REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1280 of 2019

Smt Sulekha Rani **Appellant(s)**

VERSUS

Union of India and Ors **Respondent(s)**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Admit.

2 This appeal arises from a judgment of the Armed Forces Tribunal[1] at its Principal Bench, New Delhi. While dismissing the Original Application filed by the appellant, the AFT has rejected her claim for grant of pension in respect of the service rendered by her deceased spouse in the Indian Army.

3 The spouse of the appellant was enrolled in the Army on 23 April 1994. He was posted at the Siachen Glacier from 13 September 1998. He was in SHAPE 1 medical category. On 30 August 2000, he was downgraded to low medical category

1 AFT

P2. He was then shifted to a counter insurgency area in Jammu and Kashmir on 19 November 2000. On 31 August 2001, he was discharged from service. About 6 years after the discharge, he died on 30 September 2007, leaving behind him the appellant and their children. A proceeding was initiated before the AFT for the grant of pension. This was denied to the appellant.

4 The grievance of the appellant is that no Invalidation Medical Board was held prior to the discharge of her spouse. He was in SHAPE 1 medical category before being posted for 7 months at the Siachen Glacier. Relying on the decision of this Court in **Dharamvir Singh** v **UOI**[2], it has been submitted that a member of the force is presumed to be in sound physical and mental condition upon entering service if there is no contrary record at the time of entry. The submission is based on the following extract from the decision:

> "24.2. A disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of the individual's acceptance for service in the Armed Forces."
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> 29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)]

Reliance is also placed upon the decision of this Court in **Union of India** v **Rajpal Singh**[3] ("**Rajpal Singh**"). In that case, the Respondent, a Junior Commissioned Officer (JCO), was placed in the permanent low medical category for a period of

2(2013) 7 SCC 316
3 (2009) 1 SCC 216

two years before he was discharged. Before the expiry of this period, he was sent a notice to show cause as to why he should not be discharged from service as no sheltered appointment was available and his unit was deployed in a field area. A two judge Bench of this Court held his discharge invalid on the ground that the Respondent had not been subjected to an Invalidating Board under Rule 13(3)(I)(ii) of the Army Act, 1950[4].

5 On the other hand, Mr Aman Lekhi, ASG submitted in the present case that a notice to show cause was issued to the spouse of the appellant on 2 March 2001. The show cause notice was in the following terms:

> "1. You have been placed in low medical category BEE (P) with effect from 30 Aug 2000. You are willing to serve in present medical category but no sheltered appointment is available for you in the unit. Therefore, it is proposed that you should be discharged from service having placed in medical category lower than AYE and not upto the required standard under the provisions of Army Order 46/80 Rule 13(3) III (v) of Army Rules 1954."

In response to this notice, a reply was addressed on 7 April 2001 stating that though he wished to continue in the service of the Army, since he was being discharged from service due to non-availability of a sheltered appointment in the unit, he may be discharged in a manner that would enable him to obtain other service in the civilian section. On the basis of this response, it was urged that the Jawan had in fact accepted his discharge and as a result, there was no necessity to appoint an Invalidation Board. The order of discharge (it was urged) was not appealed against in accordance with the provisions of law. The learned ASG has submitted that the decision in **Dharam Singh** (supra) deals with the provisions of

4 "Army Act"

Rule 14(b) and hence may not have application. Moreover it was urged that the spouse of the appellant had an Ectopic Kidney and his condition was not caused or aggravated by military service. It has been urged that the affliction was of a constitutional nature and was not attributable to service in the Army.

6 In the present case, it is not in dispute before this Court that no Invalidation Medical Board was held. The show cause notice upon which reliance has been placed is dated 2 March 2001 and reference is made to Rule 13(3) (III) (v).

7 Rule 13 deals with Authorities empowered to authorize discharge. It provides thus:

> "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 person 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 exercisable by any other authority superior to it.
> [(2A) Where the Central Government or the Chief of the Army Staff decides that any persons subject to the Act should be discharged from service, either unconditionally or on the fulfillment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the 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 belongings except that in the case of junior commissioned officer and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officer and warrant officers of Remounts, Veterinary and Farms, Corps, the "Commanding officer" means the Director Remounts, Veterinary and Farms."

In so far as is material to the discussion before us, Rule 13(3)(III) provides as follows:

Category	**Grounds of discharge**	**Competent authority to authorise discharge**	**Manner of discharge**
Persons enrolled under the Act who have been attested	**(iii)** Having been found medically unfit for further service.	Commanding Officer	To be carried out only on the recommendation of an Invalidating Board.
	(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.
	(v) All other classes of discharge.	Brigade/Sub-area Commander	The Brigade or Sub-area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.

8 Rule 13(3) (III) (v) is in the nature of a residuary provision. It covers all other classes of discharge or, in other words, discharge which does not fall under the preceding categories. The specific provision in regard to medical unfitness is provided in Rule 13(3)(III)(iii) where a person has been found medically unfit for further service. The manner of discharge provided is, “only on the recommendation of an Invalidating Board”. The provision contained in Rule 13(3)(III)(iii)(a) which

provides for a discharge on the recommendations of the Release Board was inserted on 29 May 2010 and hence, has no application to the present case.

9 In **Rajpal Singh** (supra), while interpreting 13 (3)(I) of the Rules, the Court noted that only cases which are not covered under a specific head can be covered under a residual head:

> "24**. ...** It is plain that a discharge on the ground of having been found "medically unfit for further service" is specifically dealt with in Column (I) (ii) of the Table, which stipulates that discharge in such a case is to be carried out only on the recommendation of the Invalidating Board. **It is a cardinal principle of interpretation of a Statute that only those cases or situations can be covered under a residual head, which are not covered under a specific head. It is, therefore, clear that only those cases of discharge would fall within the ambit of the residual head, viz. I (iii) which are not covered under the preceding specific heads.** In other words, if a JCO is to be discharged from the service on the ground of "medically unfit for further service", irrespective of the fact whether he is or was in a low medical category, his order of discharge can be made only on the recommendation of an Invalidating Board. The said rule being clear and unambiguous is capable of only this interpretation and no other. **(emphasis supplied)**

The Court further noted that when the discharge was on the ground of medical unfitness, the Rule prescribes a particular procedure for discharge. Thus, an order of discharge passed without subjecting the officer to an Invalidating Board would be contrary to the statutory rule:

> "27**.** In view of the foregoing interpretation of the relevant rule, we are in complete agreement with the High Court that where a JCO is sought to be discharged on the ground of medical unfitness for further service, his case has to be dealt with strictly in accordance with the procedure contemplated in Clause I (ii) in Column 2 of the Table appended to Rule 13.

> **The Rule prescribes a particular procedure for discharge of a JCO on account of medical unfitness, which must be followed and, therefore, any order of discharge passed without subjecting him to Invalidating Board would fall foul of the said statutory rule."**
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> **(emphasis supplied)**

10 After considering the facts and material before us, we are of the view that the discharge of the appellant's spouse without convening an Invalidation Medical Board suffers from an illegality. The respondents have relied upon the response purportedly addressed by the Jawan to the notice to show cause issued to him. The provisions Rule 13(3) (III) (v) upon which reliance has been placed had no application to the case. It would not operate in an area which is covered by medical unfitness.

11 Having weighed the nature of the relief that should be granted to the appellant, we are of the view that the case of the appellant for grant of family pension deserves to be accepted. We direct that for the purposes of computing the family pension, the service of the deceased spouse of the appellant should be deemed to have continued until 30 September 2007. No arrears of wages shall be payable between the date of discharge and the date of death. The arrears of family pension shall be paid to the appellant within a period of three months from the date of receipt of a certified copy of this order. The appellant is accordingly held to be entitled to family pension on the above basis.

12 We allow the appeal in the above terms and set aside the impugned judgment of the Armed Forces Tribunal dated 28 March 2011. In the circumstances of the case there shall be no order as to costs.

……J.
[Dr Dhananjaya Y Chandrachud]

……J.
[Indira Banerjee]

NEW DELHI;
16 July 2019.