

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 584 of 2019 with M.A. No. 962 of 2019

Wednesday, this the 10th day of November, 2021

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

No. 712560L Sgt (Med Asst) Yogesh Kumar
S/o Shri Umesh Prasad Yadav
Presently residing at Durgapuri Coloney, Nilmatha Bazar,
C/o M.B. Rana, District – Lucknow (UP)

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Ashok Singh &**
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 Air Staff, Air Force Headquarters, New Delhi – 110010.
3. OIC, Air Force Record Office, Subroto Park, New Delhi – 110010.
4. Station Commander, 51 ASP, Air Force Station PIN-936851, C/o 99 APO.
5. Commanding Officer, 151 Base Hospital, C/o 99 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
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:-

- “8.1 To quash/set aside the impugned order dated 22 Aug 2019 as well as 23 Sep 2019, passed by the respondent No.-5 as a Annexure No A-1 with compilation No-1 to this O.A.
- 8.2 Issue an order or direction directing the respondent authorities to permit the applicant to be continue in service till completion of his service tenure/limits of service.
- 8.3 Issue an appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the demand of justice.
- 8.4 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicants.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 12.01.2004. The applicant was recommended by Graded Psychiatrist of 151 BH on 22.08.2019 to be downgraded in LMC S5 due to Alcohol Dependency Syndrome (ADS) and to be invalided out from service. The case of IMB in respect of the applicant was recommended by 151 BH on 22.08.2019 but IMB proceedings were delayed due to various observations on procedure. The applicant has been discharged from service on 11.09.2020 (AN) under the provisions of AF Rules 1969, Chapter III, Rule 15, Clause 2(c) on having been found medically unfit for further retention in service. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that on wrong footing, SMO of the unit illegally filled F-10 form against the applicant by declaring a case of mental state and applicant was sent to 151

Base Hospital (BH) and was recommended for IMB in a very illegal and hypothetical manner. In pursuance of the discharge slip dated 22.08.2019 issued by 151 BH, applicant was advised for readmission with all old documents alongwith fresh AFMSF-16 and disciplinary clearance for IMB. Sqn Ldr 51 ASP, AF issued disciplinary certificate dated 13.09.2019 to the applicant. He submitted that relying upon the discharge slip dated 23.09.2019 issued by 151 BH on the ground of proposed recommendation for release medical board, applicant cannot be discharged from service because disease ADS is not proved in any angles. The applicant filed a statutory appeal before Chief of the Air Staff dated 18.11.2019 which is still pending.

4. Learned counsel for the applicant also submitted that in the light of natural justice, fair play and equity it is admitted that order impugned dated 22.08.2019 as well as 23.08.2019 passed by 151 BH is totally illegal and not permissible in the eye of law, hence, the same may be quashed in the demand of justice and applicant be permitted to continue in service till completion of his service tenure/limits of service.

5. Learned counsel for the respondents submitted that the applicant is a case of ADS and was involved in many indisciplined activities/incidents in past as per following details :-

- (i) On 09.07.2016 consumed liquor and knocked the door of a civilian Meena Kumari who was working in SMC at the time of incident. She lodged a complaint of sexual harassment against the applicant, however at a later

stage, Meena Kumari withdrawn the complaint and case was compromised.

- (ii) On the night of 29.07.2018, the applicant was arrested by the civil police on the charge of extortion of money from truck drivers on NH-37. An FIR was lodged against him and he was put under civil custody from 29.07.2018 to 22.08.2018 and was released on bail on 22.08.2018. The subject civil case is pending at Sessions Court, Guwahati.
- (iii) On 20.01.2019, the applicant drove the service Ambulance under influence of liquor without the knowledge of Auto Tech and without holding service driving license and was tried under Section 82 of AF Act and awarded 'Severe Reprimand'.
- (iv) On 09.06.2019, the applicant was again found in drunken state in civil area and was brought to AF Station with injuries on face and leg. He was referred to 151 BH for review with AFMSF-10 on 10.06.2019. Subsequently 151 BH sent him to de-addiction centre at Command Hospital, Kolkata and after treatment he was diagnosed with ADS (Relapse) by 151 BH with proposed IMB from service in LMC S5.

6. Learned counsel for the respondents further submitted that applicant was in low medical category for Alcohol Dependence Syndrome, Opioid Dependence Syndrome and Benzodiazepine Dependence Syndrome w.e.f Jan. 2013 and was upgraded to S1

w.e.f 09.02.2015. However, the applicant has been repeatedly found to be under the influence of alcohol and had created nuisance and acts of indiscipline several times. The case of IMB in respect of the applicant was recommended by 151 BH on 22.08.2019 but IMB proceedings were delayed due to various observations on procedure. The initiation of AFMSF-16 and other medical proceedings were undertaken in terms of DGAFMS Medical Memorandum No. 171/2002 and guidelines issued vide IAP 4303. Para 9 Part (a) iii of said memorandum stipulates that *“all cases of alcohol dependence suffering a recurrence after upgradation to category S1 will be invalidated out of service”* which is also corroborated by IAP 4303. Accordingly, the case was processed. Hence, the claim of the applicant that unit processed his case of invalidment illegally and arbitrarily is baseless. On the basis of instructions, applicant has been discharged from service on 11.09.2020 (AN) under the provisions of AF Rules 1969, Chapter III, Rule 15, Clause 2(c) on having been found medically unfit for further retention in service. He pleaded for dismissal of O.A.

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

8. We find that applicant was placed in low medical category S5 due to Alcohol Dependency Syndrome (Relapse) on the recommendation of medical board and was recommended to be invalidated out from service. Accordingly, he was invalidated out from service under the provisions of AF Rules 1969, Chapter III, Rule 15,

Clause 2(c) on having been found medically unfit for further retention in service.

9. We also find that medical proceedings were carried out in terms of DGAFMS Medical Memorandum No. 171/2002 and guidelines issued vide IAP 4303 which stipules that all cases of alcohol dependence suffering a recurrence after upgradation to category S1 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.

10. In view of the above, the O.A. deserves to be dismissed. It is accordingly **dismissed**.

11. There is no delay in filing O.A., therefore, M.A. No. 962 of 2019 (delay condonation application) filed by the applicant is also **dismissed**.

12. 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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