

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 109 of 2021

Friday, this the 18th day of August, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 3186501Y Ex CHM Lalit Kumar, S/o Shri Babu Ram, R/o Village-Ausmanpur, PO-Hererpathpur, Tehsil-Shamli, District-Shamli (UP)-247777.

.... Applicant

Ld. Counsel for the: **Shri Ashok Singh**, Advocate.
Applicant **Shri Vikas Singh Chauhan**, Advocate

Versus

1. Union of India, through its Secretary, Govt of India, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, PO-New Delhi-110011.
3. OIC Records, Records The JAT Regiment, PIN-900496, C/o 56 APO.
4. Commanding Officer, 9 JAT Battalion, PIN-911209, C/o 56 APO.
5. Lt Col Surender Sharma, Graded Specialist (Psychiatry), 74 Military Hospital, C/o 56 APO.

... Respondents

Ld. Counsel for the: **Shri Rajiv Narayan Pandey**, Advocate
Respondents. Govt Standing Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

(a) To quash/set aside the basic order passed by OIC, Records the JAT Regiment vide their letter/order No 0572/49/Rel/RA (RO) dated 26 Sep 2017, affirming order impugned dated 28 Aug 2018 passed by Headquarters, South Western Command and order dated 14 Nov 2019 passed by Commanding Officer, 9 JAT, in which rejected the same without considering the true facts and reasons being an ex-parte and devoid of merit and substance.

(b) Issue an order or direction directing the appropriate authority to constitute the independent or civil medical board for confirmation of the disability Alcohol Dependence Syndrome by which the applicant suffer irreparable loss and injury and after clearance of report, passed the suitable order for grant the compensation in favour of the applicant provided under law.

(c) Issue an order or direction directing the respondents to constitute the staff court of inquiry against the Col Nalin Durgpal to enquire the matter that in what circumstances filed the F-10 and F-11 form against the applicant without obtaining any report.

(d) Issue an appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the demand of justice.

(e) Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Army on 26.08.1993 and after completion of military training he was posted to 9 JAT Battalion. During the course of his service he was promoted to the rank of Havildar. On 20.12.2016 due to alleged heavy drinking, the unit authorities sent him to 175 Military Hospital alongwith Form No-10. He was admitted to Military Hospital, Abhor on 21.12.2016. Since facilities of psychiatric evaluation were not available with 175 Military Hospital, he was referred to 174 Military Hospital, Bhatinda where his medical category was downgraded to S2 (T-24) to be reviewed

on 28.06.2017. Later, by review medical board he was placed in low medical category S2 (Permanent) w.e.f. 22 Sep 2017. Being placed in low medical category prior to start of his extension period the applicant's discharge order dated 26.09.2017 was issued by Records, the JAT Regiment. His Release Medical Board (RMB) was conducted on 22.12.2017 and he was discharged from service w.e.f. 31.01.2018 (AN) in S2 (Permt) medical category. On 06.03.2018 applicant preferred statutory complaint against order dated 22.09.2017, which placed him in permanent low medical category, which was dismissed vide order dated 28.08.2018 being devoid of merit and information to this effect was provided to the applicant vide letter dated 14.11.2019. Applicant has filed this O.A. to quash his discharge order dated 26.09.2017, order dated 28.08.2018 rejecting his statutory complaint and order dated 24.11.2019 conveying outcome of his complaint dated 06.03.2018.

3. Learned counsel for the applicant submitted that on 20.12.2016 at around 9.00 PM when applicant was sleeping in his room, there was sudden quarrel of 02 soldiers i.e. Nk Manoj Kumar and Nk Satendra. It was further submitted that this incident was reported to the Commanding Officer, 9 JAT who ordered Maj Prashant Bhardwaj to prepare the guard for admitting the soldiers at nearest Military Hospital. It was further submitted that on the wrong statement of Regimental Police Havildar (RP Hav), Major Bharadwaj also took applicant alongwith aforesaid personnel and admitted in 175 Military Hospital on 21.12.2016 alongwith Form No 10.

4. Learned counsel for the applicant further submitted that Lt Col Surendra Sharma, Graded Specialist of 174 Military Hospital, being influenced by his Commanding Officer, downgraded his medical category arbitrarily and placed him in S3(T-24) medical category w.e.f. 12.01.2017 prior to discharge from the Military Hospital on 28.01.2017. On reaching unit he was appointed for performing duties as Company Havildar Major (CHM) w.e.f. 11.02.2017. It was further submitted that on one hand the applicant was declared to be a psychiatric case at the behest of Commanding Officer but on the other hand he was entrusted to perform onerous duty of a CHM which he performed to the entire satisfaction of his superiors. His contention is that the applicant was fully fit but even then his medical category was downgraded to curb his further services. He pleaded for setting aside order dated 26.09.2017 affirming impugned order dated 28.08.2018 passed by Headquarters South Western Command and order dated 14.11.2019 passed by Commanding Officer, 9 JAT. In the prayer clause it has also been pleaded that an independent medical board or civil medical board be constituted for confirmation of his disability 'Alcohol Dependence Syndrome' in addition to constitution of a Staff Court of Inquiry (C of I) against Col Nalin Durgpal to enquire into the circumstances under which his Form No. 10 was filled without obtaining any report.

5. On the other hand, respondents have filed their counter affidavit and submitted that applicant was due to retire from service w.e.f. 31.08.2017 but on his willingness for extension of service, two years service was extended from 26.08.2017 to 25.08.2019 by the screening

board. It was further submitted that applicant was referred to 175 Military Hospital when found intoxicated on 21.12.2016 during parade hours and on investigation he was found to be suffering from 'Alcohol Dependence Syndrome' and his medical category was initially downgraded to S3 (T-24) and in review medical board, he was placed in S2 (Permt) medical category.

6. Learned counsel for the respondents further submitted that since applicant was placed in low medical category prior to commencement of extension period, which was granted by the screening board, he was rightly discharged from service in terms of policy letter dated 20.09.2010 which lays down that personnel placed in low medical category due to psychological causes will not be eligible for extension in service. Learned counsel for the respondents further submitted that in order to provide him an opportunity in his defence against his contemplated discharge, he was served upon show cause notice dated 31.07.2017. It was further submitted that in his reply dated 06.08.2017 applicant admitted that he was placed in low medical category. After having deliberated upon the reply of the applicant's show cause notice and in accordance with Army Order 46/80 and policy letter dated 20.09.2010 the Commanding Officer processed his case for discharging him from service on medical grounds under Rule 13 (3) III (iii) A (i) of the Army Rules, 1954.

7. Repudiating submission of learned counsel for the applicant, learned counsel for the respondents further submitted that since applicant was discharged from service by following due process as per

rules on subject on the authority of medical opinion given by a Graded Classified Specialist, he was rightly discharged from service by not granting further extension in service as envisaged in policy letter dated 20.09.2010. He pleaded for dismissal of O.A.

8. Heard Shri Ashok Singh and Shri Vikas Singh Chauhan, learned counsel for the applicant and Shri Rajiv Narayan Pandey, learned counsel for the respondents and perused the record.

8. It is not disputed that applicant was enrolled in the Army on 26.08.1993 and during the course of his service he was promoted to the rank of Havildar. On 20.12.2016 while in barrack, after consumption of alcohol quarrel broke out between Nk Manoj Kumar and Nk Satendra which being reported to higher authorities, Maj Prashant Bhardwaj was ordered by the Commanding Officer to prepare guard for admitting them to Military Hospital. Applicant who was performing duty of CHM of 'D' Company was also found intoxicated and, therefore, by order of Commanding Officer all three were admitted to 175 Military Hospital on 21.12.2016 alongwith Form-10.

9. While admitted in Military Hospital applicant's condition was evaluated and finally the Graded Specialist (Psychiatry) gave the following remarks on the applicant when he was discharged from the hospital:-

"This 43 yr old serving CHM/INF/GD with about 24 yr of service has been referred at the behest of his unit authorities when found intoxicated on 21 Dec 2016 during parade hours with history of indulgence in excessive drinking in past. AFMSF-10 dated 21 Dec 2016 mentioned him indisciplined, casual, heavy drinker, misbehaviour, average in professional impulsive.

On initial physical examination he was smelling alcohol with raised B.P. which normalized with forced abstinence. MSE revealed normal PM, Euthymic affect, alcohol defences, partial insight into his illness, stable biodrives. Relevant inf revealed deranged alcohol biomarkersHe was managed as a case of Alcohol Dependence Syndrome with forced abstinence, anticraving drugs, given benefit of psycho education about the ill effects of use of alcohol on his health, regular individual and group therapy aimed at enhancing motivation for abstinence. He has responded completely to the treatment and expressed motivation for abstinence in future.”

10. The record reveals that the applicant was admitted to the hospital due to his excessive drinking habits. Also his history reveals onset of alcohol use in the year 2003, initially occasionally around 120 ml 2-3 times a week, gradually increased over the years to 180 ml 3-4 times due to development of tolerance and craving. His alcohol use increased over such that by 2014 it even involved drinking at duty hours.

11. With regard to applicant's contention that his Form No-10 was wrongly filled by the Commanding Officer, we have perused Army Order 3/2001 of which Paras 21 and 22 being relevant are reproduced as under:-

“21. Alcohol Dependence and drug (substance) abuse are incompatible with Military Service/ethos and all such cases should be invalidated out of service unless the PBOR shows an unequivocal determination to give up the use of alcohol/drug for good in the shortest yet reasonable time span. There is a well laid down procedure for disposal of such PBOR, which has been mentioned in revised DGAFMS Memorandum 171. It is not in the organizational interest of the Army, if a large number of PBOR are alcohol/drug dependent and still continue to stay but there is also a requirement of system to give such individual a chance to recover and come to main stream.

22. It is mandatory for the Commanding Officer to raise AFMSF-10 specially mentioning individual's alcoholic/drug habits in a suspected case of alcohol dependence syndrome/drug abuse, on being asked by service psychiatrist or in confirmed case of alcohol dependence syndrome/drug abuse being sent for re-categorisation. Commanding Officers will also ensure that the personnel in low medical category for above disorders are regularly sent for follow up reviews as recommended by the psychiatrist/medical board.”

12. Perusal of aforesaid paragraphs makes it crystal clear that Commanding Officer is empowered to fill Form-10 in respect of suspected personnel of the unit involved in alcoholism/drug habits for psychiatric evaluation by the medical authorities. The applicant was sent by the Commanding Officer to medical authorities alongwith Form-10 when he was found indulged in heavy drinking. Thus, we find no force in submission of the applicant that his Commanding Officer had wrongly filled Form-10.

13. The applicant was initially checked by Col VS Chauhan, Senior Advisor (Psychiatry) and thereafter, he was checked by Lt Col Prateek Yadav, Psychiatrist on temporary duty to the hospital where the applicant was admitted and both the specialists found him having features of alcohol use disorder and recommended treatment. The applicant's opinion was given after overall assessment by the different psychiatrists which revealed features of alcohol dependence syndrome in the individual as tolerance, craving, loss of control, organ damage related to alcohol use and raised blood pressure from possible withdrawal of alcohol use which normalised with forced abstinence. We find that the same finding was corroborated by his laboratory report which showed derangement of mean corpuscular volume and liver function. We also find that opinion given by Lt Col Surender Sharma, Graded Specialist (Psychiatry) is commensurate with the assessment made by Col VS Chauhan, Senior Advisor (Psychiatry) but Lt Col Prateek Yadav, Classified Specialist (Psychiatry) while visiting Psychiatry Ward on 23.12.2016 made no recommendation on applicant's condition but

prescribed some medicine. In para 4.8 of the O.A. applicant has contended that Dr. Prateek Yadav, gave no opinion with regard to low medical category of the applicant as he was fit for further military duty. On perusal of Annexure A-6 we find that Lt Col Prateek Yadav, Classified Specialist (Psychiatry) visited Psychiatry Ward on 23.12.2016 and did not endorse his opinion on applicant's medical category and prescribed Beclofen medicine but nowhere it has been mentioned that he is fit for military duty. It is noticeable that Col VS Chauhan, Senior Advisor (Psychiatry) and Lt Col Surender Sharma, Graded Specialist (Psychiatry) endorsed their recommendations to place applicant in low medical category and put him on anti-craving drugs. In view of the above, we find no reason to state that Lt Col Surender Sharma, Graded Specialist (Psychiatry) endorsed his recommendations under influence of the Commanding Officer.

14. Against his Commanding Officer applicant had submitted complaint dated 06.03.2018 which was scrutinized through commanders in chain and rejected vide order dated 28.08.2018. For convenience sake, extract of order dated 28.08.2018 is reproduced as under:-

"1. A complaint dt 06 Mar 2018 against CO, 9 JAT addsd to COAS with copy endorsed to GOC-in-C, South Western Comd and GOC 10 Corps was recd on 14 Mar 2018 (copy att).

Brief of the Case

2. No 3186501Y Ex CHM Lalit Kumar of 9 JAT (hereinafter referred to as the complainant) was performing the duties of CHM, D Coy 9 JAT. On 20 Dec 2016 at around 2100hrs a scuffle took place in the Coy lines betn Nk Manoj and Nk Satender. The matter was reported to CO who sent Maj Prashant Bhardwaj to the Coy to look into the matter. Maj Prashant Bhardwaj had asked the complainant to prep the gd to enable the two NCOs to be sent to MH, however, the RP Hav who was also present there reported to the Offr that CHM Lalit Kumar is himself drunk and hence is not in a condition to prep the gd. The matter was reported to CO who asked that all three indls be taken to 175 MH. After

admitting the complainant at 175 MH, CO Col Nalin Durgpal filled up AFMSF-10 and sent it to the Hosp. CHM Lalit Kumar was later transferred from 175 MH to 174 MH from where he got discharged on 26 Jan 2017 with Med Cat S-3 (T-24).

3. After returning the unit, the complainant continued to serve till he retired from service. The complainant now claims that he was victimised by CO 9 JAT for trying to illegally prove him insane. The complainant seeks redressal for the perceived wrong done to him and the associated humiliation that he had to suffer. The complainant is hence seeking a suitable action to be taken against the CO.

4. Maj Allegations. The complainant has made the following major allegations in the complaint:-

(i) He was falsely implicated to be drunk on the ni of 20 Dec 2016 by the Regimental Police Havildar and Maj Prashant Bhardwaj.

(ii) He was admitted in 175 MH and AFMSF-10 was wrongly filled to prove him insane by the CO as he was vindictive. He reflects on his good service in the past to substantiate his claim of being victimised.

(iii) He was transferred from 175 MH to 174 MH under the influence of Col Nalin Durgpal, CO 9 JAT.

(iv) On 25 Dec 2017 while being admitted at 174 MH Lt Col Pateek Yadav CI Specialist Psychology, Base Hospital Delhi had visited the Hosp. As per the complainant, he overheard Lt Col Prateek Yadav saying that he cannot observe any kind of problem with the complainant then what was the reason for keeping him in the hosp for such a long time. The complainant claims that the doctors then told him that there was nothing wrong with him and that since his CO has intentionally filled up AFMSF-10, they were keeping him in the hosp for six months only and then will declare him fit in the next review. On his pleading, the doctors confided in him that the CO being very displeased with him, the doctors cannot help him.

(v) His main contention is that the doctors were biased and had declared him insane under the influence of Col Nalin Durgpal, CO, 9 JAT.

(vi) He states that after being RTU, he was appointed CHM of 'D' Coy having the resp of 120-130 jawans. Hence he contends that the decision making process of CO is flawed and that the mental state of the CO is questionable.

(vii) The complainant states that there are certain symptoms associated with Alcohol Dependence Syndrome which as per him were not found in his medical report.

(viii) Col Nalin Durgpal and Maj Prashant Bhardwaj made his life miserable and he had to go through mental and physical pain. For this the complainant is asking for legal action against CO alongwith compensation of rupees two crores.

5. The complaint was inv through fmn channel as well as med channel. The indl was initially sent to 175 MH for Psy evaluation with AFMSF-10 and further was placed under psy obsn/evaluation at 174 MH. Lab inv undertaken had revealed deranged alcohol biomarkers. Psy evaluation revealed presence of alcohol defences. Accordingly, he was managed as a case of Alcohol Dependence Syndrome and was placed in LMC S3 (T-24) w.e.f. 25 Jan 2017 as per provisions under AO 3/2001

read in conjunction with AO 09/2007 and DGAFMS Medical Memorandum 171/2002. He was subsequently released in LMC S2 vide RMB held at 175 MH on 27 Dec 2017.

6. The case was processed at HQ South Western Comd alongwith 'R' of cdrs in chain. GOC-in-C, South Western Comd has closed the case on 16 Aug 2018 being devoid of merit and substance.

7. In view of the aforesaid, it is requested that the complaint be closed at your end."

15. Thus, we find that complaint dated 06.03.2018 submitted by the applicant against his Commanding Officer and Psychiatric Specialist was rejected vide order dated 28.08.2018 being devoid of merit.

16. Applicant's contention is that he was mentally fit after discharge from service as he was entrusted to perform duties of CHM though illegally being placed in S2 medical category. It is observed that applicant was performing duties of CHM prior to sending him in Military Hospital and after discharge from service when he became normal he was made to perform CHM duties after a week or so.

17. On careful analysis of the case, we find that 'Alcohol Dependence Syndrome' is primarily a disease/disability where an individual cannot control his excessive drinking habits. It is also well known that all efforts are made by military doctors and the organization to help a soldier who becomes a victim of 'Alcohol Dependence Syndrome' and only when all efforts fail, the soldier is placed in low medical category which leads to his discharge from service on medical ground.

18. With regard to constitution of independent or civil medical board for confirmation of 'Alcohol Dependence Syndrome' as prayed by the applicant, we find that the Hon'ble High Court of Kerala at Ernakulam in

WA No. 1071 of 1997 (OP No. 18002 of 1993) in the case of **Union of India vs. Sreekumar P**, has viewed as under :-

“(a) the disability has been assessed by a competent expert body like the medical board whose conclusions are to be accepted as correct unless contradicted by any other medical board by cogent evidence.

(b) Once the expert body like the medical Board expresses an opinion it is entitled to great weight. Unless the medical findings are utterly perverse this Court exercising jurisdiction under Article 226 of the Constitution cannot go behind the said opinion and substitute its own opinion for that of the expert body.

(c) This court while exercising jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Court. The findings of the expert body cannot be interfered with unless it is palpably wrong.

19. In view of the above, since medical board is a duly constituted medical body its opinion should be given due weightage, value and credence as opined by the Hon’ble Supreme Court in Civil Appeal No. 1837 of 2009 in the case of **Union of India vs Ravinder Kumar**. In the case in hand, applicant’s medical board, which is a duly constituted medical body, was held at 175 Military Hospital, therefore prayer to hold fresh medical board or civil medical board being not justified is refuted.

20. Apropos above, the Original Application No. 109 of 2021 deserves to be dismissed, hence **dismissed**.

21. No order as to costs.

22. Pending applications, if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 18 August, 2023

rathore

(Justice Anil Kumar)
Member (J)