

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 519 of 2019

Friday, this the 12th day of November, 2021

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

Kamal Kishore, No. 3020234N, Ex Sep,
S/o Sri Rajvir Singh
R/o Vill – Udranpur, Lilapur, PO – Harisinghpur,
Tehsil – Amritpur, District – Farrukhabad (UP) – 209622

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Vijay Kumar Pandey**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. GOC, 17 Mountain Div, C/o 99 APO.
3. OIC Records, Record Rajput Regiment, Fatehgarh (UP).
4. Commandant 158 Base Hospital, C/o 99 APO.
5. Commanding Officer, 27 Rajput Regiment, C/o 99 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt Counsel

ORDER

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:-

- “(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned order dated 09.07.2019/10.07.2019 & IMB proceedings, contains as annexure no. 1 & 2 to the

original application, passed by opposite party no. 4 & 5, and direct the opposite parties to reinstate the applicant in the Army service, after medical examination by duly constituted independent and fresh medical board w.e.f. 10.07.2019 with all service consequential benefits, with compound interest @ 18% p.a. from the date of discharge to till the date of actual and final payment of the amount, in the interest of justice.

- (ii) That this Hon'ble Tribunal may kindly be pleased to award the cost Rs. 20,20,000/- (Rs. Twenty Lac and Twenty Thousand only) to the applicant against the opposite parties and allow the same.
- (iii) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant."

2. Brief facts of the case are that the applicant was enrolled in the Army on 20.06.2017 and invalided out from service on 01.07.2019 under Army Rule, 13 (3), III (iii). During the Command Music Course at HQ Eastern Command, Kolkata, applicant was admitted in Command Hospital, Kolkata for the diagnosis "Likely Pyrethrin Poisoning Self Inducted". During treatment, the applicant was referred to Psychiatric Specialist for Psychiatric evaluation of self harm. After due examination, Psychiatric Specialist recommended invalidment of the applicant in LMC S5 for Unspecified Non Organic Psychosis (ICD 10 F29). Accordingly, applicant was invalided out from service w.e.f. 01.07.2019 under Army Rules 13 (3) III (iii). The applicant submitted his first appeal dated 25.09.2019 which was rejected by the respondents vide letter dated 21.12.2009. The applicant being not

satisfied with the procedure of invalidment from service has filed present Original Application to quash IMB proceedings and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant has been discharged from service on 10.07.2019 without any medical infirmity in very illegal and arbitrary manner without providing any opportunity to the applicant. The medical authorities have diagnosed **“Unspecified Non Organic Psychosis (F29)”** and **“Intentional Self Poisoning By And Exposure to Pesticides (X68)”** whereas applicant has no infirmity as well as poisoning. The opposite parties have passed the order of discharge without obtaining his signature on IMB proceedings which shows that the principles of natural justice have been violated in very illegal and arbitrary manner and copy of the same has not been provided to the applicant for which applicant filed a RTI application. For the allegation of intentional self poisoning, it is mandatory provision to carry out medical of the applicant to prove the poisoning but nothing has been done which reveals that there is no case of poisoning.

4. Learned counsel for the applicant further submitted that prior to discharge from service under Army Act, it is mandatory requirement to furnish a discharge order by the opposite parties but no discharge order has been issued to the applicant under Rule 12 of Army Rules, 1954 and Section 22 and 23 of Army Act, 1950 which is violative of Articles, 14, 16 and 21 of the Constitution of India. He placed reliance on the judgments of the Hon'ble Apex Court in **Ramrameshwari Devi**

and others vs. Nirmala Devi and others (2011) 8 SCC 249, the Division Bench of Allahabad High Court, Lucknow Bench in **Sameer Kumar vs. State of U.P.** [2014 (32) LCD 2436] and AFT (RB), Lucknow judgment in OA No. 130 of 2014, **Adesh Kumar vs. Union of India and Ors**, decided on 09.02.2016 and pleaded that applicant's case is covered with the aforesaid judgments and accordingly applicant's discharge order and IMB proceedings should be quashed and applicant be reinstated in the service.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 20.06.2017 and discharged from service on 10.07.2019 under Army Rule, 13 (3) III (iii). During the Command Music Course at HQ Eastern Command, Kolkata, applicant was admitted in Command Hospital, Kolkata for the diagnosis "Likely Pyrethrin Poisoning Self Inducted". While undergoing treatment, applicant has given self written statement dated 25.10.2018, filed alongwith counter affidavit, narrating events leading to his admission and problems being faced by him e.g. headache, giddiness, living silent and aloof, depression and thinking to commit suicide and has admitted having consumed poison (Mosquito Repellent Liquid) to commit suicide. After consuming poison, applicant was under treatment at Command Hospital, Kolkata and his father submitted applications to Hon'ble Prime Minister of India and National Human Right Commission with a request not to medically invalid out his son from service and to allow him to continue in service on humanitarian grounds. The unit of the applicant (27 RAJPUT), vide letter dated

26.03.2019 replied that decision of invalidment of the applicant has been taken by the medical authorities in accordance with Army Order 3/89 and the unit had no role to play.

6. Learned counsel for the respondents further submitted that during treatment, the applicant was referred to Psychiatric Specialist for Psychiatric evaluation of self harm. After due examination, Surg. Commander, Priyadarshree Patra, Command Hospital, Kolkata vide Summary & Opinion dated 31.12.2018 recommended that *“This 20 year old Sepoy/Infantry/ General Duty, unmarried soldier with less than 2 years of service came under medical care after an incident of attempted self harm. He was managed as a case of Unspecified Non Organic Psychosis (ICD 10 F29). In view of insidious onset of the psychotic illness in a young male, without any clear cut stressors and relapsing potential within first two years of service, **it is unlikely that he will be a useful member of Armed Forces.** Hence, I recommend LMC S5 for Unspecified Non Organic Psychosis (ICD 10 F29) in accordance with DGAFMSF Memorandum 171/2002 (Para 9 (a) (vi), which states that “all individuals who are unlikely to be reasonably productive in the discharge of their duties shall be invalided out of services after adequate treatment”. As a general rule the following cases will be invalided out – cases with less than 2 years of service, and where chronicity is likely (Major Psychiatric Disorders, Generalised Anxiety Disorder, Obsessive Compulsive Disorder, Alcohol/Drug Dependence and other)”. Accordingly, applicant was*

invalided out from service w.e.f. 01.07.2019 under Army Rules 13 (3) III (iii).

7. Learned counsel for the respondents further submitted that as per IMB proceedings dated 22.01.2019, the disability “**Unspecified Non Organic Psychosis (F29)**” has been considered as neither attributable to nor aggravated by military service rather it has been considered as not connected with service with reasons that ‘Perusal of opinion of Psychologist clearly revealed that the onset of his disability was during recruit training in Regimental Centre in the form of behavioural changes, lack of interest in training activities and suicidal ideation (On which he did not act so that financial assistance to his family is not denied)’. Apropos, Non Organic Psychosis is also not attributable to/or aggravated by military service and the other disability “**Intentional Self Poisoning by and Exposure to Pesticides**” as NANA and has been considered as not connected with service with reasons that Deliberate Self Harm by consuming pesticide can never be conceded attributable to/aggravated by military service. Since both his disabilities have been considered as NANA and not connected with service, applicant is not entitled for disability pension in accordance with para 179 of Pension Regulations for the Army, 1961 (Part-1).

8. Learned counsel for the respondents also submitted that applicant has signed his ‘Discharge Roll’ so he was well aware about his discharge due to IMB. As per para 8(b) (ii) of AO 9/2004/MP, “Unit/formation will ensure that the individual is dispatched to the

Regiment/Corps Centre/Deport to enable him to report there 11 clear days before the due date of discharge and ensure that the discharge is carried out within the specified time limit of 21/30 days”, accordingly, 27 RAJPUT has published the invalidated out Part II Order dated 01.07.2019 in accordance with IMB proceedings dated 25.06.2019 and Discharge Roll was signed by the applicant on 10.07.2019 and signed by Commanding Officer on 24.07.2019. The Discharge Roll of the applicant was produced before the Tribunal by Departmental Representative on next day of hearing i.e. on 27.10.2021 which confirms that Discharge Roll was prepared/issued. Learned counsel for the respondents pleaded that O.A. may be dismissed.

9. We have heard learned counsel for both sides and perused Court of Inquiry proceedings and the material placed on record.

10. It is pertinent to mention here that judgments relied up by the applicant in Para 4 above are not relevant in this case being based on different facts and circumstances.

11. We find that on the recommendations of IMB, applicant was invalidated out from service in low medical category S5 due to his disabilities “**Unspecified Non Organic Psychosis (F29)**” and “**Intentional Self Poisoning By And Exposure to Pesticides (X68)**” which were considered as NANA and not connected to military service. According to Psychiatric Specialist opinion, applicant was unlikely to be a useful member of Armed Forces, hence, in accordance with DGAFMSF Memorandum 171/2002 (Para 9 (a) (vi),

applicant being unlikely to be reasonably productive in discharge of his duties was invalided out from service after due procedure under the provisions of Rule 13 (3) III (iii) of Army Rules, 1954. Hence, the applicant is not entitled the reliefs prayed in Original Application to quash his discharge order and to reinstate him in service.

12. It is also clarified that applicant has signed his 'Discharge Roll' on 10.07.2019 which confirms that applicant was aware about his discharge due to IMB. Accordingly, as per AO 9/2004/MP, unit of the applicant (27 RAJPUT) has published the invalided out Part II Order dated 01.07.2019 in accordance with IMB proceedings dated 25.06.2019 and thereafter, Discharge Roll was issued and the same was produced before the Tribunal by Departmental Representative on 27.10.2021 which confirms that Discharge Roll was prepared/issued.

13. In view of the above, we do not find any illegality or illogicality in invalidating out of the applicant from service. The O.A. deserves to be dismissed and it is accordingly **dismissed**.

14. No order as to costs.

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

Member (A)

Member (J)

Dated: November, 2021

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