

AFR
RESERVED

Court No.3

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Transferred Application No. 174 of 2009

Friday, this the 06th day of November 2015

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 14223726-Ex. Sepoy/Cook, Rama Shankar
S/O Shri Ram Nath, Resident of Village Padrikalan,
Achalganj, Distt. Unnao, (U.P.).

.....Applicant

Ld. Counsel for : **Shri Yashpal Singh, Advocate**
the Applicant

Versus

1. Union of India, through Secretary, Ministry of
Defence, NEW DELHI.
2. Commanding Officer-25th Battalion-the Rajput
Regiment, C/O 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Rajesh Kumar,**
Respondents **Central Govt. Counsel**
assisted by Lt Col Subodh
Verma, OIC Legal Cell.

ORDER

Air Marshal Anil Chopra, Member (A)

1. The Writ Petition No. 6374 of 1997 was filed in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow and later transferred to Armed Forces Tribunal, Regional Bench, Lucknow under Section 34 of The Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 174 of 2009. The petitioner has sought following reliefs :-

(a) Issue a Writ Order, or direction in the nature of certiorari thereby summoning the relevant records and the impugned discharge order and quashing the same;

(b) Issue a Writ Order, or direction in the nature of Mandamus commanding the Respondents:-

(i) to pay full back wages/salary to the petitioner from the date of discharge to the date of completion of 15 years of service including all the allowances, perquisites and benefits as applicable/ revised from time to time with 18% interest;

(ii) to pay Gratuity and such other benefits to the full extent applicable to the petitioner in the last rank held by him on the date of his illegal discharge with interest @ 18%;

- (iii) to pay full pension and arrears thereof with 18% interest from the due date to onwards and continue to pay the same in future;
- (c) pass such other orders as the Hon'ble Court may deem fit and appropriate in the matter;
- (d) allow the Writ Petition with costs.

2. The petitioner has come against the discharge from army service by an order dated 08.09.1984. The brief facts of the case are that the petitioner was enrolled in the Army on 13.12.1974 as Signalman-Cook. Petitioner was posted to various operational postings in the Eastern and Western sectors and included High Altitude Areas. While posted at Alwar, the Officer Commanding 'B' Company of 25 Rajput deputed him as cook of the Commanding Officer. While working at Commanding Officer's residence the petitioner had a serious verbal altercation with lady wife of Commanding Officer. This episode caused serious annoyance to the Commanding Officer. The Commanding Officer initiated AFMSF-10 against the petitioner declaring him mentally sick and referred him to Military Hospital, Alwar where he was diagnosed as a case of "Anxiety State". He was referred and allowed to travel to Army Hospital, Delhi unattended without an escort. The petitioner was examined and assessed by Psychiatrist who after a few weeks detention in hospital downgraded him to Medical Category C (T-24). Thereafter the petitioner returned to his unit and for next few months he worked as unit cook in Low Medical Category (C). Six months later

Military Hospital Alwar re-categorized him in category B(Permanent). While he was returning from the hospital after re-categorization board the unit moved to High Altitude Area in field location and the petitioner was directed to report to Rajput Regimental Centre, Fatehgarh from where he was discharged with effect from 08.09.1984 without any pensionary benefits. Till Sep 1997 the petitioner did not even know as to why he was discharged.

3. On writing to the Officer-In-Charge Records in Sep 1997, he got a reply from the unit dated 10.09.1997 (**Annexure 2**) stating that he was discharged from service with effect from 08.09.1984 being in low medical category with disability of Neurosis (300). Percentage of disability by release medical board was less than 20%. His claim for disability pension was sent to CDA (P), Allahabad but returned by them being disability not attributable to military service. The petitioner has quoted army categorization system and the relevant portion is reproduced below :-

Medical Category-A

Fit to serve in any terrain, climate, or altitude anywhere in the world.

Medical Category-B

Same as medical category 'A' except that there are some minor restrictions on his employment specifically recorded by Medical Authority in relation to the ailment/infirmary suffered by the individual e.g. a person

placed in Medical category B for some ailment in his ears, may not be required to fire a Mortar/Recoil-less Gun or a tank where ears are exposed to very loud bangs. Considered fit for retention in service. Not to be discharged as unfit for military service.

Medical Category-C

To perform sedentary duties only-free from stress and strain. To be retained in service, if the Commanding Officer certifies that sheltered appointment is available for the employment of the individual or else he may be discharged from service under Army Rule 13 (3) iii (v).

4. The petitioner has also referred to the medical categorization in terms of case of Psychosis illness and management of Psychosis cases and disposal of cases of Psychosis. Relevant portion of the regulations are reproduced as under :-

Disposal of Cases of Psychosis

Regulation Para 443-cases of psychotic illness to be invalidated from the Armed Forces.

Cases diagnosed as suffering from Psychosis, or who have had a psychotic breakdown even though they may have recovered, will be invalidated as expeditiously as possible out of service as permanently unfit for service in the Armed Forces except those referred to in Para

444below. In all cases AFMSF-10 duly completed will be attached to the invaliding medical board proceedings.

Regulation Para 444.

The instructions mentioned in Para 441-above, will not necessarily apply to cases with a good personal and family history whose breakdown, while psychotic in character, has been of a short duration and not of a serious type and occurred with severe precipitating cause such as trauma, intoxication or other physical factors. A patient, who makes a perfect recovery without any residual psychotic disability, may be considered for retention in the service provided he has been examined and reported fit by a classified specialist in Psychiatry, who has not previously examined the patient. A Medical Board will be held on such cases and the proceedings alongwith AFMSF-10 duly completed sent through the normal channels to the D.M.S. concerned for confirmation.

Regulation Para 445-Final Disposal from Hospital.

Individuals subject to Army Act (1950), Navy Act (1957)/Air Force Act (1950).

A person subject to the Army Act (1950)/Navy Act (1957)/Air Force Act (1950) after invaliding, will be discharged by the competent authority and sent home where he will be handed over to his relatives or friends, who will be required to sign a certificate accepting full

responsibility for his welfare and the safety of others. If, however, the relatives or friends refuse to accept the patient or to sign the required certificate, the patient, if dangerous, will be handed over to the civil power.

*Para 446 Transfer of Armed Forces Personnel
invalided out of service for psychosis*

As soon as the invaliding documents have been approved, the Commanding Officer of the hospital will inform the CO Station who will provide suitable attendants as recommended by the Commanding Officer of the Hospital to escort the patient from the hospital to his home. The Commanding Officer of the Hospital will also arrange Railway accommodation, if required for the invalid and party from the hospital to the patient's home and will arrange for the patient to be examined by two medical officers separately and at different times on the day prior to leaving the hospital. If each medical officer is satisfied as to the necessity for the patient's admission into a civil mental hospital, he will complete and sign a lunacy certificate (or IAFM 1244/Form 3-Schedule 1, Indian Lunacy Act of 1912). These certificates will be handed over to the relatives/friends/civil power, alongwith the patient.

5. Petitioner has stated that from the extracts of relevant regulations it is observed that the petitioner's case was not at all handled, treated, managed and disposed off according to the regulations :-

(a) The petitioner was not sent on any sick leave as provided in Regulation 440 (c) but was discharged from Hospital to return to his unit in Medical Category 'C' and to perform normal duty subject to restrictions imposed by Medical Authority.

(b) As provided in Para 440- the petitioner was brought before a Medical Board who by placing the petitioner in Medical Category C (T-24) (Category C temporarily for 24 weeks) had referred the petitioner for further observation and treatment.

(c) The petitioner was not invalidated out of service as required in Regulation 443;

(d) The case of the petitioner was fully covered and came in the purview of Regulation 444 – as he had been upgraded from Medical Category C to B within a short span of six months.

(e) The case of the petitioner was not the one to come under the category of "PSYCHOTIC" illness, as his final disposal from the hospital was effected as per Regulation 444 (a) and Regulation-446, or 453.

6. It is contended that the petitioner was definitely not a case of Psychotic illness of which NEOROSIS(300) IS ONE OF THE VARIANTS. In fact he was made a mentally sick person by the respondents by filling up AFMSF-10 declaring the petitioner to be

a mentally sick person to effect vengeance on account of the verbal altercation of the petitioner with CO's lady wife.

7. The petitioner was not discharged from service under the provisions quoted above. According to the entry made in the discharge book of the petitioner on page 4 (copy attached as Annexure No 4 of the petition) he was discharged under Rule 13 (2A) of the Army Rules, which reads as hereunder :-

“Army Rule 13 (2A)

Where the Central Govt or the Chief of the Army Staff decides that any person or class of persons subject 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 will also be the Competent Authority to discharge from service, such person or any person belonging to such class in accordance with the said decision”.

8. The petitioner submits that no such decision was taken by the Central Government or the COAS against the petitioner individually, or any class of persons to which the petitioner belonged to discharge him from service. The petitioner has been discharged prematurely after 9 years and 271 days service thus denying him pension which he would have been entitled after 15 years of service. The discharge of the petitioner, therefore, by respondents is totally arbitrary and illegal and deserves to be quashed.

9. Through the Counter affidavit the respondent have contended that the petitioner was discharged from army service on 08.09.1984 under Army Rule (3) III (V) read in conjunction with Army Rule 13 (2A) through Release Medical Board in low medical category BEE (Permanent) due to disability 'NEUROSIS (300)'. The petitioner filed writ petition in the year 1997 praying to quash release proceedings after 13 years. The petitioner has claimed full back wages/salary from the date of discharge to the 15 years of service at a very belated stage. The disability claim was rejected by PCDA as disability was neither attributable nor aggravated by military service and was assessed less than 20% for one year. Military Hospital, Alwar had declared the petitioner as a case of Neurosis. On 12.03.1984, he was transferred to Army Hospital Delhi Cantt for review and re-categorization, and after examination by classified specialist Surgery and Neuro Surgeon, he was upgraded to Category BEE (Permanent) with effect from 22.03.1984. He was brought before Release Medical Board on 20.07.1984 at Military Hospital, Alwar which was approved on 26.07.1984 (**Annexure CA-2**). The petitioner was not given sheltered appoint for further retention in service due to non availability of sheltered appointment. He was discharged from service with effect from 08.09.1984.

10. Respondents contended that the petitioner had not filed any appeal for rejection of disability pension claim, however a legal notice dated 04.09.1997 (**Annexure CA-6**) was sent by petitioner's counsel against non grant of disability pension. The reply dated 16.09.1997 was sent to the petitioner indicating that

his disability is neither attributable nor aggravated by military service and was assessed as less than 20% for one year and therefore he was not entitled to disability pension.

11. The petitioner was enrolled in the army in the trade of 'cook'. He was posted in duties of his profession. His version is that he was posted at the residence of Commanding Officer and was administered very strong words by Commanding Officer's wife is denied as being false. His contention that AFMSF-10 was raised against him is incorrect. The petitioner had reported to Military Hospital, Alwar on 18.10.1982 at about 1430 hrs on his own with complaint of pain in epigastrium, occasional feeling of apprehension and disturbed sleep. After being examined by Graded Specialist (Medicine) a case of neuropathy was detected and the petitioner was transferred to Military Hospital, Jodhpur for opinion of Neurophysician on 29.10.1982. The classified specialist Surgery & Neuro Surgeon, diagnosed it as Neurosis and as such the petitioner remained under treatment till 30.11.1982 and was transferred back to Military Hospital, Alwar.

12. It is further stated by Ld. Counsel for the respondents that since the petitioner could not be given sheltered appointment for further retention in service due to non availability of sheltered appointment, he was discharged from service with effect from 08.09.1984 vide Government of India, Ministry of Defence letter No A/32395/VIII/Org 2 (MP)/713-8/A/D (AG) dated 10.05.1977. The T.A. is devoid of merit and suffers from inordinate delay and as such T.A. deserves to be dismissed with costs.

13. In his rejoinder affidavit Ld. Counsel for the petitioner has re-iterated that the discharge of the petitioner was carried out without holding IMB and was illegal and arbitrary. The petitioner had no source of income and was facing financial hardship in the absence of any pension from the service. The petitioner was not seeking the disability pension and has sought for quashing of discharge from army service with consequential benefits.

14. Heard Ld. Counsels for the parties and perused the records. The entire original records of the petitioner were produced before the court. The issues with adjudication at this stage are :-

(a) Was the petitioner made a psychotic case of NEUROSIS (300) because of altercation with the CO's wife?

(b) Was form AFMSF-10 raised on the petitioner as alleged?

(c) Had the petitioner been discharged from service through an RMB without doing an IMB?

(d) Since the disability ascribed is below 20% could he have been retained in service?

15. The petitioner has alleged that he was working as a cook in CO's residence, and due to verbal altercation with the Commanding Officer's wife, the CO had initiated AFMSF-10. AFMSF-10 is a form to be filled up by a Commanding Officer in a case requiring Psychiatric examination. The petitioner has not submitted a copy of the AFMSF-10. The respondents have categorically denied raising of the AFMSF-10. But study of the

medical board proceedings at Army Hospital, Delhi Cantt does indicate reference to AFMSF-10 (09 March 1984). Such a form has to be raised for psychiatric evaluation, and it was apparently raised during medical evaluation at Army Hospital Delhi Cantt. As such linkage of raising of the form by Commanding Officer due to altercation with CO's wife cannot be established. In any case such a form is only a request for psychiatric examination and the actual status is evaluated by the medical specialist. The petitioner was doing his trade duty, that of a cook in the Commanding Officer's house is not denied.

16. A detailed study of the petitioner's documents indicates that there was no psychiatric problem reported during his service at units in Jabalpur, Jodhpur and during posting to Uri Sector in J&K at High Altitude. The problem has started only at Alwar after the petitioner was deployed at the CO's residence. Having been enrolled on 13.12.1974, he was admitted in MH Alwar for the first time on 18.10.1982 as a case of "Anxiety State". He was in SHAPE-I throughout till then.

17. The petitioner was discharged from service on 08.09.1984 after completion of 09 years, 08 months and 25 days under Army Rule 13 (3) iii (v) read in conjunction with Army Rule 13 (2A) through a Release Medical Board in low medical category BEE (Permanent) due to disability NEUROSIS (300) which was neither accepted as attributable to nor aggravated by military service. Disability was assessed below 20% for ONE year.

18. A study of the RMB proceedings indicates that in the intervening period the petitioner had been examined at MH Alwar, MH Jodhpur and Army Hospital Delhi Cantt. He has travelled from the unit to the hospital or vice versa without an escort. In the intervening period he has been doing duties of his trade (cook) without any complaint on behavior or performance. His final disability is mentioned as less than 20% without specific further qualification in terms of any figures i.e. 15-19% or 11-14% etc. It is clearly mentioned that the individual requires no attendant.

19. The opinion of Senior Adviser in Psychiatry Col VK Pande at Army Hospital Delhi Cantt dated 19 March 1984 which was the basis for categorization to BEE (Permanent) and subsequent release from service is reproduced below :-

“This is an old case of Neurosis in medical category BEE (Temp). He is admitted for re-categorization complaints of getting pain on both sides of lower chest on doing work for prolong period at times. The nature of pain is dull in character. No history of radiation. No history of being associated with chest respiratory movement, No respiratory, cardio vascular or other abdominal complaints.

His AFMSF-10 (09 Mar 84) is satisfactory. On examination, well build of average nutrition. Pulse 80/m, regular BP-130/80 mm of Hg. Respiration-16/m, regular.

Psychiatrically – He is co-operative, talks relevantly. He is not tense or depressed. Remain preoccupied with one or

other complaints and birds for sympathy. Judgments and in sight is present.

An old case of neurosis, He has vague somatic complaints. On examination, no physical abnormality detected. Psychiatrically – he is not tense or depressed. Remains pre-occupied crave for sympathy and attention. Hs is recommended medical category BEE (Permanent).

Advised : Tab Liv SP 1x Tds, Tab Vit C 1xbd for 15 days as on OPD case.

*Sd/- x xxxxx
(VK Pande)
Colonel
Senior Adviser (Psychiatry)”*

20. A plain reading of the specialist report does not indicate very serious abnormalities. The unit Commanding Officer gave a certificate dated 18.05.1984 based on above medical board not recommending continuation of service in public interest and that he could not be given a sheltered appointment. The sequence of events and time lines since the individual first reported to MH Alwar on 18.10.1982 indicates that the case has been progressed in a hurry.

21. The opinion of Lt Col GR Collechha Classified Specialist (Psychiatry) dated 02.07. 1984 during the Release Medical Board is reproduced below :-

“An old case of neurosis in low medical cat BEE (psy) permanent wef 12 Mar 84. His release is approved. Hence admission for release medical board. Patient still maintaining pain in lower side of chest on both sides on doing work for prolong periods the pain occurs only occasionally. It is dull aching type with no radiation. The pain is relieved by pressing the chest wall. Not associated with any respiratory or cardiovascular symptoms Motivation for service poor. No physical abnormality is detected for his pain which is of functional in nature.

Psychiatric examination – revealed no evidence of psychosis. Not depressed. Mild apprehension and precaution with his somatic complaints persist. Personality is neurotic with histrionic traits. Orientation, memory intelligence not affected.

Fit for release in low medical cat BEE (psy) permanent.

*Sd/- x xxxx
(GR Colechha)
Lt Col
Classified Specialist (Psychiatry)”*

22. A plain reading of the opinion dated 02.07.1984 also indicates that the medical state is not very serious. The same is further corroborated by a disability assessment of below 20 percent and that too for only one year. Also doctors have mentioned that there is no need for an attendant. In such circumstances we wonder what was the compelling hurry to discharge the individual, more so when he was a cook and not

expected to be employed using weapons in combat role? The individual had been treated earlier and sent back for trade duties. Why could he not be kept in trade duties for longer periods and continued with his further treatment. Terminating his unblemished service of 9 years, 08 months and 25 days in such haste indicates a lack of sensitivity to a man in uniform. Also in the process it denied him pension, and in turn, livelihood.

23. It is not disputed that the petitioner was discharged based on a Release Medical Board and not after an Invalidating Medical Board which is requirement as per regulations. It is also not disputed that the discharge should have been based on recommendations of the Invaliding Medical Board. The subject has been further settled by the Apex Court in **Civil Appeal No. 6587 of 2008 (Arising out of SLP(c) No.6037 of 2007) Union of India and Others Vs.Rajpal Singh**, wherein it has been reaffirmed that Invaliding Medical Board is mandatory for discharge on medical grounds. The discharge without an IMB thus cannot stand legal scrutiny.

24. The Hon'ble Supreme Court in the case reported in (2014) 5 SCC 417 **Om Prakash Chautala Vs. Kanwar Bhan** has observed as under :-

“Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is nobility in itself for which conscientious men would never barter

it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities”.

25. Discriminatory treatment given to the petitioner followed by discharge from service in derogation of rules, regulations and army orders negate the dedicated service rendered by service personnel (petitioner) while serving in the armed forces (army). Such instances scuttle down the reputation and dignity which is protected by Article 21 of the Constitution of India. In the present case, the petitioner seems to have suffered for no fault on his part because of commission and omission on the part of the respondents. The petitioner has suffered mental pain and agony. He has also suffered loss of status of rank as well his honour to continue in service. Accordingly, we are of the opinion that it is a fit case where in view of law settled by Hon'ble Supreme Court exemplary cost should be awarded (Vide **AIR 2005 SC 3353, Salem Advocate Bar Association, Tamil Nadu vs. Union of India**, (2001) 8 SCC 249, **Ramrameshwari Devi & ors vs. Nirmala Devi and others** and (2012) 6 SCC 430, **A. Sanmugam vs. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhayana Paripalanai Sangam represented by its President & ors.**

26. In view of the aforesaid we are of the view that petitioner has a case. Transfer Application No. 174 of 2009 is allowed. The discharge of Petitioner Ex-Sepoy cook Rama Shankar is quashed. He be notionally re-instated to the last rank held with effect from the date of discharge. He shall be deemed to continue in service till date of normal retirement for the rank held and be paid 25% of back wages and allowances till the date of normal retirement. He further be paid full pension and allowances from the new date of retirement (supra) in accordance to rules. The

payments be made expeditiously, say within four months of this order.

27. Keeping in view the factual matrix of the case, we quantify the costs to Rs. 75,000/- (Rupees seventy five thousand) which shall be deposited by respondents in this Tribunal within 4 months from the date a certified copy of this order is received. Out of aforesaid amount of Rs. 75,000/- the petitioner shall be entitled to withdraw an amount of Rs. 50,000/- (Rupees fifty thousand) and remaining Rs. 25,000/- (Rupees twenty five thousand) shall be remitted to the library fund of Bar Association of Armed Forces Tribunal, Lucknow.

(Air Marshal Anil Chopra)
Member (A)

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(Justice D.P. Singh)
Member (J)