

E-Court
RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 67 of 2015

Wednesday, this the 08th day of September, 2021

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

No. 15435768-N Ex Recruit Mohd Soharab, S/O Md. Slahuddin,
R/O Village-Dharwan, Post Office-Gangauli Tehsil-
Muhammadabad, District-Ghazipur (UP), Pin-233222.

.... Applicant

Ld. Counsel for the: **Col BP Singh (Retd)**, Advocate.
Applicant

Versus

1. Union of India through Secretary of Ministry of Defence,
New Delhi.
2. Chief of the Army Staff, Army Headquarters, Sena
Bhawan, New Delhi-110011.
3. Officer-In-Charge, Army Medical Corps, Central Command
Lucknow.
4. Commandant, AMC Centre and College, Lucknow.

... Respondents

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

ORDER

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:-

(a) Issue an order or direction directing the respondents to quash/set aside/cancelled discharge order dated 22.12.2011 mentioned in discharge book (Annexure A-1 (iv)).

(b) Issue an order or direction to the respondents to re-enrol the applicant in service in terms of para 143 of the Regulations for the Army, 1987 with all service and monetary consequences, after examining that the applicant meets all qualitative requirements including the medical fitness.

(c) Issue any such other order or direction which this Hon'ble Tribunal may deem fit and just in the facts and circumstances of the case in favour of the applicant.

(d) Allow the Original Application with exemplary cost in favour of the applicant.

2. Briefly stated facts of the case are that the applicant was enrolled in Army Medical Corps (AMC) as Nursing Assistant on 25.06.2011 after having been found physically and mentally fit. No entry was made in the medical examination report at the time of joining service. He alleged that during the course of his basic military training he came to know that his mother was not well. He could not ask for leave due to ongoing basic military

training but remained preoccupied with mother's illness thereby having reduced interest in training. After some days his father was called and he was granted 10 days casual leave for the period from 26.08.2011 to 05.09.2011. After return from leave he was again found gloomy, withdrawn and reduced interest in training and applied for release from service but later changed his mind and expressed motivation to continue in service. On 06.09.2011 due to his abnormal behaviour he was referred for psychiatric evaluation and returned back to unit on the same day. The next day i.e. on 07.09.2011 he refused to take food, stopped speaking to others and did not sleep in night of 07/08.09.2011. On 08.09.2011 he did not join training and was again sent for psychiatric evaluation where after in thorough investigation he was found to be suffering from 'Moderate Depressive Episode (ICD F-32.1)'. On recommendation of the Graded Specialist (Psychiatry) his Invaliding Medical Board (IMB) was conducted on 13.12.2011 at Command Hospital, Lucknow and he was invalided out from service in medical category S5H1A1P1E1 w.e.f. 22.12.2011 (FN). This O.A. has been filed for re-enrolment of applicant in the Army in terms of para 143 of the Regulations for the Army, 1987.

3. It was alleged that the petitioner had no family history of any psychiatric disease. He was brought before the Invaliding Medical Board and they declared the disability of the petitioner

'Moderate Depressive Episode (ICD F-32.1)' as neither attributable to nor aggravated by Army service and his claim for disability pension was rejected vide order dated 28.08.2012. Applicant has got issued a medical fitness certificate dated 16.04.2014 from Chief Medical Superintendent, district-Ghazipur. Applicant's then counsel Shri PN Chaturvedi (now late) issued a legal notice dated 05.05.2014 to Officer-in-Charge, Army Medical Corps and Commandant AMC Centre and College, Lucknow for his re-enrolment but there seems to be no response from respondents as it has not been placed on record.

4. We have heard the learned counsel for the parties and have gone through the records.

5. The submissions made by learned counsel for the petitioner are that the disease 'Moderate Depressive Episode (ICD F-32.1)' was sustained by the applicant during service which fact is borne out from the record that there was no entry in the original record of the petitioner that he was suffering from such disease prior to enrolment. Learned counsel for the applicant further submitted that applicant is presently medically and physically fit as mentioned in Medical Fitness Certificate issued by Chief Medical Superintendent, District, Ghazipur, therefore he should be re-enrolled in Army in terms of provisions contained in para 143 of Regulations for the Army, 1987.

6. Rebutting applicant's arguments, learned counsel for the respondents submitted that applicant was invalidated out from service by a duly constituted medical board of officers which opined that- "This 19 years recruit with above 2 months and 12 days training is a case of moderate depressive episode (ICD F-32.1) who manifested soon after joining service has poor stress tolerance and due to chronic and relapsing nature of illness will remain vulnerable for frequent depressive or manic episode. He is therefore not suitable for military service and is recommended to be invalidated out of service in medical category S5". In this regard, the learned counsel has cited case law of Division Bench of Hon'ble High Court of Kerala in the case of **Union of India & Ors vs Sreekumar P** in Writ Appeal No 1071 of 1997 against the judgment pronounced by learned single judge. The Bench in this case has held that once the expert body like the medical board expressed an opinion it is entitled to be given great weight. Unless the medical findings are utterly perverse this court exercising jurisdiction under Article 226 of the Constitution of India cannot go beyond the said opinion and substitute its own opinion. It was further held that findings of the expert body cannot be interfered with unless it is palpably wrong. Learned counsel for the respondents further relied upon the Hon'ble Apex Court judgment in the case of **Union of India vs Damodaran AV**, SLP (C) No 23727 of

2008, which has held that the medical board is an expert body and its opinion is entitled to be given due weight, value and credence. Further averment made by learned counsel for the respondents is that since the Graded Specialist (Psychiatry) has held that applicant's disease is chronic and relapsing in nature therefore, he will not be suitable for further military service. Concluding his submission, learned counsel for the respondents submitted that in these circumstances applicant cannot be re-enrolled in Army in terms of para 143 of Regulations for the Army, 1987. He pleaded for dismissal of O.A.

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

8. Applicant was enrolled in the Army on 25.06.2011 and during the course of basic military training he suffered with 'Moderate Depressive Episode (ICD F-32.1)'. He was psychologically checked by Graded Specialist (Psychiatry) who after thorough investigation gave his opinion as under:-

"This 19 yr old recruit with about 2 months and 12 days of training is a case of Moderate Depressive Episode (ICD F-32.1) who has manifested soon after joining service has poor stress tolerance and due to chronic and relapsing nature of illness will remain vulnerable for frequent depressive or manic episodes, he will hence not suitable for military service and is

recommended to be invalided out of service in medical category S5 of SHAPE factors.”

9. Applicant was invalided out of service w.e.f. 22.12.2011 in medical category S5H1A1P1E1 with advice to continue medicine and review by a qualified psychiatrist. We have also observed that after discharge from service applicant was despatched alongwith escort to hand him over to his parents which implies that his mental condition was not so good that he could travel on his own.

10. The crux of this case is that applicant being medically fit is entitled to be re-enrolled in the Army on the basis of medical fitness certificate issued by Medical Superintendent, District-Ghazipur, and in accordance with para 143 of Regulations for the Army, 1987. We have perused the aforesaid medical certificate and we find that medical fitness certificate issued by Medical Superintendent, Ghazipur is not acceptable in Army. The applicant was invalided out from service by a duly constituted Medical Board and according to opinion of Psychiatrist, his condition will remain vulnerable due to frequent depressive or manic episodes. In this regard we are of the view that medical fitness certificate issued by Medical Superintendent, Ghazipur will not prevail over a duly constituted Invaliding Medical Board. With regard to re-enrolment in terms of para 143 (supra), it may be observed

that this provision is applicable to the non pensioner who were medically boarded out with disability below 20% and later became medically fit for re-enrolment. For convenience sake, the aforesaid Regulation is appended below:-

“143. Re-Enrolment of Ex-Servicemen Medically Boarded Out.

(a) Ex-Servicemen, who are in receipt of disability pension, will not be accepted for re-enrolment in the Army.

(b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-enrolment, either in combatant or non-combatant (enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman applies for re-enrolment and claims that he is entirely free from the disability for which invalided, he will be medically examined by the Trg MO and if he considers him fit, the applicant will be advised to apply to officer-in-charge, Records Office concerned, through the recruiting officer for getting himself re-medically boarded. The officer-in-charge, Records Office concerned, on receipt of the application, will arrange for his medical examination at Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including that on accommodation and

journey to and from the place of medical examination."

11. From the aforesaid Regulation (supra) it is obvious that this provision is applicable to those personnel whose medical disability was assessed @ below 20% and later became medically fit. In the instant case applicant's disability has been assessed @ 40% for life therefore, this provision is not applicable in case of the applicant. Further, while endorsing his opinion, the Graded Specialist (Psychiatry) has mentioned that applicant is suffering from frequent depressive or manic episodes and his condition will remain vulnerable, therefore applicant is also not entitled to be re-enrolled keeping in view the definition of manic episodes according to medical literature which is as under:-

"Manic episode is a psychological condition that causes a person to experience unreasonable euphoria, very intense moods, hyperactivity, and delusions. Manic episode is a common symptom of bipolar disorder."

12. We further notice that according to medical literature, there is no treatment of manic episodes but the symptoms can be managed by regular treatment. Thus, we are clear that since the aforesaid disease is incurable, therefore, the Graded Specialist (Psychiatry) has recommended applicant to be invalided in medical category S5.

13. In view of the above applicant is not liable to be re-enrolled in Army as he does not fulfil the conditions laid down in para 143 of Regulations for the Army, 1987. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08 September, 2021
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