

Allahabad High Court

Mohd. Yasin Ansari S/O Shri Mohd. ... vs Union Of India (Uoi) Through The ... on 6 February, 2006

Author: S Ambwani

Bench: S Ambwani

JUDGMENT Sunil Ambwani, J.

1. Heard Col. (Retd.) R.A. Pandey, learned Counsel for the petitioners; and Shri K.C. Sinha, Asstt. Solicitor General, Government of India, for the
2. Brief facts giving rise to these petitions are as follows:
3. In Writ Petition No.17585 of 2003, the petitioner Mohd. Yasin Ansari, was enrolled in Indian Army as sepoy in 17 Rajput Regiment at Varanasi on 4.9.91. He completed his training at Fatehgarh and was posted at Dhana (Sagar) in the State of M.P. In the year 1995 his regiment was transferred to Assam, where he suffered with an infection due to change in atmosphere. He was sent to Sikandarabad in 1997 for medical tests. During this period he was attached to 4 Engineers Regiment. He was placed in lower medical category BEE (Permanent) w.e.f. 4.3.2000 with diagnosis 'EXTROPIA (RT) EYE OPTD'. Prior to his placement in category BEE, Permanent, he was operated at Sikandarabad Military Hospital on 22.7.98. He proceeded on sick leave for a month and was recalled to his unit along with his regiment and was posted at Shahjahanpur where he was temporarily put in Category 'C' on 3.9.99. After six months he was placed in category 'BEE' Temporary vide report dated 15.9.99 and thereafter in category 'B' permanent on 8.3.2000. He was not given any sheltered appointment for further retention in service in the Unit. His discharge was sanctioned vide Army Headquarters Letter dated 15.3.2000. His release Medical Board was held at Military Hospital Bareilly on 13.3.2001 where his disability was assessed at 20% for two years and considered as attributable to military service. He was finally discharged from service w.e.f. 1.6.2001 under Army Rule 13(3) III (v) read with Army Rule 13(2-A) after rendering 9 years and 270 days of service.
4. The petitioner's claim for disability pension was forwarded to the Chief C.D.A. (P) Allahabad vide Rajput Regiment letter dated 15.12.2001. He was granted service elements at the rate of Rs.1275/- per month for life and Rs.310/- per month on account of temporary disability elements for two years by the Chief C.D.A. (P) Allahabad vide letter dated 16.5.2002. Re-survey Medical Board of the petitioner was required to be carried out before 13.3.2003. The petitioner was advised by the Military Hospital, Allahabad to report for re-survey medical board vide their letter dated 21.3.2003. His disability was again assessed at 20% for life by the concerned medical authority and the claim for disability was forwarded to Chief C.D.A. (P) Allahabad vide records the Rajput Regiment Letter dated 17.7.2003, which is still under consideration,
5. The petitioner has challenged the orders dated 16.11.2001 and 31.5.2001 and has prayed for writ of mandamus to retain him in service till the age of superannuation and to pay salary month to month whenever it falls due.

6. In Writ Petition No.25959 of 2004 the petitioner Shri Gyanendra Singh while attending camp training at Raiwala on 6.7.2003 as driver PMT was accidentally hit by wooden peg of the tent flap, resulting into a blunt injury in his right eye. He was evacuated to MH Raiwala and thereafter to the camp. The petitioner successfully completed the training and was returned to BEG & Centre, Roorkee along with other recruits on the scheduled date. An inquiry report dated 23.7.2003 was initiated. The petitioner was discharged on 8.8.2003 by MH Roorkee in medical category 'SHAPE-1' and was granted four weeks leave. On return he was referred to MH Dehradun on 13.9.2003. As there was no Eye Specialist, at M.H. Dehradun, he was examined by the Classified Specialist (Ophthalmology). It was found that at the time of injury the visual acuity in his right eye had dropped to 6/60, which later on improved to 6/24. In the concluding para of the report it was written that he has a marked diminution of vision in right eye and is unlikely to make a good soldier, and was recommended to be invalidated out of service. Thereafter, the petitioner was transferred back to MH Roorkee for further disposal. An Invalidating Medical Board was held on 3.12.2003. The petitioner was discharged in the medical category as referred above with remarks to be retained in unit till the medical board is approved by higher medical authority. The petitioner was discharged from service on 28.1.2004.

7. The petitioner thereafter got himself examined from S.R.N. Medical Hospital, Allahabad which is an associated hospital of Moti Lal Nehru Medical College, Allahabad, by Dr. A.K. Chadha, D.O.M.S., Professor Eye Department, and was provisionally diagnosed with vision in right 6/12 P and left eye 6/6 P vide report dated 24.4.2004.

8. The petitioner has prayed for a direction to quash the order dated 27.1.2004 by which he was discharged from Indian Army serving as recruit in the trade of driver PMT under Army Rule 13 (3) IV on medical grounds, due to medical category i.e. 'S1H1A1P1E5', and to set aside discharge order approved by DDMS UP Area, Bareilly on 7.1.2004.

9. In Writ Petition No. 11212 of 2002. the petitioner No. 4272650M Ex Sep Inder Deo Oraon was enrolled in India Army on 26.12.1994. He served in high altitude area in Sikkim till February 1997. The petitioner got married on 11.3.1997 and brought his family to Chandi Mandir in April 1998. A male child was born to the couple. In May 1999 the petitioner reported sick with the complaint 'inability to sustain erection and perform satisfactory sex' and was placed in 'LMC: 'B' (Psy) (T) by Command Hospital (WC) for "Psychosexual Dysfunction". He was lowered in medical category 'C' (Psy) for the same disease on 30.12.1999 to be reviewed afresh. It is alleged in the writ petition that on 27.9.2000 his only brother was murdered by anti social elements. The petitioner's AFMSF-10 was filled by Maj Surendra Monga, OC 'B' Coy/Offg. CO highlighting his professional competence & Psychosocial profile as 'Unsatisfactory, Gloomy, Suspicious and Equivocal performance'. Instead of reviewing his medical condition, the petitioner was discharged on the basis of solitary opinion of Major Neetu Narang, Graded Specialist (Psy) at CH (NC) invalidating him out of service in LMC S-5 of SHAPE factor as a case of 'Psychosexual Dysfunction (Relapse)' and 'Depression'. The petitioner's statutory petition dated 11.8.2001 under Section 26 of the Army Act was rejected by Chief of Army Staff on 30.10.2001 with following orders:

3. AND WHEREAS during his medical review in Jan 2000 at Command Hospital (Western Command), he was found to have manifestation of neurotic tendency, depressive feature and morbid preoccupation with the sexual weakness. He was examined by different psychiatrists and has been given benefits of continuation of three antidepressant drugs, counseling and psychotherapy.

4. AND WHEREAS during his medical review during July-Aug 2000, at Command Hospital (Northcom), Udhampur, the petitioner persisted with the complaints of sexual weakness, in addition to forgetfulness and lack of interest in work. Mental status evaluation revealed significant depressive, features, depressive mood, depressive cognitions and disturbed diorhythms. In view of multiple relapse of symptoms, co-existed depressive disorder, significant impairment of his socio-occupational functioning, inadequate response to protracted psychiatric management and poor motivation for further service, a case was initiated by his Commanding Officer for a report of the Psychiatrist with regard to the employability of the petitioner.

5. AND WHEREAS, the petitioner was offered the required medical treatment. His diagnosis has been confirmed by different psychiatrists. He has been observed for almost two years. His frequent relapses despite adequate treatment and marked pre-occupation with his illness led to his invalidment out from the service on medical grounds on 09 May 2001.

6. AND WHEREAS, in view of the foregoing, there being no infirmity in the invalidment out of the petitioner, his request for reinstatement in the service is not justified.

10. The petitioner has prayed for directions to quash the order of discharge dated 9.5.2001, and the order rejecting his statutory petition with a further prayer to reinstare him in service with retrospective, seniority and salary,

11. In Writ Petition No. 18136 of 2004, the petitioner No. 14436384P Ex Recruit Ishu Narayan was enrolled in Indian Army on 10.1.2001 and joined training as Rect/Opr. At Arty Centre, Nasik. In September 2001 he complained of (sic)udache, and was referred to INHS Asvini through Military Hospital Devlali, where Cl. Spl. (Med. & Neuro) vide his Summary & Opinion dated 11.9.2001 diagnosed it as 'Generalised Tonic Clonic Seizure' and recommended him to be invalidated out of service in 'Category P5'. The Medical Board approved the proceedings on 12.11.2001. HQM & G Area approved the invalidating medical board proceedings on 2.12.2001 and the petitioner was invalidated from Army on medical grounds by order dated 28.12.2001 w.e.f. 18.12.2001 under Army Rules 13 (3) III (iii), 13 (3) IV & 18 (3). He was given Provisional Discharge Certificate on 7.9.2002. The petitioner got himself examined by Prof. (Med. & Neuro) of SRN Hospital', Allahabad on 18.11.2003 who was advised after CT Scan that the petitioner did not have any 'Generalised Tonic Clonic Seizure'. The petitioner filed statutory petition under Section 26 of the Army Act dated 16.12.2003 which was pending for six months when the writ petition was filed.

12. In the counter affidavit of Shri S. Jadhav, QM 198 Fd Regt. C/o 56 APO it is stated that the petitioner had an attack of convulsions and had tongue bite on the right side of tongue. The convulsions subsided in 2-3 times. He was referred to MH Deolali and where he was treated five

days and transferred on 5.9.2001 to Indian Naval Hospital ship, Ashvini. After detail investigation he was diagnosed as a case of 'Generalised Tonic Clonic Seizure' (Secondary) and was recommended to be invalidated out of service in medical category S1H1A1P5E1 with the conclusion that he was a recruit and was unlikely to become a fit soldier. He was transferred to Military Hospital, Deolali for Invalidating Medical Board which confirmed the opinion and recommended him to be invalidated. He was discharged on 18.12.2001 under Item (iv) of Rule 13 of Army Rules of 1954.

13. In Writ Petition No. 50936 of 2004 the petitioner No. 6493716F Ex Rect/ASH Anil Singh was enrolled in Indian Army on 21.10.1997 and was assigned Animal Store Hand (ASH) trade in Army Service Corps. His training commenced at Gaya on 22.10.1997. A re-medical examination was held on 28.11.1997, at MH Danapur where Surgical Specialist recommended him to be invalidated out for 'Hydrocele & Un-descended Testis (Rt.)' Proceedings for medical board were held at MH Gaya on 9.1.1998 and were approved by Deputy Assistant Director of Health, Headquarters, Madhya Pradesh, Bihar & Orissa Area. The discharge order dated 7.3.1998 was passed invalidating him out of service on medical grounds and struck off strength (SOS) on 8.3.1998. No notice was given for discharge. Petitioner's disability pension claim was forwarded to Chief Comptroller, Defence Accounts (Pensions) Allahabad. It was rejected on 16.3.1999 on the basis of opinion expressed by Medical Advisor (Pensions) due to disability neither attributable nor aggravated by Military Services. His statutory petition dated 1.6.2001 received parawise comments of Commandant, ASC Centre (North) Paharpur, Gaya. It is contended that the statutory petition is still pending. In para -9 of the counter affidavit of Maj. Manish Ojha, it is admitted in para-9 that the statutory petition was received on 26.6.2001. There is, however, no indication whether it was decided.

14. In Writ Petition No. 15417 of 2004, the petitioner No. 15732Q9M Ex. Spr Hasib Ahmed Islam was enrolled as Sapper/Musician in Army's Bombay Engineer Group, Kirkee on 22.12.1984. On his posting to 106 Engineer Regiment in Eastern Sector, he fell sick and was placed on 11.11.1992 in LMC 'BEE' (T) due to 'HEPATO INTESTINAL AMOEBIASIS' and in 'CEE' (P) to be reviewed after 24 weeks. It is alleged that petitioner's signatures were obtained on 5.5.1993 on an application for pre-mature discharge on his own request after he was given assurance that he will get disability pension. He was proposed to be released on 1.8.1993 and was directed to 151 Base Hospital, Guwahati for Release Medical Board. The Invalidating Medical Board assessed his disability at 30% and recommended him to be released. The petitioner was asked to report in the end of June, 1993 to complete discharge formalities in the record office Kirkee, Pune, and by order dated 31.7.1993 he was discharged under Item-III (iv) of Army Rule 13(3) showing 'premature retirement on his own request', without any order regarding disability pension. The petitioner submitted a statutory petition on 28.11.2002 to the Chief of Army Staff which was rejected on 11.1.2003 by the Record Officer for OIC Record on the ground that the petitioner is not entitled for disability pension as he was discharged on extreme compassionate ground on his own request. In para 3 of the writ petition, the petitioner has alleged that he was discharged after giving assurance that he will get disability pension. The petitioner has invoked doctrine of promissory estoppel for award of disability pension. He has prayed for setting aside the orders dated 28.3.2003 and 23.7.1993 and for reinstatement with retrospective seniority.

15. The writ petitions were heard on 3.2.2005 and 12.8.2005. learned Counsel for the petitioner has relied on to Section 47 of the Persons with Disabilities (Equal Opportunities, Protections of Rights and Full Participation) Act 1995 (Act No. 1 of 1996) which provides that no establishment shall dispense with or reduce in rank an employee on acquiring disability during his service, provided that after acquiring disabilities, if the employee is not suitable for the post, he was holding, he can be shifted to some other post with the same pay scale and service benefits and further that if it is not possible to adjust him against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier. Section 47 of the Act No. 1 of 1996 is reproduced below;

47. Non-discrimination in Government employment.-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not I suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work earned on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

16. Shri K.C. Sinha, learned Counsel for Central Government placed on record notification dated 28.3.2002 under proviso to Section 47 of Act No. 1 of 1996 by which all categories of posts of combatant personnel of Armed Forces were exempted from the provisions of Section 47 of the Act. The notification is reproduced below;

EXTRACT FROM THE GAZETTE OF INDIA PART II, SECTION 3, SUB-SECTION (ii) Appearing on Page Nos. 3489-3490 Date: 13.4.2002 MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT NOTIFICATIONS New Delhi, the 28th March, 2002 S.O. 1179.- In exercise of the powers conferred by proviso to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) the Central Government having regard to the type of work carried on hereby exempt all categories of posts of combatant personnel on the Armed Forces from the provision of the said section.

(No. 16-27/2001-NI.I) Smt. RAJWANT SANDHU, Jt. Secy.

17. Col (Retd.) R.A. Pandey, learned Counsel for the petitioner has amended the writ petitions challenging the notification dated 28.3.2002 on the ground that it is biased, arbitrary, discriminatory and ultra vires to the Act No. 1 of 1996, and is thus violative of Article 14, 16 and 21 of

the Constitution of India. He submits that the Ministry of Social Justice and Empowerment, Government of India without making any alternative provisions for nearly 25 Lacs combatant personnel of the three Armed Forces of the Union of India, has not only violated, the provisions of Act No. 1 of 1996 in letter and spirit but has also arbitrarily denied the benefits of the Act as also the benefits of Army Order No. 46 of 1980, Army HQ letter dated 15.3.2000 to these unfortunate personnel who acquire disabilities during service, without any justification.

18. Col. (Retd.) R.A. Pandey submits that on being called young persons join Indian Army to serve the nation. They have strong sense of devotion and commitment to duty. They have to undergo rigorous training and having been recruited and trained, they should not be thrown out from service on suffering disabilities which may be attributable to training or service or otherwise. The denial of disability pension leaves them to destitution and, even if the disability pension is granted, the disability element of the pension is so low that they are not able to survive on his own. Col. (Retd.) R.A. Pandey submits that though in the present case the disabilities of the petitioners do not fall within the definition of disability under the Act No. 1 of 1996 which is too narrowly defined under the Acts, the discharge does not conform to the Army Order No. 46 of 1980, providing for procedure for dismissal of the permanent lower medical category personnel other than officers, Army Rule 13, Army Headquarters letter dated 19.6.1999 and 15.3.2000. He submits that the discharge of personnel with lower medical category in Indian Army depends upon the whims of a few specialists in Military Hospitals. Their opinions are often biased and are arbitrary affecting a person's future and his right to life. He has given illustrations where army personnel in lower medical category are discharged without following due process of law provided by Army itself in the aforesaid orders. He submits that the Army personnel serve in extreme climate, and have to live for long periods in difficult terrain and circumstances. The nature of job is dangerous and risky and that in the circumstances the discharge not only affects the life of the persons, who suffer disabilities attributable to service but also affect the morale of the forces. Army Order No. 46/1980 lays emphasis upon suitable alternative appointment commensurate with the medical category, placed permanent low to the effect that the retention of such personnel does not exceed the sanctioned strength of the regiment/corps. These Army orders and Army HQ letters are also applicable to those who do not fall within the definition of disabled under the Act No. 1 of 1996. It is contended by Col. (Retd.) Pandey that the respondents have not followed the guiding principles laid down in Army Headquarters letters No. B/10122/LMC/MP-3 (PBOR) dated 15.3.2000 which spells out the policy of the Indian Army for rehabilitation by offering sheltered appointments. No offer whatsoever or any effort was made to find out sheltered appointment for the petitioners. He has also attacked the policy on the ground that it discriminates those who have been rendered disabled or placed in permanent low medical category due to battle casualties and not those who have not suffered battle casualties. A lower medical condition on account of difficult conditions in service or in battle do not fall in different categories. It would be relevant to quote the entire Army Headquarters letter dated 15.3.2000;

DISPOSAL OF PERMANENT LOW MEDICAL CATEGORY PERSONNEL BELOW OFFICERS' RANK

1. Reference :-

(a) AO 46/80

(b) AR 13

(c) Army HQ letter No. B/10122/LMB/Org 2 (MP) (C) dt. 09 Jun 99.

2. In the recent past, the aspect of management of permanent low medical categories (LMCs) has been under scrutiny at all levels with the aim of not only simplifying the procedure for discharge but also to ensure that such personnel are not deprived off various benefits offered from time to time by the Central/State Governments, Army HQ, Non-Governmental Organisations etc. As already known, most of these benefits, both monetary and material, are provided only to those battle casualties who are invalided out by the organization, and not to those who are themselves unwilling to continue in service. The conditionalities laid down by the donors for receipt of such benefits on discharge must, therefore, be explained in detail to affected JCOs/OR so that maximum advantages are derived by them.

3. This letter further simplifies the existing procedure for discharge of permanent LMCs, in the rank of JCO/OR. It is, however, reiterated that clarifications on benefits, service conditions, employability etc. should be obtained from the Directorate concerned at Army Headquarters and not from this Directorate.

Sheltered Appointments

4. AO 46/80 lays down implementation instructions for disposal of permanent LMC JCOs and OR. Vide Para 2 (a) of the AO, retention of such personnel is subject to the following conditions:-

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

(b) Should be justifiable in the public interest.

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

5. Guiding Principles. Within the conditions laid down in AO 46/80, the guiding principles that should be considered by the Commanding Officers for retention/discharge of permanent LMCs are as under: -

(a) Those nearing their minimum pensionable service should preferably be retained.

(b) The nature of disability and capability of the individual to look after himself outside the service and the need to continue treatment at MHs which may not be located in the vicinity of the individual's home station.

(c) The circumstances under which he injury was 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) Whether requisite medical treatment has been provided to the individual, including fitting of artificial limbs or other aids.

(e) The effect on pensionary/disability benefits from the Central and State Govts/Army HQ/AG1/NGOs etc. Sanctioning Authorities

6. Under the provisions of AR 13, based on the recommendations of the Invalidating Board, the Commanding Officer is the competent authority to sanction discharge of JCOs/OR who have been found medically unfit for further service. This authority had been enhanced to specified authorities superior to the Commanding Officer in order to ensure better management and control of permanent LMCs. However, keeping in view the changing environment, a review has been carried out and it has now been decided that while the sanctioning authority would be the commanding Officer as laid down in AR 13, approval of the following authorities, would however, be obtained prior to the actual sanction of discharge;-

(a) Battle Casualties (Willing to serve) - Head of Army/Service

(b) Battle Casualties (Unwilling to serve)- OIC Records

(c) Non-Battle Casualties (Willing to serve) OIC Records.

(d) Non-Battle Casualties (Unwilling to serve) OIC Records.

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

8. Withdrawal of Sheltered Appointment. Sheltered appointment will be formally withdrawn with effect from the date of approval for discharge by the competent authorities given at Para 6 above. Discharge of the individual will be carried out within six months of the date of approval.

9. Procedure Battle Casualties (Willing to Serve)

(a) Requisite documents, including the following documents in triplicate, will be forwarded to the parent Directorate at Army Headquarters, through the OIC Records.

(i) Proforma as per Appendix attached.

(ii) Willingness Certificate by the individual.

(b) Documents, along with the decision of the Head of Arm/Service, will be returned to the unit through OIC Records by the Parent Directorate.

(c) Where approval has been accorded, the individual will be brought Before Release Medical Board and discharge carried out as per laid down instructions. Copy of approval by the Head of Arm/Service will be submitted to the Medical Board along with the medical documents.

10. Non-Battle Casualties (Willing to Serve) . The procedure will be as above except that OIC Records will be the approving authority.

11. LMC Unwilling to Serve . Permanent LMCs, whether Battle Casualties or otherwise, unwilling to continue in service will sign an unwillingness certificate which shall be forwarded to OIC records along with other documents for necessary approval. The individual will thereafter be brought before Release Medical Board and discharge carried out as per laid down instruction. Copy of approval by the OIC Records will be submitted to the Medical Board along with the medical documents.

Date of Effectiveness

12. These orders will be effective from the date of signing of this letter. Discharge orders issued prior to this date but not implemented, will be reviewed as per provisions of this letter.

13. This letter superseded our letter referred to at Para 1(c) above.

14. HQ Commands are requested to disseminate this letter down to unit level, including all hospitals.

15. This issues with the approval of the Adjutant General.

Sd/-

(SR Ghosh) Col DirMP-3(PBOR)

19. Shri K.C. Sinha, learned Counsel for respondents has relied upon supplementary counter affidavit of Capt. P.K. Patro filed on behalf of Ministry of Defence. He has relied upon notification dated 28.3.2002 under the proviso to Section 47 of the Act No. 1 of 1996, by which exemption has been granted to all categories of combatant personnel of Armed Forces from the purview of Section 47 of the Act No. 1 of 1996. He submits that the Act cannot be made applicable to Armed Forces by virtue of Article 33 of Constitution of India which gives Parliament unlimited power to restrict fundamental rights in respect of members of Armed Forces and has relied upon judgments in Gopal v. Union of India AIR 1967 SC 413; and Ram Swarup v. Union of India .

20. Shri Sinha submits that for proper discharge of duties, members of Armed Forces besides other operational duties which include service in extreme climates of Rajasthan, high altitude of Lch and Ladakh, in thick forest of North East region and highest battle field of the World i.e. Siachin Glaciary,

have to be physically fit at all times to meet the challenges of job requirement. The medical examinations are made periodically to check the physical fitness of all ranks and officers. In case any member of the Armed Force found permanently medically unfit to perform the duties, and no sheltered appointment is available, then such person is medically boarded put of service, with retiral benefits as admissible to him as per the provision of the Army Rules 15A in case of the officers, and under Army Rule 13 in case of persons other than officers. The Chairman of the Staff Committee suggested, exemption from provisions of Section 33 and 47 of Act No. 1 of 1996, which was allowed by the Central Government. The Armed Forces is exempted from reservation for physically disabled and special provisions under Section 47 of the Act No. 1 of 1996. The proposal submitted by the Armed Force included recruitment Rules, nature of duties, description of work, environment of the posts, equipments used for performing the job, reasons for seeking exemptions, total number of posts, identified for the persons with disabilities category wise, number of posts filled by the persons with disabilities category wise, rehabilitation measures taken for persons, who acquired disability during service and policy for boarding out the personnel who have been declared medical unfit for the post.

21. In para 11 of the supplementary counter affidavit of Cap, P.K. Patro, it is stated that Army requires young and physically fit persons to discharge their role effectively. The Army is carrying in its ranks a large number of personnel in low medical category, whether it was attributable to military service or not. The Army also provides sheltered appointment to battle casualties, rehabilitation/re-settlement measures currently in place for disabled ex servicemen which have been detailed in para 12 as follows;

(a) Employment For the purpose of appointment in Group 'C' and Group 'D' posts in the Central Government/Public Sector Undertaking filled by the Employment Exchanges, disabled ex servicemen whose disability is attributable to military services are accorded Priority-I. Further upto 2 dependants of the Army Personnel killed in action or severely disabled (with 50% or above disability and who have become unfit for employment but disability is attributable to military service) are also given priority.

(b) Self Employment-

(i) Widows/disabled ex servicemen are eligible to be sponsored by Director General (Resettlement) for attaching one tripper truck in their name with an ex servicemen Coal Transport Company. At present 314 widows and 30 disabled ex servicemen are availing the benefit of scheme as on date.

(ii) Ministry of Petroleum and Natural Gas has reserved 8% of their Oil product agencies i.e. LPG, Kerosene Oil Agencies and Petrol Pumps for widows/dependants/disabled ex servicemen.

(iii) 500 Petroleum/LPG Outlets were released by Govt. for widows/NOK of personnel killed in Operation Vijay in Kargil Sector. A case has been taken up with Ministry of P & NG to allot 50 of these outlets to disabled soldiers boarded out of service during Kargil War.

(C) Ex-gratia

(i) Prior to 01st May 1999 disabled battle casualties were awarded an ex-gratia of Rs. 50, 000/- each. After 01st May 1999 the ex-gratia was raised to Rs. 1 lakh. Total amounts paid are as under:-

(aa) For soldiers disabled (Battle Casualties) prior to
01st May 7999 - Rs. 1, 18, 994/- Lakh.

(bb) For soldiers disabled (Battle Casualties) after to
01st May 1999 - Rs. 150.00 Lakh.

(d) A special package was applicable to disabled soldiers of Operation Vijay (Kargil) who were

(e) Disabled soldiers retained in service are paid ex-gratia depending upon their percentage of

Sl. No.	Disability Percentage	Amount
1.	Over 75%	Rs. 30,000.00
2.	50% to 75%	Rs. 20,000.00
3.	Less than 50%	Rs. 10,000.00

That apart from the above, assistance is also provided from Army Welfare Corps Fund to disabled

(a) Mobility Equipment Wheel Chair/Scooter (a) Max upto Rs. 50,000.00
(i) No. of cases - 834
(ii) Amount paid - Rs. 397.89 lakhs

(p) Provision of Artificial Limbs @ Rs. 1 lakh for above

Knee Prosthesis, Rs. 50,000/- for below Knee

Prosthesis and Rs. 50,000/- for below Elbow Prosthesis.

(i) No. of cases - 141
(ii) Amount paid - Rs. 62.95 lakhs

(c) Modification of Bathroom (r) Rs. 25.0000/-

(i) No. of cass - 06
(ii) Amount paid - Rs. 1.5 lakhs

(d) Daughter's marriage @ max upto Rs. 30,000/-

- (i) No. of cases - 272
- (ii) Amount paid - Rs. 62.5 lakhs

22. In para 14 of the affidavit of Capt. P.K. Patro, it is stated that about 2500 army personnel are boarded out annually. It is not possible to afford protection in service under Section 47 of the Act to all those who have been declared disabled. The Ministry of Defence pleaded before the Ministry of Social Justice of Empowerment that in view of the stringent requirements of fitness, the recruitment policy for the Armed Forces has to be kept in view and no compromise can be made with the same. Keeping in view the need to have cohesive fighting forces, no reservation of the post is sought even for the socially backward classes in the matter of recruitment to the Armed Forces. It is stated in para 16 of the affidavit that Ministry of Defence found that provision of Section 33 and Section 47 of the Act No. 1 of 1996 would cause turbulence if applied to Armed Forces because the number of persons who are unfit for military duties would create a problem for the Armed Forces as they have a large number of physically/disabled soldiers in the rank.

23. Shri K.C. Sinha has laid great emphasis in the pleadings in para 18 that the provision for active service and non-active service as observed by the Court amongst Military Organization means Armed personnel including officers who are on the front or those who are posted at peace stations. A cycle system is maintained in posting for a fixed period at primary stations in non-active service. The armed personnel are required to perform ministerial jobs but after expiry of the said period, they have again to go back to their active service. They cannot provide alternative jobs for discharging ministerial work to the disabled persons as the Ministry has to maintain the vacancies which may provide room for adjustment of those armed persons who are in active service after expiry of their fixed term. In case disabled persons are to be adjusted in the peace and family stations for performing the ministerial job in any work where standard of physical fitness is not required, then it will not be possible for the Armed Forces to maintain the cycle system. Army Order No. 46/80 issued for disposal of Permanent Low Medical Category Personnel other than officers, takes care of a suitable alternative employment commensurate with medical category provided their retention does not exceed 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 are discharged irrespective of their service put in by them. Ordinarily permanent lower medical category personnel are retained till completion of 15 years in the case of JCOs and 10 years in the case of other ranks (including Non-Commissioned Officers). Such personnel may continue to be retained beyond the above period until they become due for discharge in the normal manner subject to their willingness and the fulfilment of the stipulation. He has relied upon Army Headquarters Memo dated 15.3.2000 reproduced above with reference to Army Order No. 46/80 and Army Rule No. 13.

24. The issue raised in these writ petitions is of great importance as it affects the fundamental right as well as statutory rights guaranteed by Act No. 1 of 1996 of a large number of personnel of armed forces, who are discharged every year on the ground of their placement in permanent lower medical category. In the supplementary affidavit filed on behalf of Ministry of Defence this number has been

approximated to about 2500 every year.

25. Under Article 33 of the Constitution of India, the Parliament may by law determine to what extent any of the rights conferred by Part III of the Constitution of India shall in its application to; (a) the members of Armed Force; (b) and other categories of Armed Force be restricted or abrogated. So as to ensure proper discharge of duties and maintenance of discipline amongst them. The Constitution Bench of Apex Court in *Ram Swarup v. Union of India* MLJ 1988 SC 113, held that each and every provisions of the Army Act, 1950 is law made by the Parliament and where such provision affects fundamental rights in Part III of the Constitution, that the III provision does not on that account become void, as it must be taken that the Parliament has thereby under Article 33 made requisite modification to affect the respective fundamental right. Another Constitution Bench of the Apex Court in *R. Viswan and Ors. v. Union of India Mil. L.T.* 1999 SC 85 while considering the constitutional validity of Section 21 of the Army Act, 1950 held that rights which are permissible to be restricted by notification under Section 21 or part of fundament 1 rights under Clauses (a), (b) and (c) of Article 19(1) and under the same Constitutional scheme, cannot be restricted by executive action un-supported by law. Further the restriction must be reasonable and in the interest of sovereignty and integrity of the India, security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Section 21 of Army Act gives powers to the Central Government by notification to restrict any member of Armed Forces to join any trade union, society, institution, association, to attend, to address any meeting, take part in any demonstration and to communicate with press or to publish in book letter or document.

26. In *Roy Ajai Kumar Misra v. Union of India* (Writ Petition No. 23251 of 2002) Andhra Pradesh High Court held that since discipline is to be maintained in the Army, certain powers have to be conceded to the officers to deal with the soldiers and subordinate officers to follow command, but on the pretext of maintaining discipline, the freedom of the personnel working under them cannot be curtained, or infringed to take away the rights guaranteed under Article 21 of Constitution of India.

27. The rights of the disabled as defined under 2(1) of the Act No. 1 of 1996 which includes blindness, low vision, leprosy cured, hearing impairment, mental retardation, locomotor disabled and mental illness given in the Act and other statute is basically rights to equal protection of all laws guaranteed under Article 14 of the Constitution of India. It defines and spells out the responsibility of the State towards prevention of disability, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disability. It admits to remove barriers to create free environment for persons with disability, remove discrimination against persons with disabilities in the sharing of development benefits; to counteract, situation of abuse and exploitation of members with disabilities and to make special provisions to integrate persons with disabilities in social mainstream. Section 47 of the Act is a salutary provision which brings non-discrimination in governmental employment. The disabled persons within the meaning of the Act acquiring disability during the service are not to be discriminated in dispensation with their job and reduction in rank. Such persons are provided to be rehabilitated/seconded in the establishment and in case it is not possible to adjust, such employee has to be kept on supernumerary post until a suitable post is available or he attains age of superannuation whichever is earlier. Sub-section (2)

denies opportunity of promotion on the ground of disability. The proviso gives powers to the appropriate Government which exempt any establishment from the provisions of the section. The establishment in Section 2(k) means a corporation, established under the Central or provincial or State Act or an authority or body owned and controlled or aided by the Government or a local authority or a Government. The company as defined under Section 617 of the Companies Act, 1956 includes department of a Government.

28. We are concerned herewith, two different classes of persons namely (1) those who have suffered disability as defined under Section 2(i) of the Act No. 1 of 1996; and the other (2) those who are not disabled within the meaning of Section 2(1) of the Act No. 1 of 1996 but are placed in permanent lower medical category.

29. In *Gopal Upadhyay v. Union of India*, an order cancelling the registration of a union of carpenter, tailor, boot makers, gardeners, sweeper, cooks, etc. who are compendiously described as 'camp followers' of the Army. Relying upon Section 21 of the Army Act which empowers Central Government to notify Rules restricting or curtailing fundamental right under Article 19(1)(c), it was submitted that although these category of persons are non-active and are in some matters governed by other service regularizations, they are integral to the armed forces. They answer the description of the persons of the Armed Forces within the contemplation of Article 33 of Constitution of India and thus the notification covered them.

30. Before considering the effect of notification under the proviso to Section 47(2) of Act No. 1 of 1996, dated 28.3.2003 issued by Central Government exempting the combatant personnel of Armed Forces from the purview of Section 47 of the Act, it would be appropriate, to refer to the object and purpose and background in which Act No. 1 of 1996 was enacted.

31. Article 25 of the Declaration of Human Rights by UN General Assembly states that each person has, "the right to security in the event of unemployment, sickness, disability, widowhood, old age, and other lack of livelihood in the circumstances beyond his control. In the year 1971, the General Assembly stipulated that mentally retarded persons be accorded the same rights as other human beings, as well as special rights corresponding to their needs in the medical, educational and social fields; and in 1975 the General Assembly adopted the "Declaration on the Rights of Disabled Persons" which proclaimed equal civil and political rights of disabled persons, and the subsequent adoption of the standard Rules in the equalization of opportunities for Persons with Disabilities in 1993 served as an instrument for policy making and a basis for technical and economic cooperation. The evaluation of these international standards relating specifically to disability reflects on the move to place the rights of persons with disabilities within the category of Universal Human Rights.

32. It was also realised that the disabled need adequate protection through appropriate Legislation. A meeting to launch the Asian and Pacific Decade of the Disabled Persons 1993-2002 was then convened by the Economic and Social Commission for Asian and Pacific Region. It was held at Beijing on 1st to 5th December, 1992 and it adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region, India was a signatory to this promulgation and accordingly the Bill was introduced for this purpose and ultimately the

Disabilities Act was enacted.

33. The Statement of object and reasons to the Disabilities Act which was appended to the Bill reads as under:

The meeting to launch the Asian and Pacific Decade of the Disabled persons 1993-2002 convened by the Economic and Social Commission for Asian and Pacific Region, held at Beijing on 1st to 5th December, 1992 adopted the proclamation on the Full Participation and Equality of People with Disabilities in the Asia and the Pacific region. India is a signatory to the said proclamation and it is necessary to enact a suitable legislation to provide for the following:

- (i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;
- (ii) to create barrier free environment for persons with disabilities;
- (iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis, non-disabled persons;
- (iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;
- (v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and
- (vi) to make special provision of the integration of persons with disabilities into the social mainstream.

Accordingly, it is proposed to provide inter alia for the constitution of Co-ordination Committees and Executive Committees at the Central and State levels to carry out the various functions assigned to them. Within the limits of their economic capacity and development the appropriate Governments and the local authorities will have to undertake various measures for the prevention and early detection of disabilities, creation of barrier-free environment, provision for rehabilitation services, etc. The Bill also provides for education, employment and vocational training, reservation in identified posts, research and manpower development, establishment of homes for persons with severe disabilities, etc. For effective implementation of the provision of the Bill, appointment of the Chief Commissioner for persons with Disabilities at the Central level and Commissioners for Persons with Disabilities at the State level clothed with powers to monitor the funds disbursed by the Central and State governments and also to take steps to safeguard the rights of the persons with disabilities is also envisaged.

34. The Act No. 1 of 1996, deals with prevention of early detection of disabilities, education, employment, affirmative action, non-discrimination, research and manpower development, recommendation of institutions for persons with disabilities, institutions for persons with severe

disabilities, social security and other miscellaneous provisions.

35. To illustrate reference may be made to the decisions of the Hon'ble Supreme Court in National Federation of Blind v. Union Public Service Commission . the Writ Petition was filed against discrimination of visually impaired persons in competing for the coveted civil services of the country, and for the government to be directed to permit otherwise qualified blind candidates to appear in the selection examination. The Supreme Court not only allowed the petition, but also directed the government to allow them to write the examination in Braille or with the help of a scribe. The Supreme Court also responded to the Writ Petitions filed under Article 32 of the Constitution of India, against the treatment meted out to persons with mental disabilities in institutions for their care and treatment and laid down guidelines on their living conditions, education, training and rehabilitation facilities in such institutions.

36. Article 21 of the Constitution also protects the rights to livelihood as an integral facet of right to life and persons with disability were given protection under this Article of the Constitution. In this context reference may be made to the famous case of Narendra Kumar Chandla v. State of Haryana and Ors. which was decided by the Hon'ble Supreme Court prior to the enforcement of the Disabilities Act. This was a case of a Sub-Station Attendant of the Haryana State Electricity Board in the pay scale of Rs. 1400-2300 who unfortunately had to be operated in Tata Memorial Hospital, Bombay and was thereafter discharged but his right arm was completely amputated The Electricity Board absorbed him as Carrier Attendant in the lesser pay scale of Rs.825-1300. Feeling dissatisfied, he approached the High Court but his petition was dismissed. The Supreme Court while granting relief of protection of last pay scale observed:

Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Asking the appellant to discharge the duties as a Carrier Attendant is unjust. Since he is a matriculate, he is eligible for the post of LDC. For LDC, apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as an LDC. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs. 1400-2300. Necessarily, therefore, his last drawn pay has to be protected. Since he has been rehabilitated in the post of LDC we direct the respondent to appoint him to the post of LDC protecting his scale of pay of Rs. 1400-2300 and direct to pay all the arrears of salary.

37. In Anand Bihari and Ors. v. Rajasthan State Road Transport Corporation, Jaipur and Anr. , the Hon'ble Supreme Court examined the question whether a State Road Transport Corporation can retire the bus drivers on the ground of their defective or sub-normal eyesight developed during the course of the employment. The Court held that termination of service was unjustified, inequitable and discriminatory. It was impressed by the Supreme Court that service conditions of the bus drivers must provide adequate safeguards since such bus drivers developed defective eyesight or

sub-normal eyesight because of the occupational hazards. A scheme was directed to be framed for providing alternative jobs along with the retirement benefits and for payment of additional compensation proportionate to the length of service rendered by them, in case of non-availability of jobs.

38. In the case of Rameshwar Dass and Anr. v. State of Haryana and Ors. (1995) 3 SC 285, the Supreme Court while considering the aforesaid judgment delivered in the case of Anand Bihari (supra) observed as follows:

It appears that some of the appellants suffered serious injuries during the course of their employment which incapacitated them from performing their duties. Initially, they were transferred to lighter duties, but while they were working on those posts, they were retired from service on the ground that they were medically unfit. From the written submission filed on behalf of the respondents before the High Court, it appears that the terminal benefits have been paid to them. If the judgment of this Court in Anand Bihari v. Rajasthan State Road Transport Corporation, is read in its proper context and spirit, then it has to be held that this Court impressed on the State Road Transport Corporation to first provide for alternative jobs to such drivers who have become medically unfit for heavy vehicles. A direction for payment of additional compensation was given only when it is not possible at all in the existing circumstances to provide alternative jobs to such drivers. It need not be pointed out that the authorities of the Corporation should not take recourse only to the payment of the additional compensation without first examining whether such drivers could be put on alternative jobs.

Taking all facts and circumstances into consideration, we direct the respondents to apply their mind properly to the question whether the appellants who have suffered injuries and have become medically unfit can be put to some alternative jobs by way of rehabilitation. The question of payment for additional compensation will arise only when it is not possible to provide alternative jobs to them or some of them.

39. Section 47 of the Disabilities Act was analysed by the Hon'ble Supreme Court in Kunal Singh v. Union of India and Anr. and it was observed as follows:

Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an

employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.

40. The same view was reiterated by the Supreme Court in Union of India v. Sanjay Kumar Jain 2004 AIR SCW 4577 wherein it was held as follows:-

Sub-section (1) of Section 47 in clear terms provides that there cannot be any discrimination in Government employments and no establishment shall dispense with or reduce in rank an employee whatsoever during his service.

41. The Act No. 1 of 1996 is by way of special provisions to remove inequality. The provisions of Section 47(1) and (2) of Act No. 1 of 1996 were applicable to the members of the Armed forces. The notification dated 28.3.2002 exempts all categories of combatant personnel of armed forces from the purview of Section 47 of Act No. 1 of 1996. The notification is legislative in character but is not an act of Parliament and thus the Court is not called upon to decide whether the notification restricts or abrogates the fundamental rights guaranteed under Article 14 and 21 of the Constitution of India.

42. It is contended by the petitioners that all categories of Armed Forces are not combatant personnel. There are various categories of employment in the army which cannot be called combatant personnel. It is difficult to conceive that each and every army personnel has to be physically fit for a combatant role. In the present case, we are dealing with about 2500 persons who suffer disabilities and/or are brought under permanent lower medical category from amongst more than 1 lac army personnel constituting armed forces. There are large number of posts in cantonments, field stations, workshops and such establishments where the person may not required to be posted on active combatant duties. The carpenters, tailors, boot makers, gardeners, sweepers, cooks and painters, mistries may be armed personnel, they, however, may not be posted or assigned field duties. The Court has not been shown any provision in law or classification under the Army Act, Rules or Army Orders, which may provide each and every army personnel to be assigned combatant duties. It is too much of rhetoric to say that once a person joins army, he has to be fighting fit and may be posted on duties ready to combat. This argument is devoid of logic and appears to be made only out of prejudice to the disabled and those who are placed in permanent lower medical category. All the wars in future are not likely to be fought in battle field. The Army shall continue to require services of personnel at stations, which may not be called peaceful at the

time of war but are required at such stations to look after the establishment, families and equipment.

43. If we compare the stand of the Army before Ministry of Social Justice and Empowerment, for exemption from Section 47 (Act No. 1 of 1996) with its earlier policy spelled out in Army Rule 13, Army Order 46/80, and Army Headquarters letter dated 9.6.1999 and 15.3.2000 in respect of disposal of permanent low medical category personnel, below officer rank, we find a clear contradiction between the two. The disabled are included in permanent low medical category personnel. The policy adopted by Indian Army for such persons is to offer sheltered appointments, which does not exceed the sanctioned strength, and to continue those nearing minimum pensionable service to be retained, to continue with treatment at Military Hospitals and to provide requisite medical treatment including of fitting of artificial limbs and other aids. The Army was compassionate until it was faced with a declaration of rights under Section 47 of Act No. 1 of 1996. The legal right declaring equal protection to disabled appears to have put the Army on defensive, and to make a representation to the Central Government to exempt the entire Armed Forces from Section 47 without any exceptions. A compassion to its disabled personnel, appears to have given place to rigid stand, out of a state of fear, to the declaration of right under Section 47. Instead of asking for a qualified and restricted exemption based on equity and good conscience, the army applied for total exemption, and the request was granted as a matter of course.

44. An establishment under the proviso to Section 47 of Act No. 1 of 1996 also means a part of establishment and also includes qualified exemptions to certain categories of disability. In my opinion the representation for exemption from Section 47 without qualifying itself any part of establishment which may not be required to combat and in complete ignorance to the policy to deal with persons with permanent low medical category by providing sheltered appointments, not exceeding the sanctioned strength of the regiment/corps, was not a reasonable exercise of administrative powers of exemption conceded to the Central Government. It not only violates the right of equality guaranteed to the disabled persons under Article 14 of the Constitutions, but also suffers from the vice of wednesbury unreasonableness. The notification dated 28.3.2002 is thus held to be violative of Article 14 and 21 of Constitution of India. It will, however, be open to the Ministry of Defence as an establishment to apply afresh to the Central Government, through the Ministry of Social Justice and Empowerment, with a fresh representation with or without qualified or restricted exemptions and for a fresh consideration in accordance with observations made as above.

45. Now coming to those persons who are not disabled within the meaning of Section 2(i) of the Act No. 1 of 1996 but are placed in permanent low medical category irrespective of notification dated 28.3.2002, I find substance in the contention of Col. (Retd.) R.A. Pandey that petitioners were not treated fairly and in accordance with policy of Indian Army as contained in Army Order 46/80, Army Rule-13 and Army Headquarters letters dated 19.6.1999 and 15.3.2000. The Court is not called upon to decide nor there is any case of battle casualties, which have been given a preferential treatment both for sheltered appointment and compensation/pension and thus does not find it proper to deal with the arguments. The policy, however, as detailed above, offers sheltered appointments namely suitable alternative appointments commensurate with the medical category justified in public interest and which does not exceed the sanctioned strength of the regiment/corps.

It also requires the authority to consider the nature of disability, the capacity of the individual to look after himself outside the service and the need to continue treatment, the circumstances in which the injury was sustained or aggravated and whether requisite medical treatment has been provided. The petitioners did not receive such consideration at all. The opinion of the medical experts which cannot be ordinarily subjected to judicial review has been treated to be final to invalidate the petitioners from Army. Each case required consideration on its own merit.

46. Now coming to the merits of each case, in Writ Petition No. 17585 of 2003 the petitioner Mohd. Yasim Ansari was placed in lower medical category 'BEE' (Permanent) and was discharged without consideration of sheltered appointments within the sanctioned strength of regiment/corps. He had rendered nine years and 270 days of service. His discharge is, therefore, found to be violative of the existing policy of the Indian Army for treatment of a permanent low medical category personnel contained in Army Headquarters letter dated 15.3.2000 and is thus held to be illegal. This writ petition is consequently allowed, The discharge orders dated 16.11.2001 and the order dated 31.5.2001 are set aside. The respondents shall reinstate him in service, with back wages and seniority and shall reconsider him for sheltered appointment.

47. In Writ Petition No. 25959 of 2003 the petitioner Gyanendra Singh had accidentally suffered an injury in his right eye as he was hit by a wooden peg of tent flop. The lose of vision, due to accident gradually improved. His vision acuity at 6/60, had improved before he was invalidated to 6/24. He was not considered for further medical attention and for sheltered appointment in accordance with the existing policy of the Indian Army contained in Army Headquarters letter dated 15.3.2000. The impugned order dated 27.1.2004 by which he was discharged from Indian Army serving as Recruit in the trade of Driver PMT on medical ground is thus set aside. He is directed to be reinstated with back wages and seniority. The respondents shall review his medical category and if he is still placed in permanent lower medical category, reconsider him for sheltered appointment in accordance with observations made in this judgment.

48. In Writ Petition no. 11212 of 2002, the petitioner Ex Sepoy Inder Deo Oraon was invalidated from Indian Army being placed in permanent lower medical category on account of 'Psychosexual Dysfunction and Depression'. He was not considered for sheltered appointment by OIC Records in accordance with the policy of the Indian Army contained in Army Headquarters letter dated 15.3.2000. The impugned orders dated 9.5.2001 invalidating him from Indian Army is thus set aside. He shall be reinstated in service with all consequential benefits and shall be reconsidered for sheltered appointment by OIC Records in accordance with Army Headquarters letter dated 15.3.2000.

49. In Writ Petition No. 18136 of 2004 Ex Recruit Ishu Narayan was invalidated from Indian Army on being placed in permanent low medical category on account of 'Generalised Tonic Clonic Seizure'. The OIC Records did not treat him for sheltered appointments in accordance with policy contained in Army Headquarters letter dated 15.3.2000, He shall be reinstated in service with all consequential benefits and shall be reconsidered for sheltered appointment in accordance with Army Headquarters Letter dated 15.3.2000.

50. In Writ Petition No. 50936 of 2004 Ex Rect./ASH Anil Singh was invalided from Indian Army on 7.3.1998 w.e.f. 8.3.1998. His disability pension claim was rejected by OIC Records on 12.4.1999. I find that he made representation against his arbitrarily discharge on 1.6.2001 i.e. after about three years from the date of discharge. His writ petition is barred by unexplained laches as well as the fact that this Court does not have territorial jurisdiction to decide the matter. The petitioner acquired cause of action to file the writ petition in the State of Bihar. The writ petition is consequently dismissed.

51. In Writ Petition No. 15417 of 2004 the petitioner Ex Spr. Hasib Ahmed Islam was discharged from Indian Army under Army Rule 13, Item III (4) issuing him permanent retirement on his own request on 31.7.1993. He made a statutory petition to Chief of Army Staff after about nine years on 28.11.2002 which was rejected on 11.1.2003 on the ground that he is not entitled for disability pension being discharged on extreme compassionate ground on his own request. He preferred Writ Petition after one years and three months and after 11 years from the date of his discharge. The writ petition is as such barred by unexplained laches as well as lack of territorial jurisdiction. The writ petition is dismissed.

52. The writ petitions No. 17585 of 2003, Sep. 2991567 K. Mohd. Yasin Ansari v. Union of India and Ors. 25959 of 2004, No. 1534947N Ex Recruit Gyanendra Singh v. Union of India; 11212 of 2002 No. 4272650M Ex. Sep Inder Deo Oraon v. Union of India and 18136 of 2004, No. 14436384P Ex Recruit Ishu Narayan v. Union of India as amended are consequently allowed. The notification dated 28.3.2002 under the proviso to Sub-section (2) of Section 47 of the Persons with Disabilities (Equal Opportunities, Protections of Rights and Full Participation) Act 1995, issued by Central Government exempting all categories of posts of combatant personnel of the Armed Forces from the provisions of the Section is held to be violative of Article 14, 21 of the Constitution of India and the Act No. 1 of 1996, and is quashed. The respondents in these writ petitions which are allowed, and in which the orders of discharge and rejection of statutory petitions have been set aside, are directed to re-consider the medical category of these petitioners and if they are still found to be placed in permanent lower medical category, to consider them for sheltered appointment under Army Order No. 46 of 1980, Army Rule 13 and Army HQ letters dated 9.6.1999 and 15.3.2000. They shall be reinstated in service with back wages and seniority before such consideration. They are also entitled to costs of writ petitions filed by them.

53. The writ petition No. 50936 of 2004, No. 6493716F Ex Rect./ASH Anil Singh v. Union of India and Ors., and Writ Petition No. 15417 of 2004, No. 1573209M Ex. Spr. Hasib Ahmed Islam v. Union of India and Ors., are dismissed.