
(2009) 07 P&H CK 0226

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 62 of 2009

Surjeet Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: July 13, 2009

Acts Referred:

- Army Rules, 1954 - Rule 13(2A), 13(3)

Citation: (2009) 2 ILR (P&H) 1068 : (2009) 7 SLR 26

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: Rajeev Anand, for the Appellant; Gita Singhwal, Central Government Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

Permod Kohli, J.

The Petitioner a Naib Subedar working in the Indian Army has been discharged from service under Rule 13(3) Item 1 (ii),--vide order, dated 11th July, 2008 (Annexure P-4) and his promotion to the rank of Subedar has been withdrawn,--vide another order, dated 19th September, 2008 (Annexure P-6).

2. Aggrieved of the aforesaid orders the Petitioner has preferred this writ petition challenging the same and seeking further direction for his reinstatement in service. The brief facts, relevant for the purpose of this petition are being noticed hereunder:

3. The Petitioner was enrolled in the Indian Army in the Corps of Electrical and Mechanical Engineers as Store Keeper Technical on 25th August, 1981. He was promoted as Naib Subedar in the year 2001. It is stated that the Petitioner remained posted at Leh (J & K), a high altitude area from May, 2003 to November, 2005. Thereafter, he was posted at Amritsar. In April, 2007 Petitioner was diagnosed to be suffering from Primary Hypertension and was placed in temporary low medical

classification in May, 2007. In terms of the letter of Government of India, Ministry of Defence, dated 3rd September, 1998 a Naib Subedar with 26 years of pensionable service is entitled to extension by two years by screening or 52 years of age, whichever is earlier. It is averred in the writ petition that Petitioner was considered for extension of the term of engagement for further two years on completion of 26 years of service and being fit, eligible and qualified, extension of service for two years from August, 2007 to August, 2009 was granted to him. This extension was granted on the recommendations of the Screening Board in accordance with the recommendations of the 5th Central Pay Commission, applicable to the Armed/Defence Forces of the Union.

4. It is stated that during the entire service spreading over 27 years and three months the Petitioner served the Army without earning any adverse entry, red or black ink entry, displeasure or warning in respect of his performance or conduct. It is further stated that his work and conduct was also commended by his superiors. According to Petitioner in May, 2008 Petitioner was brought before the Re-categorization Medical Board, which placed him under low medical category (Permanent) for two years. On being placed in low medical category, Petitioner was ordered to be discharged from service with effect from 30th November, 2008 through letter dated 11th July, 2007 (Annexure P-4). This discharge has been ordered in terms of Army Rule 13(3) Item 1 (ii) of Army Rules, 1950. Before the Petitioner could be physically discharged, he received promotion order dated 12th September, 2008, whereby he was promoted as Subedar/SKT (Store Keeper Technical). Immediately, thereafter, Petitioner's promotion came to be cancelled,--vide letter dated 19th September, 2008 on the ground that he has been placed in low medical category. The Petitioner was finally discharged on 30th November, 2008. He represented against his discharge,--vide petition dated 5th December, 2008, addressed to Respondent No. 2, which has not been responded to.

5. Petitioner has challenged his discharge primarily on the ground that the same is in violation of Army Rule 13(3) Item (i) (a) of Army Rules. Army Rule 13 reads as under:

AR 13. Authorities empowered to authorize discharge.

(1) Each of the Authorities specified in Column 3 of the Table below shall be the competent authority to discharge from service persons subject to the Act specified in Column 1 thereof on the grounds specified in Column 2.

(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercised by any other authority superior to it.

(2A) Where the Central Government or the Chief of the Army Staff decide that any person or class or persons subject to the Act should be discharged from service, either conditionally or on the fulfillment of certain specified conditions, then, notwithstanding anything contained in the rule, the Commanding Officer shall also

be competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In this table "Commanding Officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in case of Junior Commissioned Officers and Warrant officers of the Special Medical Section of the Army Medical Corps, the Commanding Officer means the Director of the Medical Service, Army, and in the case of the Junior Commissioned Officers and Warrant Officers of Remounts Veterinary and Farms Corps, the "Commanding Officer" means the Director, Remounts, Veterinary and Farms.

TABLE
Category

[illegible]

6. The aforesaid rule provides for discharge of a Junior Commissioned Officer by the competent authority authorized to discharge on the grounds specified against each class and in the manner specified therein. Under Rule 13 (3) (i) (a) (ii) a Commanding Officer is the competent authority to discharge the Petitioner being found medically unfit for further service. As far the manner of discharge is concerned, it is to be carried on the recommendations of the Invaliding Medical Board. It is contended on behalf of the Petitioner that the Petitioner was never subjected to or examined by the Invaliding Medical Board and without the recommendations of such board, the Petitioner has been discharged in gross violation of the mandate of the rule. From the perusal of the rule, it is evident that discharge under the aforesaid rule is permissible, if, a person is found medically unfit for further service on the recommendations of the Invaliding Medical Board.

7. Respondents No. 1 to 4 filed their detailed written statement. In so far the discharge of the Petitioner is concerned, reliance is placed upon Army Head Quarter letter dated 18th December, 1998 which inter alia lays down procedure for screening criteria which reads as under:

Procedure for screening criteria: PBOR 1. Reference our letter No. B/33098/AG/PS.2C dated 21st September, 1998.

2. It has been laid down in the screening criteria issued,-- vide our letter under reference, as amended/clarified from time to time that an individual who has been screened and not recommended for extension will be discharged from service expeditiously but not later than six months from the date of screening.

3. A doubt has been raised whether LMCJC Os/OR who have been screened and recommended for discharge can be promoted, if eligible, during the period of six months from the date of screening.

4. It is clarified that an individual who has been screened and recommended to be discharged will not be eligible for promotion during the discharge drill period of six months.

In the aforesaid letter it is provided that an individual, who has been screened and not recommended for extension will be discharged from service.

8. In the present case, it is admitted position that the Petitioner was considered for extension in engagement and was recommended for extension of two years,--vide letter dated 12th September, 2008 (Annexure P-5) which order was later cancelled,--vide letter dated 19th September, 2008 (Annexure P-6). The cancellation order is also under challenge in the present petition. If, extension in engagement of the Petitioner is held to be valid, the order of discharge does not fall within the purview of the aforesaid letter. Notwithstanding the contents of the aforesaid letter the discharge from service is permissible under Rule 13 (3) (i) (a) of the Army Rules. The rules are statutory in nature and have to be strictly construed and adhered. The rule mandates discharge on being found medically unfit for further service on the recommendations of the Invaliding Medical Board. From the reply, it appears rather it is not disputed that no Invaliding Medical Board was ever held to consider the discharge of the Petitioner under the aforesaid rule. This question is no more res integra having been settled by the Hon"ble Apex Court in Civil Appeal No. 6587 of 2008 Union of India and Ors. v. Rajpal Singh, wherein, following observations have been made:

If a person is to be retained in service despite his low medical category for a particular period as stipulated in the Army Order 46 of 1980, the question of subjecting him to Invalidating Board may not arise. However, if a person is to be discharged on the ground of medical unfitness, at that stage of his tenure of service or extended service within the meaning of the Army Order, he has to be discharged as per the procedure laid down in Clause I (ii) in Column 2 of the said Table. Similarly, Sub-rule (2A) of Rule 13, heavily relied upon by the Appellants does not carry the case of the Appellants any further. It is only an enabling provision to authorize the Commanding Officer to discharge from service a person or a class of persons in respect whereof a decision has been taken by the Central Government or the Chief of Army Staff to discharge him from service either unconditionally or on the fulfillment of certain specified conditions. The said provision is not in any way in conflict with the scope of the remaining part of Rule 13, so as to give it an overriding effect, being a non obstante provision.

Emphasis supplied.

9. The next question, which falls for consideration is whether the Petitioner was entitled to the promotion to the next higher rank of Subedar during the extension within the extended period of service. The criteria for promotion in respect to persons in low medical category has been prescribed in Army Headquarter letter No. B/33513/AG/PS 2(C) dated 10th October, 1997, which lays as under:

Personnel placed in medical category "BEE-SHAPE-2" will be eligible for promotion to the next higher rank. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable/non-attributable to or aggravated by service conditions. However, cases of medical category "BEE (both temporary and permanent) due to psychological causes, mis-conduct or self inflicted injuries will not be eligible for promotion.

10. In the reply filed by the Respondents, it is stated that the Petitioner came up under promotion zone during September, 2008 along with his batch mates and he has been inadvertently ordered for promotion,--vide letter dated 12th September, 2008. The Respondents have not denied the criteria for promotion as laid down under letter dated 10th October, 1997. To the contrary, reference is being to Annexure R-2 letter dated 13th January, 2009, whereby the appeal/petition of the Petitioner has been disposed of saying that since the Petitioner was ordered to be discharged, he is not entitled to extension in engagement with effect from 25th August, 2007 to 24th August, 2009 as he was down graded to temporary low medical category.

11. The Respondents have failed to show as to how the Petitioner's entitlement for promotion in terms of letter dated 10th October, 1997 can be denied. Instructions and criteria for promotion contained in the aforesaid letter has not been disputed. Vide letter Annexure P-5, the Petitioner has been ordered to be promoted on the basis of the criteria laid down thereunder. The plea of the Respondents that the promotion of the Petitioner was inadvertent cannot be accepted as no reason or ground has been disclosed why the promotion of the Petitioner was bad in law.

12. In view of the above circumstances, this petition succeeds. Order for discharge (Annexure P-4) dated 11th July, 2008 and order dated 19th September, 2008 (Annexure P-6) are hereby quashed. Respondents are directed to re-engage the Petitioner forthwith and also allow him to assume the rank of Subedar on the strength of his promotion order dated 12th September, 2008 till he attains the age of superannuation. Since the Petitioner was kept out of service for no valid reasons, the Petitioner shall be entitled to the benefit of his service/promotion for the period, he remained out of service on account of impugned discharge order dated 11th July, 2008. Respondents to release all the arrears of salary and other financial benefits including of the promotional post within a period of three months.