 (T-24) with restrictions in the performance of his duties which were to be performed under supervision. This disease as per Wikipedia is known as 'Soldier's Heart' and is a syndrome that symptoms described by the patient are similar to those of heart disease, though a physical examination does not reveal any physiological abnormalities. In modern times it is considered as manifestation of an anxiety disorder, and treatment is primarily behavioural, involving modifications to lifestyle and exercise. He was therefore placed in a sheltered appointment from January 2013 to November, 2014 and on re-categorisation, he was placed in Low Medical Category S2 (Permanent).

3. The Regiment moved from Bhuj to Active Counter Terrorism Area in Srinagar in July 2015. The respondents have stated that given the current

internal security there, the employment of the applicant is not feasible in the unit as all personnel are required to be of certain standard of mental robustness to operate in this area. Besides, he could not be employed on any duty with arms and ammunition and had to be constantly accompanied by a buddy. Hence, the respondents stated that as he was unfit for any duty with or without arms and ammunition, his sheltered appointment was withdrawn in accordance with Army Orders and Instructions on the subject in organisational as well as individual interest. His discharge as a Low Medical Category was accordingly approved and he was sent to Army Air Defence Centre (Depot Battery). The respondents have further stated that he was permitted to serve upto 15 years to enable him to earn his pension and now it is not feasible for the unit to employ him given internal security situation that exists there.

4. The applicant contested that and while the hearing was in progress on 29 March, 2016, he filed a supplementary affidavit for bringing on record the letter dated 22 February 2016 issued by the Army Air Defence Records, the contents of which are as under :

“ Tele No.5472

Sena Vayu Raksha Abhilekh
Army Air Defence Records
PIN 908803
C/o 56 APO

469.....

22 Feb 16

DISCH OF PERS ON MED GRNDS WHOSE CALL UP ORDER
ISSUED BASED ON WITHDRAWAL OF SHELTERED APPT

1. Pl ref this est letter No.548/Doc/Policy/170/ER Coord dated 17 Dec 15.
2. It is intimated that fresh policy on the subject is being framed by IHQ of MoD (Army) Call up order for disch from service issued on med grnds based on withdrawal of sheltered appt in r/o JCOs/OR are put on hold till issued fresh policy on the subject.
3. You are requested to keep in abeyance the cases of all JCOs/OR whose call up order has been issued on MEDICAL grnds due to cessation of sheltered apptt.

You are also requested to ensure that such pers are not desp to ArmyAD Centre Depot Bty for disch drill till further orders.

4. Pl ack receipt by AWAN/Tele log.

Sd/- S.K Batish
Lt Col
CRC
For OIC Records”

5. The respondents had nothing further to add on being handed over this letter by the applicant. In view of above directions passed by the Army Authorities vide letter (supra) nothing remains at this stage to be decided in this case. Therefore, without going into legality or otherwise of the discharge order impugned, we direct the respondent authorities to keep in abeyance the applicant’s Discharge Order issued in accordance with letter dated 22-2-2016 by the Army Air Defence Records.

6. With the above direction the O.A. stands disposed of. No order as to costs.

7. A plain copy of the order be given to both the parties observing all the usual formalities.

8. Case records if any may be returned observing all the usual formalities.

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice N.K. Agarwal)
Member(Judicial)

tkb