

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 60 of 2016

Monday, this the 8th day of February, 2021

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”

IC-49330H Lt Col Mukesh Baboo, Son of Shri Yusuf Khan, Resident of F-25, House No. 62/143, Shyam Nagar, Mustfa Quarters, Agra Cantt, Agra-282001 and Presently posted as Additional Officer at Headquarters, Chief Engineer, Bareilly Zone, Bareilly Cantt- 243001

..... Applicant

In Person : **Lt Col Mukesh Baboo**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Director General of Medical Services (Armed Forces), Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence, ‘L’ Block, New Delhi – 110011.
4. General Officer Commanding, Headquarters Uttar Bharat Area, Bareilly Cantt, Bareilly- 243001.
5. Chief Engineer, Headquarters Chief Engineer Bareilly Zone, Bareilly Cantt, Bareilly- 243001.
6. Commandant, Military Hospital, Bareilly Cantt, Bareilly – 243001.
7. Chief Engineer, Headquarters, Chief Engineer Jabalpur Zone, Jabalpur (M.P.).
8. Commandant, Military Hospital, Jabalpur (M.P.).
9. Commander Works Engineer, MES, Jhansi Cantt, Jhansi (U.P.).

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri,**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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 applicant has sought following reliefs:-

- (i) *to summon the entire relevant record pursuant to the matter for a kind perusal, appreciation and analysis to secure the ends of justice.*
- (ii) *to issue an order or direction restraining the respondents from any further forced referral/hospitalization to Psychiatric Ward or medication to the applicant in the wake of his latest forced hospitalization on 5.12.2015 (As contained vide Annexure-1), at the hands of Respondent No. 5 & 6 to the Psychiatric Ward MH Bareilly absolutely without any reason/provocation in any manner in the name of psychiatric treatment so far as it relates to the applicant, as the applicant is perfectly hale and hearty and had been leading a normal, happy and respectful life with his family and friends for the past six years without any Psychiatric treatment/help of whatsoever nature.*
- (iii) *to issue an order or direction commanding the Respondents No 3, 4, 5 & 6 to re-declare the applicant fit i.e. S-1 category, as there is nothing adverse against the applicant in any manner and the Applicant on the contrary is perfectly hale and hearty with cheerful disposition and ability to make people laugh even during odd situations and he is*

leading quiet a normal, happy and respectful social life with his family and friends for the past six years without any Psychiatric treatment/help of whatsoever nature.

- (iv) to issue an order or direction to Respondent No 2, 4 & 5 to set aside the Desertion Report dated 06.12.2015 (As contained as Annexure-7) thereby allowing the applicant to join back his duty with self respect as he has been victimized time and again with abuse to his fundamental right to life and personal liberty like the last one of 05.12.2015 and forced to flee for his life.*
- (v) regularize the complete absent period of the applicant after catering for some breather time for him to join the duty back from the date of grant of interim relief.*
- (vi) heavy compensation as deemed just fit and appropriate looking into the fake, horrifying, unimaginable and prolonged ordeal of the applicant in all fronts i.e. physical, mental, social, financial due to forced and fake psychiatric categorization in Apr 2006 which had even pushed him to the suicidal tendency during 2009-10 where he used to think of committing suicide by jumping off 9th floor of his married accommodation in Saraswati Building of Ballyganj Maidan Camp in Kolkata.*
- (vii) direct Respondent No 5 & 4 to return the complete house hold property of the applicant including his legal and other documents as well as to get his room set up the way it was when the applicant was forced to flee on 05.12.2015.*

- (viii) to analyze the Form-10 filling Procedure and streamline the same in consonance with the most cherished values of liberty to life and health.*
- (ix) to pass such other order or direction, which this Hon'ble Court deems it fit and proper under the circumstances of the case.*
- (x) to allow the application with costs in favour of the applicant.*
- (xi) to adjudicate on the entire matter holistically in the form of a proper trial and grant long due justice to the applicant.*

2. Briefly stated facts of the case are that the applicant was commissioned in the Engineer Regiment of the Indian Army on 15.12.1989. He got married to Shabana Parveen on 28.04.1992. The applicant could not adjust with his wife and his married life was disturbed and in January 2012 he divorced his wife. Due to disturbed married life the applicant became a psychiatric patient and was treated in various Military Hospitals. The applicant was not happy with the method of treatment of the psychiatric specialist and he decided to remain Absent Without Leave (deserter) and even stopped medication on his own. While in service he was promoted to the rank of Major (Maj) and Lieutenant Colonel (Lt Col) and served in various stations. The disturbed married life of the applicant affected in his performance and disciplinary action was taken against the applicant. He was also awarded below average grading in his Annual

Confidential Reports. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant submitted that he was commissioned in the Engineer Regiment of the Indian Army on 15.12.1989. He got married to Shabana Parveen on 28.04.1992. He passed his Mechanical Engineering with first class from College of Military Engineering, Pune, despite a very turbulent family life, so much so that he used to run out of home in the middle of the night, with his wife chasing him, to bring him back home forcibly. He started pleading with his wife for a divorce, at whatever cost she wanted, which she never conceded. He could not muster courage to divorce his wife to get rid of her, because he was serving in the army. He submitted that he had served in Counter Insurgency Operation's area of Doda, Bhadarwa and Kishtwar from Jun 1997 to May 1999 to the satisfaction to his Commanding Officer. While serving at Bhatinda from 2000 to 2002, he faced a Court Martial trial as he tried to point out financial irregularities as also for having put on the rank of substantive Major (in accordance with Bagga Commission recommendations), when in fact he was denied the same, being involved in a disciplinary case. Later on he was promoted to the rank of Major. The Court Martial proceedings were challenged in AFT, Chandigarh.

4. From the year 1989 to 2002, every year he went through his Annual Medical Examinations and was declared SHAPE-1. In Apr

2003, he was transferred to Chief Engineer Siliguri Zone, Siliguri as Staff Officer Grade-II. His wife left the station with bag and baggage and went to Gwalior to stay with her elder brother. From April 2004 to Mar 2005, he served in Counter Insurgency ops area, Koopwara, near Srinagar and he shifted his family from her brother's house to Separated Family Accommodation in Gwalior. He was posted to Commander Works Engineer, Jabalpur, as Deputy Commander Works Engineer but was side stepped to Chief Engineer, Jabalpur Zone, as Staff Officer, Grade- II within a month. He choose to stay alone in the Officers Mess at Jabalpur under the pretext that academic session of his children had already commenced at Gwalior. Thus he managed to continue to retain the Separated Family Accommodation at Gwalior. In May, 2005, he was approved for promotion from Maj to Lt Col while posted at Headquarter Chief Engineer, Jabalpur Zone, which was not possible (as per Army Orders and Rules), unless and until the applicant was assessed as mentally fit and held SHAPE-1 medical category. During this tenure for one year, he looked after the works and budget sections of the Zone as Staff Officer Grade-II/I. In Jan 2006, as he was being pressed for vacating his Separated Family Accommodation at Gwalior, he had no option but to bring his wife and children to live with him at Jabalpur. He applied for family accommodation, with his field seniority of six months, but the same was not allotted by Station Headquarters, Jabalpur. Contrarily, Station Superintendent Officer, Jabalpur, made a complaint against him and he was called for an

interview by Major General Ashok Khosla, GOC, Jabalpur, who made a remark '*Tumhara dimag kharab ho gaya hai. Tum jao main dekhoonga*'. He was sanctioned 17 days leave from 16.03.2006 to 01.04.2006 and was allotted family accommodation. At about 2300 hrs on the night of 04/05 Apr 2006, he heard a loud thumping knock on his door by an officer and staff of Central Military Police (CMP) with orders to take him to psychiatric ward. Chief Engineer, Jabalpur Zone, Mr. VN Purohit, having issued Form – 10 to pick him up from his house without any warning or any opportunity to defend himself in contravention of Articles 14 & 21 of the Constitution of India, thereby violating his fundamental right. In the psychiatric ward, Maj HK Bedi, kept him under observation for 24 hours and started administering heavy doses of forced medication and injections and electric shocks. On 23.05.2006, he was downgraded to medical category S4 (Temporary) (amounting to psychotic breakdown category). He was discharged on 21.07.2006 from Danapur psychiatric ward after which he recovered to S3 (Temporary) category. From April 2006 to July 2008, he was forcefully hospitalized several times at Jabalpur and during treatment by Maj HK Bedi, he was tortured by forced medication and high dose injections.

5. On 08.08.2008, he was transferred as Senior Administrative Officer at Headquarters, Chief Engineer, Eastern Command, Kolkata and was side stepped as Senior Barrack & Stores Officer (SBSO). From Aug 2008 to Mar 2010, he had to take the fortnightly high dose

injections during medical reviews at Command Hospital, Kolkata. Further he was repeatedly given painful injections forcibly by Lt Col Chandrashekhar, Psychiatric Ward. He was faced with triple problems of heavy work load in office, shouldering domestic responsibilities and remaining under the heavy influence of medication and its side effects. In Mar 2010, he was again hospitalized as a case of 'Re-lapse' on the pretext of a molestation complaint by his neighbour's girl child. After inquiry he was absolved. In Apr 2010 his wife settled in Bhopal with both his daughters and he was placed in medical category S2 (permanent). From Apr 2010 to Apr 2012, he stopped medications and discontinued going to the psychiatrist and commenced regular physical exercises, gym sessions, music and club activities and Yoga and regained physical and mental health. His Review Medical Board was due in March 2010 and he was forcibly admitted in Command Hospital, Kolkata. He submitted his pre-mature resignation request and appealed to Lt Gen KPD Samanta, the Hon'ble Administrative Member of AFT, Kolkotta furnishing a copy of the letter from His Excellency, the President of India whereupon his Review Medical Board was carried out on OPD basis within 2 days.

6. In January 2012, he finally took divorce from his wife as per Muslim law with Rs. 40,000/- pm alimony for the next six years and bearing cost of education of his daughters, besides transferring his house purchased in Bhopal to his wife's name. He prayed for posting

to Delhi with a view to re-marry, which was denied. In June 2012, he was posted to C.W.E. Jhansi in the capacity of Additional Officer. Before proceeding on posting, Chief Engineer Kolkata Zone, Shri GS Singh, asked him to sign his Annual Confidential Report (ACR) in which his numerical grades were assessed as 0, 1, 2 and maximum of 3 (on the scale of 0 to 9) on various performance criteria. In the next ACR he was graded 5, 6, and 7 etc. As a result he was posted as Additional Officer at CWE, Jhansi. During Jul 2012 to 10 Jan 2013, he was harassed at Jhansi because of the psychiatric tag.

7. He pleaded with MS-12 Branch Army Headquarters, Delhi, for a posting to Delhi but he was posted to Babina which was later on cancelled. On 11.01.2013, he was admitted in Military Hospital, Jhansi and was given medication. On 12.01.2013, he was transferred to Command Hospital, Pune. After serving of a legal notice by his mother, followed by suicide threats, before the District Magistrate, Jhansi, he was released from hospital. On 18.03.2013, he submitted his pre-mature retirement (PMR) request for the second time. On 23.03.2013, he was transferred to Chief Engineer, Bareilly Zone, as an Additional Officer. In June 2013, his PMR application was returned to him without assigning any reason. On 19.10.2013, he again submitted his premature retirement application. On 22.04.2014, he filed O.A. No 138 of 2014 in this Tribunal which was decided on 10.09.2014 and the Tribunal directed the respondents to decide his PMR application within 4 months from the date of passing of this

order. On 12.05.2014, he decided to absent himself without leave (AWL) to avoid further hospitalization for Review Medical Board scheduled on 04.05.2014. He joined duty thereafter at Bareilly on 17.09.2014 and filed Writ Petition No 766 (S/B) of 2014 before High Court, Lucknow Bench, seeking protection under Article 21 for quashing the order dated 02.05.2014 of Chief Engineer, Bareilly Zone by which he was directed to undergo Review Medical Board. This Writ Petition was rejected because the matter was pending before Armed Forces Tribunal. On 17.10.2014, his Review Medical Board was held at Base Hospital, Delhi Cantt. He was issued Charge Sheet on 22.10.2014 for being AWL. On 18.01.2015, he filed another O.A. No 12 of 2015 decided on 25.05.2015, seeking quashing of charge sheet dated 22.10.2014. On 12.02.2015 his General Court Martial (GCM) for AWL commenced. On 17.02.2015, he filed M.A. No 360 of 2015 Inre O.A. No 12 of 2015 for early hearing of O.A. No 12 of 2015 along with record of O.A. No 138 of 2014. On 05.03.2015, the General Court Martial concluded its proceedings and a sentence of loss of three years service for increased pay and pension was awarded to him. O.A. No 12 of 2015 was decided on 25.05.2015 having become infructuous. On 14.07.2015, his Review Application was rejected. He filed Leave to Appeal before Hon'ble Apex Court against order dated 25.05.2015 of this Tribunal. Respondents re-assembled the GCM and increased the sentence to 05 years loss of service for increased pay and pension. On 06.11.2015, he filed SLP

before Hon'ble Apex Court which was withdrawn on 30.11.2015 on the directions of Hon'ble Apex Court.

8. On 05.12.2015 he was again admitted in psychiatric Ward of Military Hospital, Bareilly. He was escorted under guard to bring his belongings for the hospital admission but he managed to escape on his motorcycle driving straight to Lucknow. On the night of 28/29.12.2015 the applicant went to Bareilly Zone Officer's Mess to collect his legal documents pertaining to the subject matter and found that all his belongings were missing. On 02.02.2016, he preferred a Writ Petition No 2632 (S/B) of 2016 in Hon'ble High Court, Lucknow Bench. Vide order dated 08.02.2016, Hon'ble High Court Lucknow Bench directed him to approach this Tribunal for re-dressal of his grievances. He pleaded that directions be given to respondents to stop forced hospitalization at the psychiatric ward or medication, declare him medical fit in category SHAPE-1, quash desertion report and allow him to rejoin duty and regularise his entire period of absence and to return his complete house hold property.

9. **Per Contra**, learned counsel for the respondents submitted that plea of the applicant that he was forcibly taken to Military Hospital, Bareilly by the order of the Chief Engineer Bareilly Zone, Bareilly is wrong. As per para D and E of Director General Armed Forces Medical Service Medical Memorandum No. 111 of 1987, following has been mentioned in respect of raising Form 10:-

(a) *When a patient already under treatment of AMA shows signs and symptoms suggestive of a psychiatric illness.*

(b) *When the OC of a unit or detachment requests for psychiatric examination of one of the personnel of his unit. Such request should invariably in writing with an AFMS-10 to the AMA. The latter will refer him/her to the psychiatrist.*

10. On 5.12.2015, the applicant was observed to be breathing heavily in the office complex and showing signs of unrest mixed with heightened level of anxiety. As such Chief Engineer, Bareilly Zone, Bareilly ordered his staff to take him to Military Hospital, Bareilly. The applicant had already been medically examined at various hospitals viz MH, (Jabalpur), Command Hospital, (Kolkata), MH. (Jhansi) and Base Hospital, (Delhi Cantt) before reporting to CE, Bareilly office and he had been declared a patient of 'Schizoaffective Disorder' (a psychiatric illness) from April 2006 onwards, and his medical category as decided by Authorities was S2H1A1P1E1 with review at MH required every two years.

11. Learned counsel for the respondents further submitted that the applicant had preferred his application for premature retirement (PMR) vide letter dated 19.10.2013. His application was forwarded to Headquarters, Chief Engineer, Bareilly. HQ Central Command duly recommended returned his application with some observations on Section II of the application vide letter dated 07.12.2013. HQ, Chief Engineer, Bareilly Zone, Bareilly returned the complete case to Lt Col

Mukesh Baboo for re-submission of his case as per directions of higher HQ. Officer re-submitted his case after changing Section II of application vide his letter dated 31.12.2013. Army Headquarters, Min of Defence, wrote to the officer to undergo Release Medical Board in MH for his pre-mature retirement as he was in low medical category vide letter dated 06.01.2014. It is submitted that HQ Chief Engineer, Bareilly, Zone resubmitted his case to HQ Chief Engineer, Central Command vide letter dated 16.01.2014. HQ Chief Engineer, Central Command returned his case for re-submission vide letter dated 25.01.2014 as per Army HQ MS Branch policy letter dated 25.02.2009 on pre-mature retirement case and also forwarded the copy of the same policy letter dated 25.02.2009. HQ Chief Engineer, Bareilly Zone, Bareilly handed over the complete case to the applicant for re-submission as per policy vide letter dated 03.02.2014. Army Headquarters, New Delhi, directed to resubmit his case immediately vide Signal dated 19.03.2014. HQ Chief Engineer, Bareilly Zone, Bareilly asked the applicant to resubmit his case for further submission to higher HQ vide letter dated 25.03.2014 but the applicant did not submit his case. Thereafter, HQ Chief Engineer, Bareilly Zone forwarded photocopy of his complete previous set of premature retirement case to HQ Chief Engineer, Central Command duly recommended vide letter dated 10.04.2014. Army Headquarters, New Delhi, had directed vide letter dated 11.10.2014 to process premature retirement application on completion of disciplinary action. He submitted that applicant has to follow the policy and guide lines

before applying for premature retirement. Since next re-categorization Medical Board of the applicant was due on 04.03.2014, he was directed to report to Military Hospital, Bareilly vide HQ Chief Engineer Bareilly Zone letter dated 02.05.2014, but the applicant absented himself without proper leave w.e.f. 12.05.2014 and rejoined duty voluntarily on 18. 09.2014 for which he was dealt with as per Army Rule. Disciplinary action was ordered by HQ UB Area, Bareilly. The tentative charge sheet dated 22.10.2014 was served to the applicant and intimation regarding General Court Martial was given to the applicant. Army HQ, New Delhi vide letter dated 24.12.2014 intimated that his application for pre-mature retirement cannot be accepted at this stage until finalization of disciplinary action against him. GCM of the applicant was held at JAT Regimental Centre, Bareilly from 12.02.2015 to 05.03.2015 and following punishment was awarded:-

- (a) *To forfeit five years service for purpose of promotion;*
- (b) *To forfeit five years past service for the purpose of increased pay.*

12. Learned counsel for the respondents further submitted that the applicant was posted to Budget Section and that regarding alleged harassment by Brig Manu Mehrotra, Chief Engineer and Col KV Pratap, Additional Chief Engineer, the same is without merit. The officer absconded from duty on being referred to MH and not because of alleged harassment. He did not perform the assigned job and was mostly on leave for his own affairs. The applicant has the habit of

getting involved in unnecessary arguments and activities to disturb official work.

13. Learned counsel for the respondents further submitted that the officer is an indisciplined and habitual offender and does not obey rules and regulations. His Review Medical Board was due on 04.05.2014 but he refused to undergo the same. As such he was being asked to report to Military Hospital, Bareilly, but he filed O.A. No 138 of 2014 before this Tribunal to avoid medical review but the same was disposed off. As regards constitution of Civil Medical Board for re-examination of health of applicant, it is stated that there is no provision in the army for convening such a board.

14. Learned counsel for the respondents submitted that applicant left the duty station without any intimation on 05.12.2015 and when office of Chief Engineer Bareilly did not receive any intimation/message about his whereabouts and as there were several officers in waiting for a room to be allotted in the Officers Mess, a Board of Officers was ordered to take stock of all items of his room and keep the same in safe custody in a separate place under seal so that his room could be allotted to the next senior in waiting.

15. Ration money allowance of the applicant has been claimed from CDA (Army) Meerut and regular reminders are being issued for early passing of the claim. His request for change of home address has been processed to higher authority. The applicant was earlier given all facilities like telephone, computer and manpower. However,

since he was not taking interest in his duty, he was not considered for continuation of these facilities. He has never cooperated in doing his official work or with medical authorities. Besides he is in the habit of making a recording of all conversations.

16. We have heard Lt Col Mukesh Baboo in person and Shri Asheesh Agnihotri, learned counsel for the respondents at great length and have also perused the records on file.

17. We have seen that the applicant has filed various Applications as under:-

- (a). **R.A. No 23 of 2016**. By means of this R.A. applicant has prayed for reviewing and revising the order dated 26.02.2016 which was dismissed on 19.07.2016 being infructuous.
- (b). **M.A. No 695 of 2016**. This M.A. was disposed of vide order dated 11.04.2016.
- (c). **C.A. No 10 of 2016**. This application was dismissed on 19.07.2016 being misconceived.
- (d). **M.A. No 695 of 2016**. By means of this M.A. applicant has filed application for imploring the Tribunal which is taken on record and disposed off.
- (e). **M.A. No 463 of 2016**. By means of this M.A. applicant prayed for correction of relief clause. The application was allowed on 01.03.2016 and disposed off.

- (f). **M.A. No 1343 of 2016**. By means of this M.A. applicant prayed for taking on record various events, which was taken on record and disposed off on 19.07.2016.
- (g). **M.A. No 1717 of 2016, 2042, 2552 of 2016 and 347 of 2017**. These M.As. were taken on record and disposed off on 01.11.2017.
- (h). **M.A. No 152 of 2018**. By means of this M.A. applicant has prayed for modification of order dated 20.12.2017. Applicant was allowed to pursue his case in person instead of by legal practitioner and name of applicant as Lt Col Mukesh Baboo instead of Shri Mukesh Baboo.
- (j). **M.A. No 542 of 2018**. By means of this M.A. applicant has filed rejoinder affidavit which was taken on record and disposed off on 07.03.2018.
- (k). **M.A. No 1261 of 2018**. By means of this M.A. applicant has prayed for taking on record few important submissions which is taken on record and disposed off.
- (l). **M.A. No 1301 of 2018**. By means of this M.A. applicant prayed for taking on record important news paper reports which is taken on record and disposed off.
- (m). **M.A. No 265 of 2019**. By means of this M.A. applicant has prayed for taking on record probable reasons behind recusal which is taken on record and disposed off.

- (n). **M.A. No 238 of 2020**. By means of this M.A. applicant has prayed for taking on record letter dated 03.03.2020 which is taken on record and disposed off.
- (o). **M.A. No 3 of 2021**. By means of this M.A. applicant has filed Media Report which is taken on record and disposed off.

18. The question before us for consideration is three folds:-

- (a) Whether the applicant is psychiatric patient or not?
- (b) Whether his desertion report is liable to be quashed?
- (c) Whether officer's medical examination can be conducted by civil doctors?

19. Perusal of opinion of psychiatric specialist dated 07.12.2007 shows that the officer is an old case of 'Schizoaffective Disorder' wef 04 July 2006. The applicant misbehaves, displays maladjustment during duty and his behavior was abnormal in dealing with others. During the GCM he started feeling that everyone was complaining against him and wanted to harm him. He became depressed and developed disturbed biodrives. The symptoms kept on progressing and there was change in his personality, general outlook and behavior. He started becoming irritable on minor issues and started resorting to violence, initially at home with his wife and children and threatened to kill them. During the same period he started over spending, became socially diinhibited, hypersexual and harbored grandiose feelings. Gradually he became more and more suspicious of

people around him and started recording people's conversations. Most of the times he used to lock himself up in his room where he used to perform Yoga or sing & dance for hours. He used to hit himself at times with the intention of making his body supple, so as to be able to play the guitar well. There was no evidence of substance abuse to account for his symptoms. Psychiatrically he was elated. He exhibited increased psychomotor activity and performed *sheershashan* within 10 minutes of first interview. His speech was pressured at times and he exhibited flight of ideas. Later he became guarded, suspicious and had delusions of persecution. He also exhibited grandiose delusions. He argued with his family on day- to- day matters and he had become extremely aggressive and violent, so much so that his wife and children had to lock themselves in a room and were forced to call the psychiatrist for help.

20. Opinion of medical board of 2013 shows that behavior of the officer was abnormal since his posting in July 2012. He was transferred to Command Hospital, Southern Command on 14.01.2013 as the psychiatrist of the hospital in Jhansi was on leave. Evaluation at Command Hospital, Southern Command, Pune revealed that the individual had stopped medication, just after his discharge from hospital in May 12. He did not visit any OPD for follow up. He had erratic and argumentative behavior leading to scuffles with the unit staff. He assaulted his subordinates on multiple occasions and misbehaved with his colleagues and superiors leading to written complaints against him. He started whistling and dancing at odd times. He even misbehaved with a civilian girl leading to an official complaint against him which was later

withdrawn. There was no history of head injury or seizures. He displayed inflated self esteem, expressed grandiose ideas and blamed medical authorities for ruining his health with medications. He lacked insight and was reluctant to take medication. He listened and danced to loud music and displayed his martial art moves to his guards. He was divorced and his mother interfered in his treatment, at times unnecessarily blaming authorities for her son's condition and also threatening suicide. The officer and his mother both were given psycho education and medication on numerous occasions, to which he showed gradual response. When posted at Bareilly he complained that he was not being assigned any duty. He smiles while describing events, which appears to be odd. He harbours a strong suspicion of being harassed by the organization. He believes that he has no mental illness and needs no medication. He does not feel the need for medication and same need not be administered against his wish. He was recommended by the medical specialist to remain under supervision. He was found to be unfit to handle firearms and unfit for posting to high altitude, counter insurgency areas and for independent command.

21. After having heard the submissions of learned counsel of both the parties we are of the view that as far as medical examination of the applicant by civil doctors is concerned, the same is not possible in respect of armed forces personnel in view of the following:-

- (a) Hon'ble High Court of Delhi in ***W.P (C) 3930/2020, Priti Yadav vs Union of India and Ors*** decided on 15 July 2020 has held that “ *fitness for serving requisite duties in the Air Force is a*

matter of opinion and if in the opinion of the authorities constituted under the Rules of the Air Force the petitioner is unfit, a report of a medical practitioner of another organization which does not intend to recruit the petitioner and which will not be affected by the medical unfitness of the petitioner, cannot be the basis for interfering with the assessment by the Air Force. It is medical practitioners of the Air Force and Defence Services, who have themselves undergone the requisite training and discharge the functions of the organization, who are best suited to form an opinion as to the medical fitness of the candidates to be recruited and once they have so formed their opinion, there can be no interference therewith, at the mere asking of a rejected/disgruntled candidate.”

(b) Hon’ble Delhi High Court in ***W.P (C) 4558/2020, Shravan Kumar Rai vs Union of India & Ors*** decided on 27 July 2020 has held that *“The difference between the opinion of the Review Medical Board and of the private practitioner consulted by the petitioner, only is as to the lung capacity of the practitioner and in which respect, as aforesaid, the opinion of the respondents CRPF with whom the petitioner is to serve, is to be respected.”* The Court also held that *“the candidates found medically unfit cannot seek a change of the terms, subject to which they have taken the examination and which terms uniformly apply to all candidates. It was held that the principle of ‘rules of the game cannot be changed after the game has begun’ applies.”*

(c). Hon'ble Calcutta High Court in **WP No 1346 (W) of 2019, Subhajit Mondal & Ors vs Union of India & Ors** decided on 26 March 2019 has held that *'once for appointment to Paramilitary force, a decision is taken based on the expert opinion of a medical board, a writ court exercising jurisdiction under Article 226 of the Constitution cannot sit as an appellate authority over the said decision and take a different view. Indian Army forms an integral part of the defence mechanism system of our nation. The safety and security of the nation rests upon the Armed Forces of the country. The Armed Forces must be extremely fit by all standards i.e. physical, mentally and emotionally. Our country will not remain in safe hands if the Army men are not fit. With the view to select the best candidate the Army is required to maintain very high standards as regards fitness is concerned. Our country will remain safe only if the men in uniform are fit for the purpose they are appointed. Safety and security of the nation is of prime importance.'*

22. In number of cases Hon'ble Delhi High Court has held that the opinion of doctors of the Armed Forces shall prevail over that of private or other government doctors on the question of an applicant's physical/medical fitness. The standard of physical/medical fitness for armed forces is more stringent than for civilian employment. The doctors of the forces are well aware of the demands of duties of the forces in the terrain in which the soldiers are required to work. The Court was also of the opinion that if a candidate is not medically fit in the opinion of armed forces doctors, opinion of private or other government doctors to the

contrary cannot be accepted inasmuch as the armed forces soldiers are required to work for the country in difficult terrain and not only in peace areas. Civilian medical professionals are unaware of the demands of the duties in the forces. The Court has also observed that 'what may seem as a minor difference in the assessment of the civil doctors in comparison to the assessment of the Medical Boards, may blow up into a serious health condition during the course of service in difficult terrain in armed forces, hence demand of the officer of medical checkup by civil doctors is not sustainable in the eyes of law.

23. We have observed that army is a disciplined force and a very high standard of physical fitness is required to perform the duty. Officers are role model for the jawans in the Army. So far as the submission of the applicant that he is medically fit and may discharge his duty is concerned, ordinarily, it is not open for the Court or the Tribunal to sit in appeal over the decision of Medical Board consisting of experts in their respective fields. The Tribunal has no role to play in assessing the physical or medical fitness of a particular person and to declare him physically or medically fit. Of course, in case some *mala fide* is attributable then the Tribunal may enter into the merits of the matter and appropriate decision may be taken to meet the requirement based on the facts of each case. In the present case, no *mala fide* has been alleged or placed on record and there is no convincing argument to believe that the Medical Board had given or may give a biased medical opinion. Medical opinion given by the medical board does not suffer from any illegality or impropriety.

24. As far as negligence on part of a doctor is concerned, Hon'ble Apex Court in Civil Appeal No 3541 of 2002, ***Martin F.D'Souza vs Mohd Ishfaq***, decided on 17 Feb 2009 had held as follows:-

"It must be remembered that sometimes despite their best efforts the treatment of a doctor fails. For instance, sometimes despite the best effort of a surgeon, the patient dies. That does not mean that the doctor or the surgeon must be held to be guilty of medical negligence, unless there is some strong evidence to suggest that he is."

In the instant case, there is no evidence that psychiatric specialists in various military hospitals where applicant has been treated have knowingly harassed the applicant.

25. The opinion of medical board shows that applicant's mental condition is abnormal and he requires a checkup/review.

26. Further we have noticed that the applicant has remained absent without leave (AWL) as a absconder/ deserter since December 2015 and he continues to remain so without reporting/surrendering himself to his unit, which he is required to do. The past medical history of the applicant shows that he is in need of appropriate medical care and treatment, and that too with the Army Medical authorities and the same is possible only if he reports back to his unit/surrenders himself.

27. In view of the above, the applicant is directed to report back / surrender himself to his unit. Thereafter, the respondents are directed to constitute a re-survey medical board (RSMB) to assess the present medical category of the applicant within one month and intimate the date and time to applicant so that he can be present for the same.

The respondents are further directed to take action as per rule position pertaining to his AWL as also dues payable to him and return his personal items, if held. With these directions, Original Application No 60 of 2016 is disposed of finally.

28. There shall be no order as to cost.

(Vice Admiral Abhay Raghunath Karve)

(Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated : February, 2021

ukt/-