

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH  
KOLKATA  
(Through Video Conferencing)**

**3.  
OA 17/2021**

**L/Nk Bhagirath Sahoo  
Versus  
Union of India and others**

**..... Applicant  
..... Respondents**

**For Applicant : Mr. S.K. Choudhury, Advocate  
For Respondents : Mr. Ajay Chaubey, Advocate**

**CORAM:  
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE VICE ADMIRAL P. MURUGESAN (RETD), MEMBER (A)**

**ORDER  
22.04.2021**

The counter affidavit filed by the respondents is taken on record.

Rejoinder, if any, be filed within four weeks.

2. Learned counsel for the applicant has sought an interim relief stating that though the applicant has been recommended by the Screening Board for extension of service till 27.09.2022, without extending his term he is scheduled to be discharged from service on 31.05.2021, even without allowing him to complete his colour service, which would expire only on 22.09.2021.

3. In Para 4(C) and (D) of the counter affidavit filed by the respondents, they have shown the following reasons for the impugned action:

*(C) In the meantime, the applicant has been placed in Permanent Low Medical Category (LMC) with SHAPE factor P2 (Permanent) for two years wef 10 Jun 2020 to 10 Jun 2022. The detailed instructions for disposal of permanent LMC pers are given in IHQ of MoD (Army)/AddlDte Gen Manpower/MP-3 (PBOR) letter No. B/10201/Vol-VI/MP-3 (PBOR) dated 3 Sep 2010. As per Para 7 of IHQ of MoD (Army) ibid letter, the Commanding Officer is the competent authority to sanction discharge of JCOs/OR placed in med cat SHAPE-2/3, who would obtain approval of OIC Records not below the rank of Brigadier*

*in case of Non Battle Casualties (Willing to Service). In case Regimental/Corps Centre being commanded by the Officer below the rank of Brigadier, case will be forwarded to respective Line Directorate for obtaining sanction of Deputy Director General (Personnel) or equivalent appointment of the Line Directorate as per IHQ of MoD (Army)/AddlDte Gen Manpower/MP-3 (PBOR) letter No. B/10201/Vol-VI/MP-3 dated 26 Nov 2012 (Annexure 4). As per Para 5 of IHQ of MoD (Army)/AddlDte Gen Manpower/MP-3 (PBOR) letter No. B/10201/Vol-VI/MP-3 (PBOR) dated 30 Sep 2010, the retention of LMC personnel is subject to the following conditions:*

- (a) Availability of suitable alternative appointments commensurate with their medical category.*
- (b) Such retention will not exceed the sanctioned strength of the Regiment/ Corps.*

*(D) Post downsizing of APS Corps authorization of Sepoy/Postal Operators (Sep/PO) has been reduced from 2241 to 723. However, holding strength of Sep/PO as on 01 Apr 2021 is 889 resulting 166 Sep/POs held surplus. In order to comply with the instrs/guidelines issued by IHQ of MoD (Army) for disposal of LMC pers, Appendix 'B' to IHQ of MoD (Army) letter has been processed by 2 CBPO and keeping sin view of manpower position of the Sep/PO and conditions of retention of LMC personnel as mentioned at Para 3 (b) above, the applicant has not been recommended for retention in service by Offg Commandant (CO), 2 CBPO and officers in chain of command/OIC Records. Subsequently on receipt of approval of withdrawal of sheltered appointment nd no retention of the applicant in the service from Brig APS, IHQ of MoD (Army) dated 16 Dec 2020, Discharge Order No. 22/2020 dated 22 Dec 2020 in respet of the applicant has been issued with date of struck of strength from the service with effect from 31 May 2021 i.e. within six months of date of approval as per Para 9 of IHQ of MoD (Army) letter.*

XX XX	XXXX	XXXX
XX XX	XXXX	XXXX

Based on the aforesaid reasons, along with the applicant more than 37 personnel are also going to be discharged.

4. The applicant has already been classified in the permanent low medical category and the administrative reasons indicated herein above clearly show that on administrative consideration, the applicant is being discharged. This being the position, we are of the view that no prima facie case has been made out by the applicant for granting interim relief at this

stage. That apart, there will be no irreparable loss to the applicant. Ultimately, if the application is allowed, the applicant can either be reinstated in service or compensated by payment of arrears of salary. On the contrary, the balance of convenience is in favour of the respondents inasmuch if an interim order is passed, they would be compelled to keep the applicant in service without sheltered appointments being available even though he is in a permanent low medical category and the administrative reasons indicated in the application would be brushed aside by compelling the respondents to keep him in service contrary to the administrative difficulties expressed by them.

5. Taking note of all these aspects, we see no reason for grant of any interim relief. Resultantly, the prayer for interim relief stands rejected.

**(RAJENDRA MENON)**  
**CHAIRPERSON**

**(P. MURUGESAN)**  
**MEMBER (A)**

Alex