

**Court No. 2**

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

**ORIGINAL APPLICATION No 238 of 2014**

Friday, this the 01<sup>st</sup> day of April 2016

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

No. 17021668W Rect/Sol (Tech) Deepak son of late Nand Kishore, resident of village Sirsinda, Post Sari Rashi Tehsil Sadar, District Faizabad, U.P.

...Applicant

Ld. Counsel for the: **Shri V.P. Pandey, Advocate**  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Army Head Quarter, New Delhi.
3. Officer in Charge, Records, EME Records, PIN-900453 C/O 56 APO.
4. Commanding Officer, 'C' Coy, 1 Mil Trg Bn, 3 EME Centre, PIN-900433 C/O 56 APO.
5. Commandant, Military Hospital Jhansi.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**  
Respondents **Central Govt Counsel assisted by**  
**Lt Col Subodh Verma,**  
**OIC Legal Cell.**

**ORDER (ORAL)**

1. We have heard Ld. Counsel for the parties and perused the records,

2. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the order of discharge dated 21.08.2012 and Medical Board Proceedings dated 21.07.2012.

3. Applicant was enrolled in the Indian Army on 29.01.2012. In February 2012 he was sent for training. Admittedly during the course of training the applicant suffered medical ailment and was admitted in Military Hospital, Jhansi on 07.03.2012. It appears that considering the applicant's medical ailment, Invaliding Medical Board was convened on 06.08.2012 and the Invaliding Medical Board took a decision that the applicant should be discharged during the course of training. Opinion of the Invaliding Medical Board has been filed as Annexure No 4 to the O.A. According to the medical opinion the applicant was suffering from Mania with Psychotic Symptoms.

4. While assailing the impugned order, Ld. Counsel for the applicant relied upon Army Rule 13 (3) (iii) and submitted that under the rules in case a person is found medically unfit for further service in the Army he will be discharged by the

Commanding Officer. Submission of Ld. Counsel for the applicant is that proceedings and findings of the Invaliding Medical Board is not correct.

5. On the other hand, Ld. Counsel for the respondents submits that applicant was discharged from service in terms of Army Rule 13 (3) (iv) which provides that person enrolled under the act but not attested may be discharged during the course of training in case he is unlikely to become inefficient soldier. Submission of Ld. Counsel for the respondents is that since according to opinion of Invaliding Medical Board the applicant was not fit to serve in the Army on account of Mania with Psychotic Symptoms, as such, he has rightly been discharged in view of the statutory powers conferred under the rules.

6. However, Counsel for the applicant submits that the applicant does not fall under this medical category.

7. Before recording any finding on the question involved it shall be appropriate to reproduce relevant portion of the Invaliding Medical Board filed alongwith the counter affidavit. The Invaliding Medical Board has given detailed opinion while recording findings against the applicant that he is suffering from Mania with Psychotic Symptoms. For convenience sake the same may be reproduced as under :-

### “OPINION

*This 19 ½ yrs old recruit with just about 05 days of service is a case of Mania with Psychotic Symptoms who came to Psychiatric attention at behest of unit authorities for abnormal behavior.*

*Psychiatric evaluation revealed increased psychomotor activity, over familiarity, disinhibition, and pressure of speech with in between flight of ideas, euphotic mood & affect, grandiose delusion, delusion of persecution, lack of insight and judgment, disturbed biodrive all in a clear sensorium.*

*His P/E & relevant investigations revealed no organic etiology. He has been managed with antipsychotic, mood stabilizer and supportive psychotherapy to which he has shown tardive response.*

*There was no obvious stresser precipitating his illness. At present he is stable on medication.*

*His illness (Mania with Psychotic Symptoms) is relapsing in nature & its acute onset was without any obvious stressor (service factor or any significant stressor) while serving in peace area. His symptoms were of severe intensity and he had extremely tardive response to treatment over 03 months as inpatient. He*

*has only served about 05 days in Army. In Army there are combat situations, harsh conditions & duty with live weapons which can be dangerous for indl & organization. He may not be able to bear the severe stress and strain of military service in future. At present, he is unfit to handle firearms and live ammunition, and hence cannot complete training. It makes him a liability to service. He is only 19 ½ yrs of age & can pursue his carrier in other desired field.*

*In view of the above I consider him unfit to continue in military service & recommend him to be invalided out of service in medical category S5 as per DGAFMS Medical Memorandum No 171/02.*

ADV:

- 1. To continue (a) Tab olanzapine 10mg ½-0-1 (b) Tab Lithium 300 mg 1BD*
- 2. NOK & relatives to supervise his drug compliance & psychiatric follow up”.*

8. Keeping in view the opinion of the Invaliding Medical Board that the applicant has rightly been discharged during course of training. However, a question cropped up whether the order of discharge should have been passed under Army Rule 13 (3) (iv) as has been done in the present case? It shall be appropriate to reproduce Army Rule 13 (3) (iv) as under:-

“Category	Grounds of Discharge	Competent Authority to	Manner of discharge
-----------	----------------------	------------------------	---------------------

		authorize discharge	
	(iii)Having been found medically unfit for further service.	Commanding Officer	To be carried out only on the recommendation of an invaliding board
	(iv) At his own request before fulfilling the conditions of his enrolment	Commanding Officer	The Commanding Officer will exercise the power only when he is satisfied as to the desirability of sanctioning the application and the strength of the unit will not thereby be unduly reduced.
	(v) All other classes of discharge.	Brigade/Sub Area Commander	The Brigade or Sub Area Commander before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated an opportunity to show cause against the contemplated discharge.
Persons enrolled under the Act but not attested	(IV). All of classes of discharge	Commanding Officer or officer commanding Recruit Reception Camp or a Recruiting, Technical Recruiting or Deputy Technical Recruiting Officer	In the case of persons requesting to be discharged before fulfilling the conditions of their enrolment, the Commanding Officers will exercise this power only where he is satisfied as to the desirability of sanctioning the application that the strength of the unit will not thereby be unduly reduced.

			<i>Recruits who are considered unlikely to become efficient soldiers will be dealt with under this item".</i>
--	--	--	---

9. A comparative reading of both the provisions show that Army Rule 13 (3) (iii) relied upon by Ld. Counsel of the applicant deals with the situation where a person is medically unfit to serve the Army during period of his tenure. The legislature in its wisdom have used the word ‘further’. Using of word ‘further’ makes it condition precedent that Army personnel who have been selected, and completed training should be attested and should have been discharging duty after enrolment and completion of training. That is why the word ‘further’ has been used in Rule 13 (3) (iii). It is well settled proposition of law that while interpreting statutory provision meaning should be given to each and every word, section by section, word by word and phrase by phrase. Accordingly we cannot ignore the word ‘further’ while interpreting Army Rule (s). Hence there appears to be no room of doubt that clause (iii) of Army Rule 13 (3) relied upon by the Ld. Counsel for the applicant deals with a situation where Army personnel joins Army in accordance with rule after due completion of training in accordance with rules and circulars and not otherwise.

10. On the other hand, Rule 13 (3) (iv) deals with Army personnel who have been enrolled in the Army under the Act but have not been attested. It means that Rule 13 (3) (iv) deals with persons undergoing training or still are recruits and have not joined the Army after completion of training. It means that Army Rule 13 (3) (iv) shall apply to all the recruits who have still not been attested and are undergoing training. Exhaustive use of word 'Recruits' in Rule 13 (3) (iv) provides that all cases of discharge of Army personnel at pre-attestation stage shall be dealt with under said rules. It further provides that in column (iv) recruits who are considered unlikely to become efficient soldier will be dealt under this provision. It means that not only on medical ground but otherwise also a recruit shall be discharged at pre-attestation stage in case he/she suffers from some abnormality, medical problem or failed to complete required training under the rules at pre-attestation stage. In view of the above, we are of the opinion that the applicant has rightly been discharged in view of the provisions contained in Army Rule 13 (3) (iv). It is well settled that ordinarily it is not open through process of judicial review to take a contrary view than what has been decided by the Medical Board. Ofcourse, in case there is some mala fide or violation of statutory provision while forming opinion by the Medical Board, then the Court or



the Tribunal may interfere with it in very exceptional and rare case.

11. In view of the above, since the applicant is suffering from Mania with Psychotic Symptoms and has under gone training for 5 months and 20 days as recruit and was not attested after completion of training, the finding recorded by the Invaliding Medical Board should have been complied with, which has rightly been done.

12. O.A. Lacks merit and is rejected.

No order as to cost.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

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