

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.11590 of 2012

Date of Decision: January 29, 2015

Om Parkash Yadav

.....Petitioner

versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE RAJ MOHAN SINGH.

Present: Mr.Naresh Ghai, Advocate, for the petitioner.

Mr.Brijeshwar Singh Kanwar, Advocate for UOI.

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1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The controversy pertains to validity of the petitioner's order of discharge dated 30.08.2010 from the Territorial Army which has been upheld by the Armed Forces Tribunal, Chandigarh Regional Bench vide the impugned order dated 29.02.2012.

[2] The petitioner joined the Territorial Army as Sepoy on 16.03.1993. He was found to be suffering from 'Primary Hyper-tension' and was placed in low medical category [LMC P-3 (T-24)] on November 11, 2008 followed by next category (P-2) (P-24) on 27.04.2009. He was then served with a show cause notice dated 23.03.2010 as to why he be not discharged from service under Rule 14(b)(iii) of the Territorial Army Rules, 1948 (hereinafter referred to as 'TA Rules'), which provides that "every person enrolled shall, on becoming entitled to receive his discharge under the Act or these Rules, may be so discharged with all convenient speed, (b) any such person may be discharged as herein-after provided on any of the following

grounds, namely..... (iii) that his services are no longer required, (iv) that he is medically unfit for further service". The petitioner gave his reply (which is not on record) and thereafter, the discharge order dated 30.08.2010 was passed.

[3] The Tribunal has upheld the petitioner's discharge rejecting his contention that such an order could not be passed on the ground of 'medical unfitness' without the recommendations of Invalidating Medical Board. According to the Tribunal, Army Order No.460 of 1973 does not contemplate any report from the Invalidating Medical Board for passing an order of discharge under Rule 14 (b) (iii) of TA Rules and that the aforesaid Army Order was not challenged by the petitioner.

[4] We would, at this stage, without wastage of time, refer to the decision of the Hon'ble Supreme Court in Union of India and others versus Raj Pal Singh, 2009 (1) SCC 16, wherein also the question that arises for consideration was whether an army personnel could be discharged without following the mandatory procedure prescribed under the Army Rules only because the requirement of Invalidating Medical Board stood dispensed with under Army Order No.46 of 1980?

[5] We are informed by learned counsel for the parties that the procedure(s) to discharge an army personnel on the ground of medical unfitness contemplated under Army Order No.460 of 1973 and Army Order No.46 of 1980 are pari-materia.

[6] Reverting back to Raj Pal Singh's case (supra), the Apex Court in para No.26 has ruled as follows:-

“...26. It is manifest that the said Army Order

has been issued for disposal of permanent low medical category personnel and merely contemplates that the employment of permanent low medical category personnel at all times, is subject to the availability of suitable alternative appointments commensurate with their medical categories and also subject to the conditions that such a sheltered appointment can be justified in the public interest. A plain reading of the Army Order shows that it comes into operation after an opinion has been formed as to whether a particular personnel is to be retained in service or not, if so for what 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 authorise 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. Decision of the High Court that the discharge of the respondent was not in accordance with the prescribed procedure and was, therefore, illegal. We do not find any illegality or infirmity in the impugned judgment/order, warranting our interference. The appeal, being devoid of any merit, is dismissed accordingly with costs.....”

(emphasis applied)

[7] Applying the aforesaid ratio to the facts of the case in hand, it appears to us that once the rule through clause(iv) expressly provides 'medical unfitness' as one of the ground for discharge, how can the army authorities take shelter behind clause (iii) for discharging a person on the ground given in clause (iv), for if the ground of 'medical unfitness' is also to be read into clause (iii), then where was the necessity for the Rule Making Authority to insert clause (iv)? One of the cardinal principle of interpretation of a statute is that no word, expression or phrase is to be taken as superfluous and ought to be given its logical meaning.

[8] The petitioner was not required to assail Army Order No.460 of 1973 before the Tribunal as the said order has been pressed into aid by the respondents in their defence. It was for them to show that the said Army order has overriding

effect on the Rules which are statutory in character and were indeed relied upon by the petitioner.

[9] Since the matter involves comparative examination of procedural clauses contained in Army Order No.460 of 1973 viz-a-viz those of Army Order No.46 of 1980, we, as of now, do not express any final views on the merits and remit the case to the Tribunal to decide the same afresh after taking into consideration the observations made herein-above as well as plethora of decisions having bearing on the issue involved.

[10] For the reasons afore-stated, the writ petition is allowed to the extent that the order passed by the Tribunal is set-aside and the matter is remitted to the Tribunal for re-consideration. We request the Tribunal to decide the same expeditiously and preferably within a period of four months from the date of receiving a certified copy of this order.

[11] The parties shall be at liberty to raise their respective submissions before the Tribunal. They shall appear before the Tribunal on 23.03.2015.

[12] Dasti.

[SURYA KANT]
JUDGE

January 29, 2015
Mohinder

[RAJ MOHAN SINGH]
JUDGE