

Reserved
Court No. 2

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

ORIGINAL APPLICATION No 138 of 2015

Thursday, this the 31st day of March 2016

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

8950964-A Ex AC (U/T) Vishwa Jeet Singh S/O Shri Paramatma Singh R/O Village and Post :Tengarhin, Distt: Ballia (UP)-277201.

...Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs (Vayu Bhawan), New Delhi-110011.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. PMO, HQ Training Command IAF, Hubbal, Bangalore (KTK)-560006.
5. Station Commander, No. 405 Air Force Station Belgaum (ATS Belgaum), Sambra (KTK)-591124.

.....Respondents

Ld. Counsel for the : **Shri Shyam Singh,**
Respondents **Central Govt Counsel assisted by**
 Wg Cdr Sardul Singh,
 OIC Legal Cell.

ORDER**“Per Air Marshal Anil Chopra, Member (A)”**

1. Heard Ld. Counsel for the parties and perused the record.
2. The present application is filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved against the discharge order the applicant has sought quashing of order dated 27.06.2013 and quashing the order of denial of his reinstatement in service on medical fitness ground vide letter dated 09.07.2014.
3. Brief facts of the case are that the applicant appeared for Airmen Selection Test on 07.09.1012. After passing the written test he was medically examined on 08.09.2012 and declared medically fit. He was enrolled on 02.01.2013 in Group ‘X’ (Mechanical) and was sent for training. On 18.03.2013 while undergoing Joint Basic Phase Training (JBPT) the applicant suffered sprain in his right leg during cross country. On 18.03.2013 applicant was referred to Station Medical Centre (SMC). Medical officer observed his eyes being yellowish and he was advised to undergo blood test which revealed as normal jaundice with billirubin 1.5. On 19.03.2013 he was referred to Military Hospital Belgaon from where he was referred to City Hospital Belgaum for Ultrasonography, where it was revealed that the applicant has right kidney with small size.

4. Applicant was referred to Command Hospital Pune on 01.04.2013, where after recommendation by Nephrologist the applicant underwent various investigation tests including DTPA Renal Scan. The report showed that the applicant's right kidney was small and poorly functioning. On 09.04.2013 the Nephrologists placed the applicant in medical category P2 (T-24) (**Annexure A-2**). Subsequently, Nephrologists changed his medical opinion and converted old opinion categorizing the applicant in P5 medical category and recommended for invalidment from service. The corrected opinion dated 09.04.2013 is placed at **Annexure A-3**. On 18 Mar 2013 applicant was routed back to Military Hospital Belgaum, and on 27.04.2013 to Station Medical Centre (SMC) where he was admitted.

5. On 02.05.2013 Invaliding Medical Board (IMB) was conducted. Invaliding Medical Board opined at part V of its proceedings as:

“individual reported for training on 02 Jan 2013 and the onset is 19 Mar 2013. As this disease is congenital in nature, he was treated at MH Belgaum for jaundice and evaluated at CH (SC) Pune (Nephrology Department). The disability is neither attributable nor aggravated as per para 74 (d) Chapter VI and Para 36 of Chapter VII of GMO (Mil Pension 2008)”.

The copy of Invaliding Medical Board is placed as

Annexure A-4.

6. On 27.06.2013 applicant was discharged from service having been found medically unfit for further retention in Indian Air Force under Air Force Rules, 1969, Chapter III, clause 15 (2) (k) the applicant was not even granted status of ex-serviceman. Copy of the discharge certificate dated 27.06.2013 is placed on record as **Annexure A-5**. On 04.07.2013 applicant went to Sir Sundar Lal Hospital, Banaras Hindu University (BHU), Institute of Medical Sciences and met Nephrologists. After detailed investigation finally on 07.01.2014 Nephrologists opined that applicant is fit physically as well mentally for office work. Opinion of civil Nephrologists is placed on record as **Annexure A-6**.

7. The applicant once again got himself admitted Sir Sundar Lal Hospital, Banaras Hindu University (BHU), Institute of Medical Sciences on 25.02.2014. After detailed medical investigation Nephrologists opined on 27.02.2014 that applicant is fit physically as well mentally and he may perform routine work. Opinion of Nephrologists is placed on record as **Annexure A-8**. The applicant also made detailed representation dated 06.03.2014 for reinstatement in service and annexed all the medical documents (**Annexure A-9**). Ultimately, having received no reply from the competent

authority the applicant approached this Tribunal by filing the present O.A.

8. The respondents stated that it is undisputed fact that the applicant has small size right kidney and the applicant has been discharged from service after invaliding medical board which considered the disability neither attributable to nor aggravated by service. The percentage of disability assessed was 40%. Nephrologists at Command Hospital, Pune has conducted DTPA tests which reveal that the right kidney was small in size and has reduced/compromised functioning and has recommended for Low Medical Category Ap Gp for right smaller kidney poorly functioning. It is not denied that the consultant has initially recommended P2 (T-24) and later on changed as P5. This was done after a review by the same specialist and the corrected categorization was duly initialed by the specialist who was officer of the rank of Brigadier. As per IAP 4303 4th Edn Para 5.4.78 states that – ab-initio trainees, who are placed in permanent low medical category during the course of their training, are to be invalided out of service. Copy of the extract is placed as **Annexure No CA-1** to counter affidavit.

9. Respondents have also brought on record the view of Senior Adviser Nephrologist the effect of smaller kidney poorly

functioning. The same is flagged as Flag ‘A’ is reproduced as under:-

“EFFECTS OF POORLY FUNCTIONING KIDNEY EX AC (U/T)
VISHWAJEET

21 year old AC (U/T) was detected incidentally to have Right Small Kidney of the size 6.1 cm whereas left kidney of the size 12.3 cms. The Glomerular Filtration Rate as assessed by DTPA scan of the Right Kidney was 4ml per minute and of the Left Kidney was 58.3 ml per minute. The Serum Creatinine 0.5mg/dl and normal Colour Doppler Flow Index (CDFI) of Renal Vessel.

The above description suggests congenital Hypoplastic right Kidney however in the absence of further investigations Vesico Uretric Reflex leading to Right Pyelonephritis cannot be completely ruled out.

People with Solitary functioning kidney like in this case are susceptible to

- 1. Hyper filtration injury*
- 2. Hypertension*
- 3. Chronic Kidney Disease especially if they develop a second insult later in life for example Diabetes/Hypertension.*

Such cases are hence considered unfit if detected during enrolment medical.

If it is a congenital disorder it is often associated with multiple other congenital abnormalities of kidney and urinary tract.

*sd/- x x x x x x
(Vishal Singh)
Gp Capt
Sr Adv (Med) and Nephrologist
CHAF Bangalore”*

10. The issue that requires adjudication is that whether this deformity could have been diagnosed at the stage of enrolment; and secondly, should a person with smaller kidney be permitted

to continue in service? Para 3.6.5 of Indian Air Force Publication (IAP) 4303 related to medical status at the time of enrolment is reproduced as under :-

“3.6.5 Absence of Kidney – All candidates found to have congenital absence of one kidney or who have undergone unilateral nephrectomy will be rejected. Presence of horseshoe kidney will entail rejection. Solitary functioning kidney with diseased, non functional contralateral kidney will entail rejection. Crossed ectopia, unsacended or malrotated kidney(s), unilateral congenital hypoplasia will be a cause for rejection.”

11. From the above it is clear that with poorly functioning kidney an individual is not acceptable to be enrolled and as per the Air Force procedure it is a case for rejection from service. In the instant case the applicant's poorly functioning kidney was noticed within less than three months of enrolment and this small size would have been existed before enrolment of the applicant. The applicant was still in the initial stage of training and the respondents followed the correct procedure for medical assessment and invalidment of the applicant. It is not for the Tribunal to question the specialist's opinion or question the changes made thereon which have been duly countersigned.

12. Even the civil medical report had confirmed that size of the right kidney is much smaller and less than half the size of the left kidney. However, what impact it would have on Air Force personal which can be best judged by the specialist

within the Air Force. As such we take no cognizance of the opinion of civil Nephrologist.

13. We are of the opinion that due process for medical examination and invalidment has been followed. Applicant has not been able to make out a case. O.A. lacks merit and is liable to be rejected.

14. O.A. is accordingly rejected.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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