

Nb Sub Ram Avtar Vs. Union of India and Others

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Mar-20-2012

Judge : Manak Mohta, Judicial Member & the Honourable Mr. Lt. Gen. M.L. Naidu, Administrative Member

Appeal No. : T.A No. 500 of 2009 & WP(C) No. 8166 of 2009

Appellant : Nb Sub Ram Avtar

Respondent : Union of India and Others

Judgement :

1. This petition was originally filed on 13.04.2009 before the Honble High Court of Delhi as WP(C) No.8166 of 2009. Thereafter, it was transferred to the Armed Forces Tribunal on 30.11.2009 and was registered as TA No.500/2009.
2. Vide this petition, the applicant has sought quashing and setting aside of discharge order issued vide Corps of Signals Records letter dated 11.06.2005 (Annexure P-1), being discharged as LMC case contrary to Army Rule 13, Regulations for the Medical Services of the Armed Forces 1983 (Annexure P-4 and P-5 respectively).
3. Brief facts of the case are that the applicant was enrolled in the Corps of Signals as a Sepoy on 24.09.1981. While in service he suffered with an ailment of Posterior Sub Capsular Cataract (right eye) and since then was downgraded to Low Medical Category as E-2 meaning Eye Sight 2. The applicant was discharged

from military service w.e.f. 30.11.2005 on the grounds of LMC vide Corps of Signal Records Letter dated 11.06.2005 (Annexure P-1).

4. Aggrieved by the said order and after having heard of the order passed by the Honble Apex Court in the case of Union of India Vs Nb Subedar Rajpal Singh decided on 07.11.2008 in Civil Appeal No.6587/2008 as cited in (2009)1 SCC (LandS) 92 in which Army Rule 13 was held to be sacrosanct and therefore, IMB is the pre-condition for being discharged medically, the applicant filed a Writ Petition in the Honble High Court on 13.04.2009.

5. Learned counsel for the applicant argued that the applicant was discharged under Army Rule 13 without holding the IMB. Since the applicant was low medical he should not have been discharged on medical grounds without holding the IMB. Learned counsel for the applicant further argued that in case of Nb Subedar Rajpal Singh (supra) it has been held that Army Rule 13 explicitly mandates that no military personnel can be discharged from military service without the recommendation of an Invalidation Medical Board and if a person is discharged contrary to Army Rule 13 it would be legally unsustainable in the eyes of law.

6. Learned counsel for the applicant also submitted that the impugned order also violates para 424(c) of the Regulations for the Armed Forces, 1983 which reads as under:-

Rule 424(c):

Release on medical grounds:

(i) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.

7. Learned counsel for the applicant further submitted that the aforesaid Regulations and the system of Medical classification are placed ad seriatim. The opening preface of a similar Regulation states that Departmental orders and instructions are based on and take their authority from these Regulations. Should any variance arise between such orders and instructions and these Regulations

for the Army, the latter shall prevail. He argued that the Regulation gets its strength and source from Section 192 of Army Act, 1950 as passed by the Parliament while all other orders and instructions cannot overturn the basic principle.

8. Learned counsel for the applicant further argued that the Honble Apex Court as well as the Division Bench of the Honble High Court of Delhi have allowed writ petitions filed by Nb Subedar Rajpal Singh (supra) and Sub (Skt) Puttan Lal and other connected petitioners on 20.11.2008 and based on these judgments, the respondents were forced to reinstate personnel who were discharged under the policy of 2007. The rationale in all these cases were that Army Rule 13 had not been complied with. Learned counsel for the applicant further cited the judgment of Honble High Court of Delhi dated 27.05.2009 given in the matter of Kalu Ram Vs Union of India and stated that the said judgment is applicable mutatis mutandis to this case also. It was also contended that the order of discharge was a continuing wrong, which adversely affected the applicant financially, therefore, delay will not come in his way in granting relief. He also relied on the judgment passed in case of Union of India Vs. Tarsem Singh (2008) 8 SCC 648.

9. Learned counsel for the respondents submitted that the applicant was enrolled on 24.09.1981 and discharged from Army Service w.e.f. 01.12.2005 under Army Rule 13(3) item I(iii)(c) read in conjunction with Sub Rule 2A and the present petition is belatedly filed in the year 2009, thus, without going into the merits of the case, it is liable to be dismissed. He further stated that the applicant had rendered 24 years 2 months and 07 days service in the Army for which he is in receipt of service pension vide PCDA(P) Allahabad PRO No.S/O 46844/2005 (Army) dated 07.12.2005 (Annexure R-1).

10. Learned counsel for the respondents further submitted that applicant was downgraded to low medical category BEE(P) w.e.f. 23.08.1998 and remained in the same category till he was discharged from service i.e. upto 30.11.2005. Under the provisions of Govt. of India, Ministry of Defence letter dated 10.05.1977, as amended vide corrigendum dated 26.11.1979 (Annexure R-3) and Army Rule 46/80, the disposal of permanent low medical category was to be as under:-

(a) The employment of permanent low medical category personnel, at all time, is subject to the availability of suitable alternative appointment commensurate with their medical category and also to the provision that this can be justified in the public interest, and their retention will not exceed the sanctioned strength of the Regiment/Corps. When such appointment is not available or when their retention is either not considered necessary in the public interest or it exceeds the sanctioned strength of the Regiment/Corps, they will be discharged irrespective of the service put in by them.

(b) Ordinarily, permanent low medical category personnel will be retained in the service till completion of 15 years service in the case of JCOs and 10 years in the case of Other ranks. However, such personnel may continue to be retained in service beyond the above period until they become due for discharge in the normal manner subject to their willingness and the fulfilment of the stipulation laid down vide Sub Para (a) above.

11. Learned counsel for the respondents further stated that the applicant was retained in service till availability of suitable alternative sheltered appointment in the unit against authorised strength based on recommendations of the CO of the unit and in the interest of service. Since the CO had not recommended the applicant for further retention in service due to non-availability of sheltered appointment, commensurate with his low medical category in the unit against authorised strength vide suitability-cum-retention certificate dated 05.11.2004 (Annexure R-V). The discharge of the applicant was approved by Officer-in-Charge, Signals Record and issued on 11.06.2005. Thus the applicant was discharged from service w.e.f. 01.12.2005 under Army rule 13(3) item I(iii)(c) read in conjunction with sub rule 2A, within the policies issued by the IHQ of Ministry of Defence. It was contended by the learned counsel for the respondents that the judgments cited by the applicant do not help the contentions placed by the applicant, as the act of discharge was a complete act which was taken place in the year 2005 and the present petition has been filed in the year 2009. He further contented that the same is suffering from lapses and laches. He further submitted that observations made in para 7(iv) of Puttan Lal case (supra) disentitles the applicant to challenge the discharge order. He also drew our attention to the

judgments passed by this Tribunal on similar cases.

12. Having heard both the parties at length and having examined the relevant document placed before us, we have given our best considerations to the arguments advanced by both the counsel. We are of the opinion that the case will be governed by para 7(iv) of Puttan Lals judgment (supra) cited by the applicant himself, which clearly states that the relief has been restricted to those personnel who had before the date of judgment i.e. 20.11.2008 filed a petition before any competent court. Since the applicant in his own admission has stated that he has approached the Honble High Court of Delhi only on 15.04.2009 after the judgment given in those cases, thus, his case has been excluded as directed by the Honble High Court of Delhi in para 7(iv) of Puttan Lals case (supra) which is after the judgment of Honble Apex Court in Naib Subedar Rajpal Singhs case (supra). Vide this judgment, the Honble High Court having considered the decision of Apex Court in the above matter, laid down parameters for re-opening of cases which had been carried out upto that date. This direction is in the nature of judgment in rem and having binding force. In that the Honble Court has vide para 7(iv) directed that the general directions are applicable only to such of the persons who have been discharged or proposed to be discharged under the policy letter dated 12.04.2007 or those who may have been discharged earlier but have already approached the Competent Court by filing a petition. The other judgment cited by the applicant in Kalu Ram (Supra) also does not help the applicant as in that case the petitioner was discharged on 31.01.2008 and as per judgment given in Puttan Lals case (supra), the petitioner was given option vide letter dated 19.12.2008 to rejoin the service and he remained in service but that is not the case of the present applicant. Thus, the judgment given in Puttan Lals case (supra) and Kalu Ram (supra) do not help the contentions of the applicant.

13. In similar type of case this Tribunal in the matter of Nk Narendra Kumar Vs Union of India and Ors., OA No.262/2010 decided on 08.11.2010 has taken the same view. The relevant extracts of the said judgment is as under:-

... So far as in the case of a judgment dated 20.11.2008 passed in the Sub (Skt) Puttan Lal and Others, the Court has ruled that personnel discharged in low

medical category after 12.04.2007 without holding Invaliding Medical Board and those personnel discharged on similar ground prior to 12.04.2007 who had approached the competent court against the contemplated discharge will be reinstated with all back wages and consequential benefits.

14. On the similar facts, in cases in cases of Risaldar Ram Karan Singh Vs. Union of India decided on 21.09.2011 in T.A. No.229/2009 and Rifleman Ram Bahadur Thapa Vs. Union of India and Ors. in O.A. No.176/2011 decided on 19.10.2011, the same view was taken by this Tribunal, and the said decisions were also maintained by the Honble Delhi High Court.

15. In similar matter, before the Honble Delhi High Court in case of Rifleman Ram Bahadur Thapa vs. Union of India and Ors. W.P.(C) No.586/2012 decided on 30.01.2012, wherein the petitioner, who was discharged on 01.01.2007 filed a writ petition in the year 2011. A contention was raised of continuing wrong by the petitioner, but it was not accepted by the Honble High Court and in that judgment the decision of Tarsem Singh (supra) was held to be apparently distinguishable. The Honble Court, in this respect, observed as under:

16. Therefore, it cannot be held that the defense of laches will not be applicable for the claim that the petitioner could not be boarded out without holding an Invalidation Medical Board. The case of Tarsem Singh (supra) is apparently distinguishable and the petitioner cannot place reliance on the same to claim his relief.

16. In view of the foregoing, we are not inclined to interfere in the matter. The T.A is dismissed. No orders as to costs.

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