

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No 1067 of 2010**Monday, this the 04th day of April 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Prabhash Srivastav, Son of Shri Promod Kumar Srivastava,
Resident of 9/4 Lukerganj, Leader Road, Allahabad-211003.

...Petitioner

Ld. Counsel for the: **Shri Yash Pal Singh, Advocate**
Petitioner

Versus

1. Union of India through Secretary Ministry of Defence.
2. Secretary, Indian Navy Sports Control Board Integrated Headquarters of Ministry of Defence (Navy), New Delhi.
3. Commanding Officer, INS Hamla, Marve, Malad (West), Mumbai 400064
4. Commanding Officer, INS Chilka, P.O. Chilka, District Khurda (Orissa) 752037.
5. JDMS (H), Integrated Headquarters of Ministry of Defence (Navy), New Delhi.

.....Respondents

Ld. Counsel for the : **Shri V.P.S. Vats,**
Respondents **Central Govt Counsel assisted by**
Wahida Prizm, Surg Cdr, AMC
Centre and School, Lucknow.

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the record.
2. Being aggrieved with the order of discharge from Navy, the petitioner had preferred Writ Petition No. 56934 of 2005 in the High Court of Judicature at Allahabad which has been transferred to the present Tribunal in pursuance to powers conferred by section 34 of the Armed Forces Tribunal Act and has been re-numbered as T.A. No. 1067 of 2010.
3. Admittedly, the petitioner was enrolled in the Indian Navy and joined on 25.09.2004. However, while serving, the respondents noticed that the petitioner suffered unconsciousness. It is not disputed that the applicant was enrolled in the sports quota. The matter was referred to the Invaliding Medical Board which formed opinion that the petitioner was not fit to be retained in the Navy which was followed by discharge of the petitioner from Navy service.
4. We have been informed that the petitioner has been declared 20 % disable for life and has been paid 20 % disability pension. In view of proposition of law enunciated by Hon'ble Supreme Court with regard to rounding of disability pension, 20% disability shall be deemed to be 50% disability.
5. Ld. Counsel for the applicant has challenged the opinion of the Invaliding Medical Board on the ground that no

independent medical examination of the petitioner was done to identify existence of any disability and emphatic reliance has been placed on the prescription of the Neuro Surgeon. In response to arguments advanced by Ld. Counsel for the petitioner, it has been pointed out Wahida Prizm, Surg Cdr, AMC Centre and School, Lucknow that EEG report of the applicant was prepared by INS Ashwani and in consequence of thorough examination, opinion has been formed by the Invaliding Medical Board.

6. A question cropped up whether the court or the Tribunal shall interfere with the opinion formed by the Invaliding Medical Board. It is well settled that opinion of Invaliding Medical Board is sacrosanct and the court or the Tribunal shall not interfere with the opinion unless the opinion is formed on unfounded ground without following the procedure and relevant rules. In the present case the petitioner while filing the Writ Petition has not stated that he did not suffer from unconsciousness; rather the petitioner has made a statement in writing that he was under medical treatment of Neurologist because of unconsciousness on 20.07.2004. For convenience sake the statement of petitioner dated 10.02. 2005 is reproduced as under:-

“STATEMENT OF PRABHASH SRIVASTAVA

I Prabhash Srivastava (211297Y) “Sports Quota” is taking tablets Carbamagopine 600 mg daily from 21st July

because doctor Kartike Sharma (Neurologist) of Allahabad had suggest me to take medicine for one year because I have an episode of unconsciousness on 20th July 2004.

sd/- z z z z

*(Prabhash Srivastava)
MER (SQ)
211297-Y
(INS Chilka)
10th Feb 2005*

7. In view of the above, opinion formed by the Invaliding Medical Board does not suffer from any illegality. Once the applicant was enrolled in the sports quota he is supposed to be 100% fit. Any deformity or expected problem in the health cannot be tolerated by the Navy. Since it may create a problem during the discharge of duty. We are of the view that discharge of the petitioner from Navy in pursuance to opinion of Invaliding Medical Board does not suffer from any impropriety or illegality.

8. Accordingly, the T.A. lacks merit and is **rejected**.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

anb/

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