

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

**SUBJECT : SERVICE MATTER**

Date of decision: 20.11.2008

WP(C) Nos. 5946/2007, 9382/2007, 9389/2007, 9454/2007, 401/2008, 480/2008, 1418/2008, 1441/2008, 1445/2008, 1776/2008, 2036/2008, 2133/2008, 2678/2008, 2681/2008, 2682/2008, 2683/2008, 2684/2008, 3108/2008, 3151/2008, 3152/2008, 3159/2008, 3246/2008, 3325/2008, 624/2008, 3591/2008, 3592/2008, 3593/2008, 3594/2008, 3626/2008, 3643/2008, 21636/2005, 17415/2006, 9356/2007, 9381/2007, 9388/2007, 30/2008, 493/2008, 1077/2008, 1207/2008, 1211/2008, 1212/2008, 1378/2008, 1398/2008, 1399/2008, 1439/2008, 1473/2008, 1668-1671/2008, 1673/2008, 2032/2008, 2033/2008, 2143-2146/2008, 2148/2008, 2306/2008, 2404/2008, 9349/2007, 698/1986, 6949/2005, 7371/2007, 7964/2007, 8277-8283/2007, 8425/2007, 8429/2007, 8467/2007, 8488/2007, 8489/2007, 8705/2007, 8724/2007, 8726/2007, 8781/2007, 8808/2007, 8847/2007, 8982/2007, 9107/2007, 9108/2007, 9137/2007, 9153/2007, 9164/2007, 9172/2007, 9254/2007, 9270/2007, 9578/2007, 9618/2007, 9620/2007, 9624/2007, 9625/2007, 9648/2007, 83-86/2008, 115-120/2008, 151/2008, 159/2008, 186/2008, 219/2008, 220/2008, 290/2008, 346/2008, 351/2008, 352/2008, 357/2008, 507/2008, 513/2008, 521/2008, 535/2008, 536/2008, 538/2008, 541/2008, 562/2008, 569/2008, 581/2008, 587/2008, 626/2008, 647/2008, 655/2008, 672/2008, 693/2008, 737/2008, 743/2008, 784/2008, 786/2008, 804/2008, 824/2008, 830/2008, 834/2008, 844/2008, 882/2008, 929/2008, 930/2008, 931/2008, 936/2008, 937/2008, 940/2008, 941/2008, 943/2008, 960/2008, 961/2008, 969/2008, 970/2008, 972/2008, 975/2008, 976/2008, 1068/2008, 1073/2008, 1140/2008, 1146/2008, 1182/2008, 1183/2008, 1204/2008, 1208/2008, 1273/2008, 1288/2008, 1351/2008, 1381/2008, 1387/2008, 1397/2008, 1414/2008, 1415/2008, 1416/2008, 1419/2008, 1420/2008, 1421/2008, 1422/2008, 1436/2008, 1609/2008, 1618/2008, 1655/2008, 1680/2008, 1682/2008, 1683/2008, 1684/2008, 1724/2008, 1725/2008, 1727/2008, 1729/2008, 1730/2008, 1731/2008, 1738/2008, 1739/2008, 1740/2008, 1741/2008, 1744/2008, 1745/2008, 1746/2008, 1747/2008, 1748/2008, 1749/2008, 1768/2008, 1770/2008, 1876/2008, 2038/2008, 2040/2008, 2049/2008, 2057/2008, 2209/2008, 2277/2008, 2281/2008, 2320/2008, 2321/2008, 2340/2008, 2345/2008, 2373/2008, 2374/2008, 2375/2008, 2376/2008, 2377/2008, 2378/2008, 2379/2008, 2381/2008, 2382/2008, 2383/2008, 2384/2008, 2385/2008, 2402/2008, 2408/2008, 2563/2008, 2564/2008, 2566/2008, 2567/2008, 2572/2008, 2598/2008, 2599/2008, 2686/2008, 2691/2008, 2699/2008, 2705/2008, 2709/2008, 2727/2008, 2728/2008, 2742/2008, 2749/2008, 2767/2008, 2845/2008, 2846/2008, 2849/2008, 2850/2008, 2861/2008, 2870/2008, 2871/2008, 2879/2008, 2881/2008, 2945/2008, 3148/2008, 3227/2008 and 3232/2008, 3733/2008, 3734/2008, 3735/2008, 3698/2008, 1435/2008, 9152/2007, 1669-70/2008, 2814/2008, 3747/2008, 3784/2008, 3962/2008, 4000/2008, 4002/2008, 4223/2008, 4255/2008, 4259/2008, 4267/2008, 4268/2008, 4283/2008, 4296/2008, 4337/2008, 4418/2008, 4606/2008, 4609/2008, 4773/2008, 4796/2008, 4945/2008,

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**SUBEDAR(SKT) PUTTAN LAL  
AND OTHER CONNECTED PETITIONERS                      PETITIONER(S)**

Through: Major K. Ramesh, Mr. Amol Rattan Singh, Ms. Neelam Rathore, Col. S.R. Kalkal, Mr. Rajeev Anand, Mr. C.M. Khanna, Mr. Viraj R. Datar, Col. C.K. Sharma, Col. A.S. Chauhan, Mr. Mohan Kumar, Mr. N.L. Bareja, Mr. Hitender Sakkarwal, Mr. Sudhir Mittal, Mr. E.J. Varghese, Mr. Kuljiwan Goyal, Mr. Alok Kishor, Mr. Kundan Kumar, Mr. Anil Kumar Pandey, Mr. Rajeev Anand, Mr. B.P. Shukla, Mr. S.M. Dalal, Mr. D.S. Kauntae, Mr. Soumyajit Pani, Dr. Alok K. Sharma, Mr. R.D. Tyagi, Captain K.M. Saxena, Ms. Rekha Palli with Ms. Punam Singh, Mr. S.L. Kumar with Mr. B.K. Ahluwalia, Col. S.S. Chhawal, Mr. A.K. Bakshi with Mr. Romesh Gautam, Ms. Bandana Shukla, Mr. R.K. Sharma, Mr. Aagney Sail and Mr. Abhik Kumar, Mr. M.S. Sasan, Dr. R.S. Sasan, Mr. A.K. Trivedi, Ms. Jagrati Singh for Mr. M.K. Bhardwaj, Mr. S.K. Kumar, Mr. B.V.K. Ahluwalia and Ms. Rita Hingmang. Advocates for the Petitioners.

Versus

**UNION OF INDIA and ORS. ...    RESPONDENTS**

Through: Mr. Ashwani Bhardwaj, Mr. Manoj Ohri, Mr. Hemant Gupta, Mr. Puneet Khurana, Ms. Monica Garg, Mr. Shakir Hasan, Mr. Amiet Andley, Mr. Saroj Bidawat, Col. R. Balasubramaniam, Mr. Aakash Pratap, Ms. Barkha Babbar, Ms. Sonia Mathur, Mr. Pankaj Batra, Mr. Anil Gautam, Mr. M.M. Beg, Mr. Saleem Ahmed, Ms. Shilpa Singh, Mr. Yogesh Varma, Mr. Prakash Kumar, Mr. Jaswinder Singh, Ms. Monika Garg, Mr. Gaurav Liberhan, Mr. Rohit Malik, Mr. Jatin Dhawan, Mr. M.Y. Khan, Mr. Amiet Andley, Mr. S.M. Zulfiqar Alam, Ms. Jyoti Singh, Mr. Ankur Chhibber, Mr. A.S. Singh, Mr. Pankaj Batra, Mr. Saleem Ahmed with Mr. Habibur

Rahman, Mr. Sanjay Katyal with Mr. Ranjeet Kumar Jha, Mr. Vikas Sethi with Ms. Maninder Acharya, Mr. Rajan Sabharwal with Ms. Seema Bhadauriya, Mr. Pushkar Sood with Mr. Varun Kathuria, Mr. Sewa Ram with Mr. R.K. Bachchan, Mr. Dalip Mehra with Mr. Rajiv Ranjan Mishra, Mr. Jai Bansal and Mr. Vivek Singh, Advocates, proxy for Ms. Madhu Sharan, Mr. Sanjay Katyal, Mr. R.V. Sinha, Mr. A.S. Singh and Mr. Puneet Khurana, Advocates along with Colonel G.S.Aul and Major S.S. Pandey for the Respondents. Advocates for the Respondents.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HONBLE MR. JUSTICE MOOL CHAND GARG

SANJAY KISHAN KAUL, J. (ORAL)

1. The common question which arises for consideration in this batch of petitions is as to whether an army personnel could have been discharged from service without holding the Invaliding Medical Board (IMB for short). A Division Bench of this Court had held against the respondents against which the respondents preferred a Special Leave Petition. Since the Honble Supreme Court was seized of the matter, it issued directions that this Court should stay its hand till the authoritative pronouncement of the Supreme Court is available on this aspect. We may also note that interim orders were granted by this Court, but the Supreme Court vacated the interim orders and in view thereof a general interim order was passed by this Court on 14.05.2008 keeping in mind the orders passed by the Supreme Court whereby the benefit of stay was restricted to the service personnel continuing in the accommodation provided by the Army.

2. The Supreme Court has delivered a judgment in Civil Appeal No.6587/2008 in Union of India and Ors v. Rajpal Singh on 07.11.2008. The question which has been decided has been succinctly set out in para 2 of the Order itself as to whether the holding of an IMB is a condition precedent for discharge of a Junior Commissioner Officer (JCO) on account of low medical category.

3. We may add here that this principle would actually apply not only to the JCOs alone, but also to all the Personnel Below Officers Rank (PBORs for short). The conclusion of the Supreme Court is that the High Court was correct in holding that the PBORs could not be discharged from service without holding an IMB.

4. The result of the aforesaid judgment is that all the present petitions are liable to be allowed.

5. We have heard the counsel for the parties for purposes of concluding as to what directions are required to be passed in the present petitions. The following directions are accordingly issued: i) The order passed by the Chief of Army Staff dated 12.04.2007

directing discharge of all the personnel in Low Medical Category without holding the IMB is quashed. ii) The petitioners who stand discharged as a consequence of the aforesaid order are entitled to be reinstated with all consequential benefits including continuity of service, pay and allowances and seniority as per the rules. iii) The petitioners would report to their respective Regimental Centre from where they have been discharged within a period of 30 days from today for joining. The pay and allowances and other benefits to such of the petitioners who have not been paid the pension and retiral benefits including by AGIF arising from the discharge order will be remitted within a maximum period of three months from today. Naturally, this would be applicable only to such of the petitioners who join within the aforesaid time. iv) There are certain petitioners who have been paid pension, retiral benefits and amount by AGIF and if they seek to re-join naturally they have to refund the amount. However, they are also entitled to be paid the pay and allowances. Thus only the net amount has to be refunded by them. The respondents will inform such persons about the net amount which has to be refunded back by them and the amount be remitted by such persons within 30 days of intimation of the amount to be remitted back by them. v) In respect of aforesaid direction (iv), if the balance amount is not remitted back to the respondents, it will be deemed that such petitioners have accepted their discharge. vi) In case of the petitioners who have not been discharged, naturally the occasion to discharge them now would not arise without holding the IMB. vii) The respondents are not precluded from holding the IMBs after such joining in accordance with law as per the Army Act, 1950, The Army Rules, 1954 and Army Instructions. viii) In view of the passage of time from the date of discharge till the date of rejoining, it will be open to the respondents to carry out any police verification as may be deemed appropriate by the respondents.

6. We would have disposed of all these writ petitions with the aforesaid directions alone, but we are conscious of the fact that there are a large number of personnel who have been discharged under the policy which has been held to be illegal by the Supreme Court. This has already started resulting in a spate of petitions before this Court. Such policy decision was taken on 12.04.2007 and is in proximity of time. In order to give option to such other persons who may not have approached the Court till now arising as a consequence of the judgment of the Supreme Court and to avoid such unnecessary spate of litigation before this Court, it has become necessary to issue certain further general directions even in respect of the PBORs who have not approached any Court till date. This is not only in the interest of such persons but also in the interest of the respondents and to avoid unnecessary huge litigation.

7. Insofar as the aforesaid persons are concerned, the following directions are issued: i) Individual options will be sent by the respondents to such persons within two months making an offer to them to rejoin if they so desire as per the aforesaid directions passed in the present writ petitions. The option letter will indicate that such option has to be exercised within a period of 30 days of the receipt of the letter and in case the retiral and pensionary benefits have been paid to them, such persons must rejoin along with the amount liable to be refunded by them to the respondents which shall also be indicated in the option letter. ii) The respondents will also give a public notice/advertisement apart from issuing the individual notice in a suitable manner preferably in national newspapers.

iii)It is made clear that such persons will also be governed by all the directions made in respect of the petitioners herein insofar as applicable. iv)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. v)It is pointed out that there may be certain PBORs, which may also include some petitioners, whose normal date of superannuation has already arrived or would arrive before the aforesaid option is issued. In such cases, the persons would be entitled to only the benefit of pay and allowances for the differential period after adjusting any additional benefit arising from the premature discharge. Needless to say that those who decide not to rejoin after their premature discharge would neither be entitled to any pay and allowances nor would be required to repay the amount, if any, paid to them after their premature discharge. The petitions stand allowed with the aforesaid directions. CM 771/2008 in WP(C)389/2008 In view of the disposal of the writ petition, the application does not survive for consideration and the same stands disposed of.

Sd./-  
SANJAY KISHAN KAUL, J.

Sd./-  
MOOL CHAND GARG, J.

NOVEMBER 20, 2008