

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 337 of 2019**Thursday, this the 25<sup>th</sup> day of November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex Sigmn (DR) Bimal Kumar Singh, Service No. 15705514-A  
 29 Inf Div Sig Regt, PIN-917829, C/o 56 APO  
 S/o Shri Arun Kumar Singh  
 Present Address –  
 C/o Shri SN Choubey  
 LIG 113, ADA Colony Neem Sarai, Mundera,  
 Dhumanganj, Allahabad (UP)

**.... Applicant**

Ld. Counsel for the Applicant : **Shri Shiv Kant Pandey &**  
**Ms. Nisha Pandey, Advocate.**

Versus

1. Union of India, through Secretary, Govt. of India, South Block, New Delhi-110011.
2. Chief of Army Staff, Army HQ, Sena Bhawan, South Block, New Delhi.
3. The Chairman, Appellate Committee for First Appeal Ministry of Defence, Govt. of India, New Delhi-11.
4. The General Officer Commanding-in-Chief HQ Western Command, Army HQ, C/o 56 APO.
5. The Officer-in-charge, Signal Abhilekh Karyalaya, Signal Records Post bag No. 5, Jabalpur-482001.
6. The Officer Commanding 29 Inf Div Sig Regt, PIN-917829, C/o 56 APO.

**... Respondents**

Ld. Counsel for the Respondents : **Shri Namit Sharma,**  
**Central Govt Counsel**

**ORDER (Oral)**

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

- “8.1 This Hon’ble Tribunal may graciously be pleased to set aside Discharge Order no. 52473/4/M-5(A)/15 dated 22 Feb 2018 issued by HQ Western Command (Med), as quoted in discharge certificate (Annexure-8).
- 8.2 This Hon’ble Tribunal may graciously be pleased to set aside the IMB proceeding, which is record of HQ Western Command (Med).
- 8.3 This Hon’ble Tribunal may graciously be pleased to set aside the punishment awarded to applicant on the basis of charge sheet dated 10.09.2016 (Annexure-2).
- 8.4 This Hon’ble Tribunal may graciously be pleased to set aside the punishment awarded to applicant on the basis of charge sheet dated 08.10.2016 (Annexure-3).
- 8.5 This Hon’ble Tribunal may graciously be pleased to pass an order directing respondents to re-instate applicant in the service, with all consequential benefits.
- 8.6 This Hon’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.
- 8.7 This Hon’ble Tribunal may award the cost of petition to applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.07.2006. The applicant was found many times in intoxicated state and was admitted in Psychiatric ward of Military Hospital, Pathankot. He was proposed to be invalided out of service in low medical category S5 in accordance with Army Order 9/2007

and DGAFMS Medical memorandum No. 171/2002 for his ADS. The applicant was also counselled/warned by Commanding Officer on many occasions to refrain from consumption of liquor but there was no improvement on the part of applicant. The applicant was awarded two red ink and two black ink entries for the offences committed by him. The applicant did not show any improvement on ADS, hence he was proposed to be invalided out from service in low medical category S5 for his Psychiatric disability of ADS. He was locally discharged from service on 12.03.2018 under Army Rules 13 (3) III (ii) in low medical category S5H1A2P1E1 and a Discharge Certificate was issued to the applicant. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that on 13.07.2016 applicant was sent to Military Hospital (MH) by Commanding Officer (CO) alongwith AFMSF-10 but MH returned to the applicant to the unit having no ailment. On 14.07.2016 applicant was again picked up by the order of Commanding Officer and got admitted in 167 MH on allegation that applicant was found having taken liquor without any consent of applicant or his wife which was violation of Section 19, 20 and 21 of Mental Health Act, 1987 and also violation of Article 21 of the Constitution of India. The CO of 29 Inf. Div. Sig. Regt. made false statement that applicant was on sheltered appointment in the Mandir whereas sheltered appointment is given when an individual is in low medical category and unable to perform his trade job. The CO also made false statement that applicant was referred to 167 MH on

14.07.2016 on complaint of his wife dated 11.07.2016 whereas AFMSF-10 was raised by CO on 13.07.2016 which is evident from discharge summary dated 07.09.2016 made by Major Mayank Nam Deo, MO, Psychiatry of 167 MH. The applicant was discharged from 167 MH on 08.09.2016 without any medical categorisation.

4. Learned counsel for the applicant further submitted that punishments awarded to the applicant by CO on 24.04.2010, 11.02.2012, 01.08.2014 and 13.10.2016 are wholly malafide, out of vengeance to demolish the service career of applicant. No Show Cause Notice was served to the applicant therefore, discharge order has been passed in violation of statutory provisions of Rule 17 of Army Rules and hence, same is null and void in eye of law and liable to set aside. The so called ADS is not a mental illness in term of 2(s) r/w Sec 3 of Mental Health Care Act, 2017 and therefore, discharge order on allegation of ADS as mental illness is wholly illegal and therefore, the discharge order is liable to be set aside. The applicant has not been provided with copy of IMB proceedings. The applicant's representation dated 19.06.2018 is still pending with respondent No. 6 causing undue delay.

5. Learned counsel for the applicant also submitted that in present case discharge order has been passed in violation of Army Rule 17 and therefore, Article 14 and 21 of the Constitution of India has been violated and discharge order dated 22.02.2018 is wholly illegal and liable to be set aside. Hence, the discharge order of the applicant be

quashed in the demand of justice and applicant be reinstated in service with all consequential benefits.

6. Learned counsel for the respondents submitted that applicant was posted to 29 Infantry Division Signal Regiment. The applicant rejoined from leave on 10.04.2015 and he was found in intoxicated state shouting "Bhoot Bhoot" for next three days. The applicant was referred to 167 MH, Pathankot and admitted in Psychiatric ward on 12.04.2015. He got treatment and was discharged from hospital on 14.05.2015 with directions that he is proposed to be invalided out of service in low medical category S5 in accordance with Army Order 9/2007 and DGAFMS Medical Memorandum No. 171/2002 and requires AFMSF-16 for Invalidment Medical Board Proceedings. However, on verbal request of applicant, he was accorded an opportunity to improve himself. On 22.04.2016 during sick leave, applicant consumed liquor and was found lying on the ground in an intoxicated condition, hence, referred to 329 Section Hospital, Mamun Cantt, Pathankot and was released from hospital same day after treatment. On this occasion, Smt. Soni Kumari, wife of the applicant also requested verbally to Commanding Officer to give a chance for improvement. Thereafter, applicant was employed in unit Mandir in a sheltered appointment to prevent him from consuming liquor. On 12.07.2016 applicant again consumed liquor which was reported by his wife and hence, applicant was admitted in Psychiatric ward of MH Pathankot on 14.07.2016. On 16.08.2016, wife of the applicant made

a written request to Commanding Officer to grant one more chance for improvement and accordingly, it was granted.

7. Learned counsel for the respondents further submitted that applicant was also counselled/warned by Commanding Officer in presence of Adjutant and Subedar Major of the unit about Alcohol Dependence Syndrome (ADS) on many occasions on 15.07.2016, 21.07.2016, 15.08.2016, 16.08.2016, 25.08.2016 and 23.10.2016 to refrain from consumption of liquor. The applicant was awarded two red ink and two black ink entries for the offences committed between the period of April 2010 to October 2016. In spite of best efforts, the applicant did not show any improvement on ADS. On 27.02.2017, the applicant was again found in an intoxicated state at day time during duty hours. The applicant was referred to 167 MH Pathankot and was admitted in Psychiatric ward. The applicant was given treatment and was discharged from hospital on 10.06.2017 with recommendations to be invalided out from service in low medical category S5 for his Psychiatric disability of ADS. The medical board of the applicant was held on 06.06.2017 and unit administration authorities were directed to keep the applicant under close supervision of escorts. It was further directed that on approval of IMB from higher medical authorities, the applicant was to be sent home within 21 days from the date of approval with escorts, to be handed over to his Next of Kin. Headquarters Western Command (Medical) confirmed the sentence of IMB vide order dated 22.02.2018 with directions that his discharge procedure be initiated immediately and be completed within 21 days

from the date of approval of IMB proceedings. In compliance to directions received from higher medical authorities, the applicant was locally discharged from service on 12.03.2018 under Army Rules 13 (3) III (ii) in low medical category S5H1A2P1E1 on having been found medically unfit for further retention in service and a Discharge Certificate was issued to the applicant. He pleaded for dismissal of O.A.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. We find that applicant was placed in low medical category S5 due to Alcohol Dependency Syndrome (Relapse) on the recommendation of Invaliding Medical Board and was recommended to be invalided out from service for his Psychiatric disability of ADS which was confirmed by Headquarters Western Command (Medical). Accordingly, he was invalided out from service in low medical category S5 in accordance with Rules 13 (3) III (ii) of Army Rules, 1954 on having been found medically unfit for further retention in service.

10. We also find that medical proceedings were carried out in terms of Army Order 9/2007 and DGAFMS Medical Memorandum No. 171/2002 and guidelines issued on the subject that all cases of alcohol dependence suffering a recurrence will be invalided out of service. Therefore, there seems no illegality, illogicality or personal enmity in invaliding the applicant out of service. Hence, the applicant is not entitled the reliefs prayed in Original Application.

11. In view of the above, the O.A. lacks merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Applications, if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated : 25<sup>th</sup> November, 2021

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