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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 19.03.2026

Judgment delivered on: 20.04.2026

Judgment uploaded on: 20.04.2026

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W.P.(C) 1181/2025

DHARAMVIR SINGH

.....Petitioner

versus

UNION OF INDIA AND ORS

.....Respondents

Advocates who appeared in this case

For the Petitioner : Petitioner (in person)

For the Respondents : Mr. Amit Gupta, SPC and Major Kanika Sharma Army

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J.

1. This petition has been filed under Article 226 of the Constitution of India, 1950, challenging the order dated 09.10.2024, passed by the Armed Forces Tribunal [the 'Tribunal'] in the Original Application 1376/2023 [the O.A.], and the order dated 30.08.2024 [impugned order] and the discharge order dated 11.01.2022 [impugned discharge order] dispensing with the services of the Petitioner.

2. The Petitioner joined the Indian Army as a Sepoy in the EME Branch on 15.03.2011. The Petitioner was found to be suffering from Primary



Hypertension *vide* Medical Board conducted on 13.06.2020, and on recategorization on 25.01.2021, the Petitioner was diagnosed with 30% disability.

3. Thereafter, the Petitioner was served with a Show Cause Notice [‘SCN’] dated 24.11.2021, proposing to terminate the Petitioner’s service for the disability incurred and granting the Petitioner 24 hours to submit his reply. Thereto, the Petitioner submitted his reply on 25.11.2021, requesting, *inter alia*, his retention in the service under the prevailing medical category.

4. It is stated that, however, the Petitioner was made to sign Appx ‘DE’ on 25.11.2021, the same day as his reply to the SCN, during the process of raising a report on JCOs/OR downgraded to Permanent Low Medical Category. The report was signed by the Dean, FEME, MCEME, Secunderabad, on 30.11.2021. Pursuant thereto, the impugned discharge order dated 11.01.2022 was issued, discharging the Petitioner from the service under Rule 13(3), Clause III (iii)(a)(i).

5. The Senior Officer of EME Record Office fixed the date of discharge on 31.05.2022. The Petitioner preferred the O.A. before the Tribunal, challenging the impugned discharge order dated 11.01.2022 and praying for reinstatement in service. However, the Tribunal disposed of the O.A *vide* order dated 30.08.2024.

6. Being aggrieved, the Petitioner preferred an application to review its judgment; however, the Tribunal dismissed the said application *vide* order dated 09.10.2024, whilst stating that the Petitioner should avail remedy before the appropriate forum.

7. In these facts, the Petitioner has preferred the present petition.

Submissions by the Petitioner



8. The Petitioner states that the Respondents suo moto initiated his discharge contrary to the mandatory Rule 13(3) Clause III(iii)(a)(i) of the Army Rules 1954 [the 'Army Rules'], as in the instant case the discharge was contemplated without the conduct of Release Medical Board which is sine qua non for initiating the discharge or invalidment from service, which is axiomatic from the SCN where there is no such mention of Release Medical Board.

8.1. He states that he had not completed the minimum qualifying service to earn the pensionary benefits, which is fifteen [15] years, and in order to dispense with the services of such person on medical disability, the Medical Board is sine qua non.

8.2. He states that *vide* the recategorization dated 25.01.2021, he was found to be suffering from Primary Hypertension [LMC¹ Permanent]; however, no recommendation was made by the Medical Board with regard to the Petitioner not being fit for Army service.

8.3. He states that he had not appeared before the Release Medical Board because the impugned discharge order dated 11.01.2022 was issued before a Release Medical Board was constituted, which is contrary to the Army Rules. He states that he requested continuation of services and completion of his minimum serving period; however, the Respondents took a contrary plea, as they first stated in their communications that the Petitioner had an indifferent attitude, and in the counter affidavit, they stated that there was no availability of an alternate sheltered appointment.

Submissions by the Respondents

9. Mr. Amit Gupta, learned SPC for the Respondents, states that the

¹ Low Medical Category



Petitioner was placed in the LMC P3(T-24) for Essential Primary Hypertension w.e.f. 28.12.2019, and was later downgraded to permanent LMC P2 (P) w.e.f. 25.01.2021.

9.1. He states that as per EME ROI II /2006 (Para 1223(c), 1228 & 1230) [‘Appx ‘DE’], personnel in permanent LMC may be retained only against sheltered appointments, if available.

9.2. He states that the Petitioner’s unit confirmed that there was no sheltered appointment available, triggering initiation of discharge proceedings under Army Rule 13(3) Clause III (iii)(a)(i).

9.3. He states that the SCN was in accordance with the Army Rules. The Petitioner had *vide* his reply conveyed his willingness to continue service; however, the OC unit clearly recorded his indifferent attitude to trade/administrative duties, and therefore recommended non-retention.

9.4. He states that the discharge order issued on 11.01.2022 was read out twice to the Petitioner.

9.5. He states that *vide* the impugned order, the Tribunal had directed the Petitioner to appear before the Release Medical Board; however, the Petitioner has not complied with the same, and therefore, pension formalities could not be concluded.

9.6. He states that the procedure contemplated in the Army Rules has thus been duly followed before the Petitioner was discharged from the services.

Court’s Findings

10. This Court has heard the parties and perused the record.

11. The Respondents, for discharging the Petitioner, have relied upon Rule 13(3) Clause III (iii)(a)(i) of the Army Rules, and Army Order 46 of 1980 [‘AO 46 of 80’] to submit that the procedure prescribed in law has



2026:DHC



2026:DHC:3255-DB

been duly followed before issuing the impugned discharge order dated 11.01.2022. Rule 13(3) Clause III (iii)(a)(i) reads as follows: -

TABLE

Category	Grounds of discharge	Competent authority to authorise discharge	Manner of discharge
1	2	3	4
	[iii)(a) Having been found to be in permanent low medical category SHAPE 2/3 by a medical board and when:— (i) no sheltered appointment is available in the unit, or (ii) is surplus to the organisation.	Commanding Officer	The individual will be discharged from service on the recommendations of Release Medical Board.]

12. The Respondents have also relied upon the letter dated 30.09.2010² [‘Guidelines of 2010’], which sets out the Guidelines to be followed by the competent authority while considering continuation or discharge of PBORs³, who are categorised by the Medical Board as SHAPE 2 or SHAPE 3, i.e., permanent LMC category. The relevant paragraph nos. 4, 5 and 6 of the said policy read as follows: -

“Aim

4. To lay down the guidelines for effective management of permanent LMC personnel in the Army as also to ensure that such personnel are not deprived of various benefits offered from time to time by the Central/State Governments, IHQ of MoD (Army), Non Government Organization, and so on.

Sheltered Appointment

5. **AO 46/80** lays down instructions for disposal of permanent LMC personnel. The retention of such personnel is now subjected to the following conditions:-

(a) Availability of suitable alternative appointments commensurate with their medical category.

² Letter No B/10210/Pt-IV-3(PBOR) dated 30.09.2010; “Disposal of Permanent LMC Personnel Below Officer Rank”

³ Personnel Below Officer Rank



2026:DHC



2026:DHC:3255-DB

(b) Such retention will not exceed the sanctioned strength of the Regiment/ Corps.

6. **Guiding Principle.** The guiding principles that should be considered by the commanding officers and OIC Records for retention/ discharge of permanent LMC Personnel are as under:-

(a) All endeavour should be made to allow such personnel to complete their minimum pensionable service in their present rank as under:-

(i) **Personnel in SHAPE 5.** The minimum period of qualifying service actually rendered and required for an invalid pension is 10 years.

(ii) **Personnel in SHAPE 2/3.** The minimum period of qualifying service actually rendered and required for earning service pension will be 15 years (Auth – Para 5.1.2 of MoD, Department of Ex Servicemen Welfare letter No 17 (4)/2008(2)/D(Pen/Pol) dated 12 November 2008).

(b) Take into consideration the nature of disability and capability of the individual to look after himself outside the service and the need to continue treatment at Service Hospitals which may not be located in the vicinity of the individuals home station.

(c) Take into consideration the circumstances and which the injury has been sustained and / or aggravated. No differentiation should be made between attributable and non attributable cases, except for Battle Casualties. Each case should be examined on merit.

(d) Ensure provisioning of requisite medical treatment to the individual including fitting of artificial limbs or such aids which will assist the individual to carryout his normal functions post discharge.

(e) Consider the effect on pensionary/ disability benefits from central and state Govt/IHQ of MoD (Army)/ Non Government Organization and any other such organization.

(f) Discharge of such permanent LMC personnel should help maintain the operational efficiency of the unit as also man management. Every case should be decided on its merit after analysing effect on state of manpower holdings in the Regiment/ Corps and time required to recoup The void so created.”

(Emphasis Supplied)

13. The Guidelines of 2010 refer to AO 46 of 80, which is the primary document that regulates the retention and/or discharge of the Army Personnel who are placed in the LMC [permanent]. The Army Order 46 of 1980 reads as follows: -



2026:DHC



2026:DHC:3255-DB

“AO 46/80 Disposal of Permanent Low Medical Category Personnel Other Than Officers

Aim

1. The aim of this Army Order is to lay down implementation instructions for the disposal of permanent low medical category JCOs/OR in terms of Ministry of Defence Letter No. A/32395.VIII/Org 2 (MP) (c)/713-S/A/D (AG) dated 10-5-1977 as amended vide Corrigendum No. A/32395.X/Org 2 (MP) (c)/7167.A/D (AG) dated 26-11-1979, reproduced as Appendices A and B respectively to this Order.

Retention

2. General Principles

(a) The employment of permanent low medical category personnel, at all times, is subject to the availability of suitable alternative appointments commensurate with their medical category and also to the proviso that this can be justified in the public interest, and that their retention will not exceed the sanctioned strength of the regiment/corps. When such an appointment is not available or when their retention is either not considered necessary in the interest of the service 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 service till completion of 15 years' service in the case of JCOs and 10 years in the case of OR (including NCOs). 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 in sub-para (a) above.

3. All personnel retained in service in terms of Para 2 above will, under all circumstances, be discharged on completion of their engagement periods/retiring service limits. For this purpose, NCOs and JCOs will be treated as under:

(a) NCOs will be discharged on completion of the retiring service limits appropriate to ranks as opposed to the extended limits laid down in AO 13/77. However, their retention beyond the contractual period of engagement will be regulated under the provisions of Paras 144 to 147 of the Regulations for the Army, 1962.

(b) JCOs will be discharged on completion of the normal retiring service limits as opposed to the extended limits laid down in AO 13/77.

4. Personnel suffering from pulmonary tuberculosis, including those who may be cured of the disease, will be disposed of in accordance with the provisions



of Ministry of Defence Letter No. 22679.DGAFMS/DG-3A/2721/D/ME dated 18-7-1974 (reproduced in AO 150/75), as amended/amplified from time to time.

5. Cases of all permanent low medical category personnel will be reviewed by all concerned accordingly. In the case of those personnel who become due for discharge as per the instructions contained in the preceding paragraphs, immediate action will be taken in the normal manner to carry of (sic out) their discharge, as expeditiously as possible.
6. This Order only lays down the general policy and procedure with regard to the disposal of permanent low medical category personnel. The actual discharge will, however, be carried out in accordance with the provisions of Ministry of Defence Letter No. A/32395.VIII/Org 2 (MP) (c)/713-S/a/D (AG) dated 10-5-1977, as amended vide Corrigendum No. A/32395.X/Org (MP) (c)/7167.A/D (AG) dated 26-11-1979 (reproduced as Appendices A and B respectively) and this HQ Letter No. 8861.AG/PS 2 (c) dated 18-8-1964, read with Letter No. 8861.AG/PS 2(c) dated 26-3-1970/1-4-1970.
7. Cases of permanent low medical category personnel already decided under the existing provisions, will not be reopened.
8. This supersedes all previous instructions on the subject.
A/32395.X/Org 2(MP)”

[Emphasis Supplied]

14. The Petitioner contends that Respondents have failed to follow the procedure set out in Rule 13(3) Clause III (iii)(a)(i) regulating his discharge; he therefore seeks the setting aside of the impugned order, the impugned discharge order and seeks his reinstatement.

15. To appreciate the submissions of the Petitioner, this Court deems it appropriate to trace the litigation history which led to the amendment of Rule 13(3) and the insertion of Clause III (a)(i) on 13th May, 2010, for prescribing a procedure for the discharge of Army Personnel, who have been found in permanent LMC SHAPE 2/3.

16. In a Civil Appeal titled **Union of India and Others v. Rajpal Singh**⁴, the Supreme Court, while upholding a judgment of the High Court of Delhi⁵,

⁴ (2009) 1 SCC 216 [Decision dated 07.11.2008]

⁵ Nb. Sub. Rajpal Singh v. Union of India and Others, decision dated 07.10.2005 [2005 SCC OnLine Del



held that a Junior Commissioned Officer [‘JCO’] could not have been discharged on account of his being placed in the LMC SHAPE 2/3 without holding an Invalidating Medical Board. The said findings were returned by the Supreme Court with reference to Rule 13(3)(I)(ii) of Army Rules as applicable to the JCO. The Court held that an executive authority must scrupulously follow the procedure prescribed under the Rule for the discharge of the JCO. The concerned officer had been discharged on account of non-availability of sheltered appointment on the recommendation of Release Medical Board by referring to AO 46 of 80, however, the Supreme Court held that effectively the officer had been removed from service for being medically unfit, and therefore, the procedure contemplated in Clause (I)(ii) was applicable and rejected the reliance placed by the Respondents on clause (I)(iii). Accordingly, the discharge order was set aside, and the JCO was directed to be reinstated.

17. The aforesaid judgment of the Supreme Court in **Rajpal Singh** (supra) was followed by the Division Bench in the batch petitions, **Subedar (SKT) Puttan Lal v. Union of India**⁶, whereby the Respondents, in pursuance of a policy letter dated 12.04.2007, discharged PBORs, who were in SHAPE 2/3, without holding an Invalidating Medical Board, in contravention of Rule 13(3), Clause (III)(iii) of the Army Rules. The Division Bench held that the aforesaid pronouncement of law of the Supreme Court pertaining to **Rajpal Singh** (supra) would be equally applicable to PBORs and set aside all the discharge orders on the ground of non-holding of the Invalidating Medical Board. The PBORs were directed to be reinstated, and these orders have since been implemented.

1078]

⁶ W.P.(C) No. 5946/2007; 2008: DHC: 3075 dated 20.11.2008



2026:DHC



2026:DHC:3255-DB

18. Significantly, in the judgment of the Supreme Court in **Rajpal Singh** (supra), AO 46 of 80, as applicable to the Army Personnel found in SHAPE 2/3 categories, was discussed in detail as the Respondents had placed reliance upon the same to justify the discharge. The submissions of the Respondents on the procedure to be followed for discharge as per AO 46 of 80 read as under: -

“19. It is the say of the appellants that the release of certain medical category (permanent) personnel is regulated by Army Order 46 of 1980, which contemplates that the army personnel, who is placed in low medical category (permanent), is to be retained in service for a minimum period of 15 years (for Sepoy) and 20 years (for JCO) and during this period he is entitled to all promotions as per the Rules; the discharge of low medical category is regulated as per the abovementioned Army Order and before the discharge, the personnel is placed before the “Release Medical Board” for a mandatory examination before the order of discharge is passed. An army personnel who is categorised as SHAPE V is considered to be not fit for further service of the Army and on placing such a personnel in SHAPE V he is mandatorily brought before the Invalidating Board in terms of Rule 13(3), whereas an army personnel who is in SHAPE II or in SHAPE III, is to undergo different Medical Boards apart from annual medical examination. The said personnel are not totally unfit but at the same time they are not fit for all the army duties and, therefore, they are retained for 15 years or 20 years, as the case may be, on the sheltered post mandatorily.”

[Emphasis Supplied]

However, reliance placed by the Respondents on AO 46 of 80 for justifying the discharge of the JCO was rejected as they did not find any place in the statutory provision of Rule 13. The finding of the Supreme Court is as follows: -

“30. 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 period. If a person is to be retained in service despite his low medical category for a particular period as stipulated in Army Order 46 of 1980, the question of subjecting him to the 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.”

The Supreme Court concluded that the legal effect of the discharge of SHAPE 2 JCO was that the JCO had been held by the Army to be medically unfit for further service, and for such a determination, the Court held that it should be only on the basis of the recommendation of an Invalidating Medical Board.

19. In the background of the aforesaid judgments, the Central Government on 13th May, 2010 amended Rule 13 and inserted separate Clauses in the Table for prescribing a distinct ground for discharge of JCO, Warrant Officer and persons enrolled under the Act who have been attested respectively, when they are found to be in permanent LMC SHAPE 2/3 by a Medical Board and either no sheltered appointment is available in the unit or the officer/personnel is surplus to the organisation. The newly inserted Clauses also provided for the manner of discharge. In this petition, we are concerned with the compliance of the procedure contemplated under the newly inserted Clause III (iii)(a), as the Petitioner herein is a Sepoy.

20. The aforesaid judgment of the Division Bench in **Subedar Puttan Lal** (supra) also led to the Respondents issuing the letter dated 30.09.2010⁷, formulating the Guidelines for management of the permanent LMC in SHAPE 2/3 with respect to PBORs, for the due implementation of Rule 13(3), Clause III (iii)(a) and AO 46 of 80.

21. The judicial pronouncements in **Rajpal Singh** (supra) and **Subedar Puttan Lal** (supra) show that the Respondents would have to ensure that a

⁷ Letter No B/10210/Pt-IV-3(PBOR) dated 30.09.2010; “Disposal of Permanent LMC Personnel Below Officer Rank”



discharge of a PBOR, who has been medically categorised as LMC SHAPE 2/3, is discharged strictly in accordance with the procedure contemplated in Rule 13(3), Clause III(iii)(a). The plain reading of the said Clause shows that the provision stipulates that personnel, who are found to be in permanent LMC SHAPE 2/3, and when either *no* sheltered appointment is available in the unit, *or* he is surplus to the organisation, such an individual will be discharged from service on the recommendation of the Release Medical Board by the Commanding Officer.

AO 46 of 80 stipulates that the Army Personnel, who are in permanent LMC SHAPE 2/3 will *ordinarily* be retained in service for a minimum period of 15 years [for Sepoy] and 20 years [for JCO]. The Guidelines of 2010 circulated for implementation of Rule 13 Clause III (iii)(a), at paragraph 6(a), again clarifies that *all endeavour* should be made to retain the PBOR falling in SHAPE 2/3 so as to enable the concerned individual to complete his minimum pensionable service. The Respondents in their submissions before the Supreme Court in **Rajpal Singh** (supra) as recorded at paragraph 19 [extracted above] had submitted that it is their understanding that an Army personnel, who is categorised in SHAPE 2/3 *will be retained* in service to enable him to serve the minimum pensionable service period, and thereafter, his discharge will be regulated on the procedure stipulated in Army Order 46 of 1980.

Thus, on a conjoint reading of Army Order 46 of 1980, Guidelines of 2010 and the submissions of the Respondents recorded in the Supreme Court judgment, it becomes apparent that PBORs falling in SHAPE 2/3 will *ordinarily* be permitted to complete pensionable service. The reason for *ordinarily* stipulating retention of PBORs, who are in SHAPE 2/3 until they



complete pensionable service is apparent, as a PBOR who is in the SHAPE 2/3 category is not *per-se* unfit for service in the Army but is only unfit for certain duties. It is also the stand of the Respondents that SHAPE 2/3 are not personnel who are otherwise medically unfit for service in the Army because that category of personnel would be SHAPE 5.

22. We shall now proceed to examine the facts of the present case in light of the aforesaid settled law.

23. The Petitioner, at the time of his enrolment on 15.03.2011, was in the SHAPE 1 category. Subsequently, on 08.12.2019, he was placed in medical classification P3(T-24), i.e., LMC temporary. He was thereafter categorised in medical classification P2(T-24), i.e., LMC temporary w.e.f. 28.11.2020. Finally, on 25.01.2021, in pursuance of Medical Board proceedings, he was re-categorised as P2(P), i.e., LMC permanent and therefore his overall medical category stood at S1H1A1P2(P)E1. The specialist opinion dated 21.01.2021 formed the basis of this re-categorisation.

The sole disability for categorising Petitioner as P2(P) was Primary Hypertension, and his disability was assessed at 30%.

24. The Petitioner was served with the SCN on 24.11.2021, which simply stated that permanent LMC personnel are required to be discharged from service in accordance with the Corps percentage and the individual's willingness. It was further stated that the Petitioner is required to show cause *why* he should not be discharged in the public interest.

25. The Petitioner responded in writing on 25.11.2021 and stated that he was willing to continue in service and submitted that he is capable of carrying out his duties, i.e., of a Cook. He sought to be permitted to continue in service.



2026:DHC



2026:DHC:3255-DB

26. The Petitioner was provided with Form Appx 'DE' on 25.11.2021, where Part I has to be filled in by the individual. The Petitioner duly filled it up and once again recorded that he is *willing* to continue in service. On this relevant date, Petitioner had served for 11 plus years, and he was therefore short of his minimum pensionable service, i.e., 15 years.

27. Part II of Appx 'DE' had to be filled in by the competent officer, i.e., OC⁸ of the Unit. In the relevant questions at points 2(g), (h) and (j), the competent officer did not recommend the Petitioner's retention and recorded the reason for the non-recommendation to be an 'indifferent' attitude towards trade-work/admin work. The view of the OC Unit was endorsed on 30.11.2022 at Part III by the Dean, FEME, MCEME. In this background, as on 30.11.2022, the Petitioner was not recommended for further retention and was ordered for discharge from service by OIC EME Records by an endorsement of 02.01.2022.

28. The discharge order was passed on 11.01.2022. The relevant entry pertaining to the Petitioner at serial no. 28 is as follows: -

28	03/28/05/2022	17013259N Sep/ Chef Com Dharamvir Kumar Med Cat : P2 (P) Dg: Primary Hypertension MCEME Pin- 900453 c/o 58 APO	Disch from service being placed in permit LMC lower than SHAPE-1. Individual Willing to continue in service and retention in service not recommended by competent auth.	Army Rule-13(3) item III (iii) (a) (i) of Army Rule 1954
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29. As can be seen from the above, the Respondents have referred to Army Rule 13(3) Clause III (iii)(a)(i) as the relevant Rule under which the Petitioner has been discharged. The said Clause, as discussed hereinabove, is applicable in either of two circumstances, one of which is that no sheltered appointment is available in the unit. The Respondents, in their pleadings and

⁸ Officer Commanding Unit



arguments, are categorical to the effect that there was no sheltered appointment available in the unit at the relevant time, and this is the basis for discharging the Petitioner on 11.01.2022. This stand has also been reiterated by the Respondents in their letter dated 09.03.2026, placed before this Court, the relevant paragraph reads as follows: -

“2. As per IHQ of MoD (Army) letter No B/10201/Vol-VI/MP-3 (PBOR) dt 30 Sep 2010 (copy att), Commanding Officer is the competent auth to provide sheltered appt to permr LMC incl. Retention in r/o No 17013259F Sep Dharamvir Kumar in LMC under sheltered appointment was not recommended by MCEME, Secunderabad due to non-availability of sheltered appt in the unit.”

30. In view of this categorical stand of the Respondents, we have examined the correspondence and documentation initiated by the Respondents post 25.01.2021 to examine the plea of unavailability of a sheltered appointment, which led to the passing of the final order of discharge on 11.01.2022 to see if the procedure contemplated under Rule 13 (3), Clause III (iii)(a)(i) has been followed *or not*.

31. We note that significantly, the SCN dated 24.11.2021 addressed to the Petitioner did not state that there was no sheltered appointment available in the unit. Similarly, Appx ‘DE’ at part-II, III and IV also did not record that there was no sheltered appointment available in the unit. Part II of the Appx ‘DE’ was filled in by the Commanding Officer, and while answering question 2(j), which required reasons for not recommending retention, there is no entry that a sheltered appointment is unavailable in the unit. On the contrary, it is written that the Petitioner is not recommended for retention due to indifferent attitude to trade work/admin work.

32. The ground of ‘indifferent’ attitude to trade work/admin work is not the ground on which Rule 13(3) Clause III (iii)(a) can be invoked for



discharging a Sepoy. The procedure for discharging a Sepoy on the ground of ‘indifferent’ attitude is governed by a *distinct* procedure and is considered a disciplinary case. This becomes amply evident from the Respondents Guidelines of 2010, which expressly clarify this at paragraph 8, which reads as follows: -

“8. Disciplinary/Indifferent Cases. No special provision is necessary for discharge of permanent LMCs who become disciplinary case or adopt an indifferent or casual attitude to work. In such cases, necessary disciplinary or administrative action, and if required, discharge proceedings, may be initiated by the Commanding Officer in accordance with existing orders/procedures. These cases will, therefore, not be governed by the provisions of this letter.”

In these facts, therefore, it is evident that the Commanding Officer did not even consider the availability of the sheltered appointment in the unit, and therefore, this reason offered by the Respondents in their pleadings and recorded in the impugned discharge order is not supported by the record.

33. Before we adjudicate on the correctness of the procedure followed by the Respondents in this case, we note that, as per Clause III (iii)(a)(i), the Commanding Officer cannot discharge the Petitioner without first seeking the recommendation of the Release Medical Board. In the facts of this case, the Petitioner’s discharge was recommended as per Appx ‘DE’ on 30.11.2021, and the discharge order itself was issued on 11.01.2022. Admittedly, no recommendation of the Release Medical Board was taken before recommending the discharge on 30.11.2021 or even prior to the issuance of the discharge order itself on 11.01.2022.

The Respondents, in their counter-affidavit⁹ filed before this Court have stated that the documents for the Release Medical Board were prepared and handed over to the Petitioner on 04.02.2022.

⁹ Paragraph 12



It is thus apparent from the record that the impugned discharge order has been passed without any recommendation of the Release Medical Board, which, as per Rule 13(3) Clause III (iii)(a), is a mandatory condition precedent.

34. We have perused the impugned order passed by the Tribunal and find that the Tribunal has presumed that the recommendation made by the Commanding Officer for the Petitioner's discharge is based on the Release Medical Board; however, the said finding of the Tribunal is contrary to the record placed before this Court.

35. In view of our findings above, it can be summarised that the Petitioner's recommendation for discharge was issued by the unit on 30.11.2021, and the discharge order was issued on 11.01.2022.

Therefore, this recommendation for the Petitioner's discharge was not based on the non-availability of a sheltered appointment in the unit; nor was the discharge order issued on the recommendation of a Release Medical Board.

It is thus apparent that the jurisdictional conditions for invoking Clause III (iii)(a)(i) of Rule 13(3) do not exist in the facts of this case, and therefore, the discharge order is not in accordance with the procedure laid down in law.

36. We also note that, as on 30.11.2021, when the Petitioner was recommended for discharge, he had not completed his minimum pensionable service and therefore it was all the more incumbent for the Respondents to make best efforts to assess whether the Petitioner could be accommodated in a sheltered appointment within the unit or offered an alternative employment. The Petitioner was short of approximately 3½ years



of pensionable service. The discharge has resulted in him not being entitled to any pension despite having served well for 11 plus years. The failure of the Commanding Officer to bear this vital issue in mind has resulted in non-compliance with the mandate of AO 46 of 80 and Guidelines of 2010, which contemplate that *ordinarily* a Sepoy *shall* be permitted to complete his minimum pensionable service. We find from the pleadings that the Respondents have not even applied their mind to this inequity before issuing the discharge order, which has been caused to the Petitioner, who has approximately served for 11 plus years. The impugned discharge order is liable to be set aside on this ground of non-consideration as well.

37. The Tribunal in the impugned order has taken note of the fact that the Petitioner will not receive any service pension due to non-pensionable service and has observed in obiter that the Petitioner's case may be considered for disability element of the pension or invalid pension. However, the Respondents in Appx 'DE' have concluded that the disease of Primary Hypertension is not attributable to service, and therefore it is evident that they have no intention to pay him disability element of pension. Moreover, since the Petitioner is not being discharged on the recommendation of the Invalidating Medical Board, the Respondents will not even sanction his invalid pension. It is thus clear that in these facts, the Petitioner, who has served for approximately 11 plus years and has expressed his willingness to continue in service, has been compulsorily discharged without him having earned service pension. In our considered opinion, the Petitioner's discharge is in contravention of its stated objectives set out in AO 46 of 80 and Guidelines of 2010, where the service pension of the Sepoy in SHAPE 2/3 is intended to be facilitated, as far as possible.



38. For the reasons recorded hereinabove, the impugned discharge order dated 11.01.2022 is hereby quashed. The Petitioner is hereby reinstated in the services with effect from 31.05.2022. The Petitioner will be entitled to all consequential benefits, including continuity of service, pay and allowances and seniority as per the Rules. The Petitioner will report to the concerned unit from where he was discharged within a period of 30 days from today. The pay and allowances and other benefits to which the Petitioner is entitled will be remitted within three months from today, after adjusting any payments¹⁰ already made to the Petitioner after 31.05.2022. In case there is any delay in making payments of the arrears, the Respondents will be liable to pay interest at 8% per annum, w.e.f. 31.05.2022.

39. In view of our findings above, the impugned order of the Tribunal dated 30.08.2024 is also hereby set aside.

40. With the aforesaid directions, the petition, along with pending application[s], if any, are disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

APRIL 20, 2026/hp/aa

¹⁰ Paragraph 15 of the impugned order of the Tribunal records the payments made to the Petitioner post 31.05.2022