

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 1065 of 2010

AND

Transferred Application No. 1103 of 2010

Friday this 04<sup>th</sup> day of May, 2018Hon'ble Mr. Justice S.V.S. Rathore, Member (J)RN Mishra ..... **Petitioner**By Legal Practitioner: Bhashker Pratap Dubey, Advocate  
Learned Counsel for the Petitioner.

Versus

Union of India through Secretary,  
Ministry of Defence, South Block,  
New Delhi & others..... **Respondents**By Legal Practitioner: Dr Shailendra Sharma Atal, learned counsel  
for the respondents, assisted by Wg Cdr  
Sardul Singh, OIC Legal Cell.**ORDER (Oral)**

1. Both these Transferred Applications are co-related and filed by the same petitioner, but at present the matter before me is with regard to difference of opinion in between the two Hon'ble Members in passing the order dated 17<sup>th</sup> January 2018. Hon'ble Mr. Justice D.P.Singh, Member (J) has expressed the following opinion :

*"In view of the above, the respondents are directed to constitute Medical Board within two months. On constitution of medical Board, the applicant shall be informed who shall appear for medical examination. The Medical Board shall consist of at least five Experts of different field. The opinion of the Medical Board shall be placed before the Tribunal in a sealed cover."*

2. Hon'ble Administrative Member differed from the view expressed by the Hon'ble Judicial Member. He passed the following order, the relevant part of which reads as under :

*“Considering the prayers of the applicant in the O.A as quoted above particularly prayer No (e), in my view, it would be appropriate if the applicant is given a chance to amend his prayer so that appropriate order for sending him for being examined by Resurvey Medical Board at a military hospital by respondents may be passed In the facts and circumstances, it would be appropriate if the matter is put up for rehearing so that the applicant may be afforded a chance to amend his prayer and he may be sent for being examined by the Resurvey Medical Board, if necessary.”*

It is clear from the opinion expressed by the two Hon’ble Members that it was with regard to only an interim order.

3. Since there was a difference of opinion with regard to the interim order passed by Hon’ble Judicial Member, therefore, the matter, in compliance of Section 28 of the Armed Forces Tribunal Act, 2007, was referred to the Armed Forces Tribunal, Principal Bench, New Delhi and the Hon’ble Chairperson vide his order dated 28<sup>th</sup> February 2018 has entrusted this matter to the 3<sup>rd</sup> Member, the under-signed. It is pertinent to mention here that no point for determination was framed in the referral order.

4. In this case, there is a difference of opinion regarding conducting the Medical Examination of the petitioner by a specially constituted Medical Board. The view of the Hon’ble Administrative Member was that the said Resurvey Medical Board should be conducted after amendment of the prayer clause.

5. Learned counsel for the petitioner has made lengthy argument and has submitted that the orders passed by the two Hon’ble Members are incomplete. He is of the view that it was a final order. He has argued that one Senior Officer of the Air Force had hatched a conspiracy for division of India and creation of a new State. The petitioner made complaint disclosing such conspiracy being hatched and, therefore, in order to save that officer under a planning, the petitioner has been victimised by other senior officers. The petitioner was placed in a low medical category. His ACR was spoiled and he was discharged from service without giving any extension of service. He was not paid pension for three years. He was falsely designated as a mental case and was pressurised for his medical examination, while he was declared mentally fit by the Medical Officer of Medical College and the Military Hospital of the Air Force. Apart from it, the petitioner was detailed in VIP duties and also on duties with various foreign dignitaries, so it cannot be presumed that he was

mentally not fit or unstable at that point of time. Learned counsel for the petitioner was requested by me several times to confine his arguments only on the point as to which of the two opinion expressed by two Hon'ble Members is correct and on which he places reliance, because as a Third Judge, the scope of this Single Bench is very limited i.e. only with regard to difference of opinion expressed by the Two Hon'ble Members, but inspite of my such repeated requests, learned counsel for the petitioner continued to argue the case on merits. He has also argued that in view of the order of Hon'ble High Court dated 25<sup>th</sup> February 1994 (Annexure 13 to the writ petition), no such order could have been passed.

6. On behalf of the respondents, it is submitted that this Single Bench is not authorised to hear the matter on merits. It is submitted by the learned counsel for the respondents that at this stage very limited jurisdiction is available to this Bench to express his opinion only with regard to the two opinions, so that the order may be finalised in view of the majority view.

7. Learned counsel for the respondents has vehemently argued that in the instant case, the petitioner has made very serious personal allegations against several Air Force Officers by name, but none of those officers have been impleaded as respondents in this case, while under law, the petitioner was obliged to implead them as respondents when he is making personal allegations against any person.

8. Before proceeding further, I would like to quote some paragraphs of the order of Hon'ble Judicial Member to bring on record certain circumstances under which the order was passed directing the constitution of a Special Board for medical examination of the petitioner. The relevant part of the order passed by Hon'ble Judicial Member reads as under :

*“Admittedly, the applicant was discharged as Psychiatric patient. The submission is that the medical opinion terming the applicant as psychiatric patient was given at the behest of higher authorities in order to make out a case to expel the applicant from the Air Force Services. A perusal of the order dated 19.09.1990 sent by the Fg Offr/Adjutant for Commanding officer indicates that while decision on some of the accusations were still pending at Air Headquarters, it directed that the JWO be offered medical /Psychiatric help as per laid down service procedure/ Further instructions from PMO/CPSO HQ WAC were said to be awaited. On the face of the record, the applicant was sent to Psychiatric treatment on the direction of Air Headquarters*

*and not by independent application of mind by the Commanding officer though relevant rules conferred power on the Commanding Officer. Once direction has been issued by the Headquarters which were not in touch with the applicant who was working in Police/Intelligence wing in the Air Force in lower rank, it is not understandable, how the inference was drawn that the applicant was a psychiatric patient and it prima facie appears to be tainted by instructions issued by the Higher Authorities and the Commanding officer has not applied his mind as required under the Air Force Rules and Instructions. This raises a reasonable doubt that the applicant was ousted from the Air Force on tainted medical opinion with the avowed object of getting rid of him on account the report submitted by him against alleged unlawful activities of the concerned Section officer. It is well settled law in number of cases by the Apex Court that the authority empowered under the Act should apply his mind instead of acting at the behest of superior officers/authorities that too with regard to alleged medical ailment of members of the Armed Forces. How the Headquarters had come to know that the Applicant was a psychiatric patient or mad though the applicant was discharging duties under his Commanding officer, is not comprehensible and it appears to be based on unfounded facts and prima facie some extraneous reasons. In such situation, discharge of the applicant on the basis of medical opinion which cites him as mad man/psychiatric patient requires to be given a second look.*

*The learned counsel for the Applicant has also drawn attention to the fact that even after discharge, the applicant was kept in reserve category for a period of two years while the fact remains that an airman discharged on medical grounds cannot be placed on reserve liability which is borne out from the letter dated 21.3.2017 in which para 2 (b) clearly mentions that an airman discharged on medical grounds is not placed on reserve liability. In the circumstances, the submission is loaded with substance how a mad-man or psychiatric patient can be kept on reserve liability for two years.”*

9. The order passed by Hon’ble Administrative Member shows that he was not opposed to conduct the Resurvey Medical Board, but he differed only on the ground that such an order should be passed after amendment of the prayer clause. At this stage, I do not agree with the view expressed by Hon’ble Administrative Member, because the Hon’ble Member (J) had only passed the interim order only to verify whether the petitioner was suffering from any mental illness as claimed by the respondents and the matter on merits has to be heard thereafter. Since the Hon’ble Judicial Member has not finally decided the case by his order dated 17<sup>th</sup> January 2018, therefore, there was absolutely no occasion to amend the prayer clause before passing such an interim order. The amendment of prayer clause, if any required, could have been made subsequently.

10. It is pertinent to mention here that in this case, as argued by learned counsels for both the parties that the application for amendment has been

moved by the petitioner, which was allowed, but even after lapse of very very long time, such amendments have not been incorporated by the petitioner. At this stage, I am only dealing with the controversy that has arisen because of the difference of opinion, therefore, I refrain to express any opinion on this point .

11. Hon'ble High Court vide order dated 25<sup>th</sup> February 1994 (Annexure 13 to the writ petition) has passed the following order :

*“However, in view of the facts disposed in this petition, it would be appropriate that the Air Officer Commanding, who has been impleaded as respondent no.3 and to whom the representation has been addressed, be directed to consider and dispose of the petitioner’s representation within a period of three months of a certified copy of this order being placed before him. In case the air Officer Commanding is not the appropriate authority, the representation of the petitioner may be forwarded to the competent authority, who shall decide the same within the same period. It is further directed that till the representation of the petitioner is decided the petitioner shall not be put to any medical examination.”*

Therefore, the order was effective only till the disposal of the pending representation. Admittedly, the petitioner was in service at that point of time. The pending representation of the petitioner was with the following prayer :

*“18. Therefore, under the relevant facts mentioned above, I request your kind office to initiate appropriate action in respect of paragraphs as stated above and provide adequate protection of life and personal liberty guaranteed under the Constitution as well as refer me to Psy Centre of All India Institute of Medical Sciences, New Delhi for the purpose of ascertaining the existence or non existence of the diagnosis i.g. PARANOID STATE bearing international Code No.297 and NEUROSIS bearing international code No.300 made by the Specialists (Psy) of Army Hospital Delhi Cantt -10.”*

12. Since the petitioner was discharged from service thereafter as a psychiatric case, therefore, the representation stood impliedly rejected. Hence, after a gap of 24 years that order cannot be used as a permanent injunction to hold medical examination. Apart from it, by the said orders, the respondents were restrained to conduct the medical examination of the petitioner that too only till the pending representation is decided. But in this case the Tribunal itself has ordered for the medical examination of the petitioner, in view of the subsequent developments, which have necessitated such a medical examination. Apart from it, the prayer of the representation of the petitioner was also to hold a medical board for his

check up through All India Institute of Medical Sciences as he was in service at that point of time. Therefore, the order of the Hon'ble High Court, quoted above, does not prohibit this Tribunal to direct for medical examination of the petitioner under changed circumstances and to effectively adjudicate the controversy involved in this case.

13. Keeping in view the circumstances due to which Hon'ble Judicial Member has passed an order of medical examination of the petitioner, I am of the view that such a medical examination of the petitioner was necessary. Learned counsel for the petitioner has argued that such a medical examination after lapse of 22 years, would not serve any purpose, but I do not find any substance in this submission because it is for the Medical Expert to express an opinion on this point.

14. In view of the discussions made above, I agree with the view expressed by Hon'ble Judicial Member.

15. Let this order be placed before the available Division Bench of the AFT, Lucknow on **15.05.2018** for passing orders, in view of the majority decision.

(Justice S.V.S.Rathore)  
Member (J)

Dated: 04<sup>th</sup> May, 2018.  
PKG