

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 121 of 2016**Wednesday, this the 15th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex LAC Ravi Papnai
S/o Sri Pooran Chandra
R/o Shiv Nagar Colony, Kashipur,
Udham Singh Nagar, Uttarakhand-244713**.... Applicant**Ld. Counsel for the Applicant : **Shri S.G. Singh**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Air Staff, Integrated Headquarters of Ministry of Defence (Air Force), South Block, New Delhi – 110011.
3. Flying Officer 28 ED, Air Force, Amla Depot (PO) District – Betul (MP) – 460553.

... RespondentsLd. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
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:-

- “(a) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the impugned order dated 09.09.2015 passed by opposite party no. 3 whereby discharging the applicant in a most arbitrary and malafide manner.

- (b) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to reinstate the applicant on his service forthwith.
- (c) Allow the application with all consequential benefits with exemplary cost.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 29.12.2012. While posted at 28 ED AF, applicant allegedly attempted suicide on 15.04.2014 while undergoing Mod II Course and was admitted to MH, Chennai. A Court of Inquiry was conducted at AFT Station Tambaram on 15.04.2014 to investigate into the circumstances under which applicant allegedly attempted suicide by shooting himself at right side of stomach from his service pistol But No. 132, SI No. 17275097 on 15.04.2014 while on duty as duty armourer at Station Armoury (Rest Room) and administrative action was approved by AOC Air Force Station Tambaram against the applicant on 27.10.2014. The applicant was under specialist treatment of Psychiatrist at Command Hospital, Air Force, Bangalore and further transferred to 3 AFH for treatment. The applicant was on continuous medical supervision with three escorts for aforesaid injuries/disabilities, hence administrative action as recommended by Air Officer Commanding (AOC), Air Force Station, Tambaram was not taken against the applicant since the applicant was suffering from under mentioned injuries/disabilities :-

- (a) Moderate Depressive Episode.
- (b) Intentional Self harm with pistol.
- (c) Gunshot wound abdomen (Optd).

3. On approval of IMB proceedings vide letter dated 26.08.2015 by competent authority at Air HQ, AFRO discharge order of the applicant was issued vide order dated 03.09.2015 under the provisions of Air Force Rules, 1969, Chapter III Rule 15 Clause 2(c), "On having been found medically unfit for further service in the IAF". Accordingly, applicant was discharged from service on 24.09.2015 (AN) and was struck off from the strength of Air Force w.e.f. 25.09.2015. The applicant being not satisfied with the procedure of discharge has filed present Original Application to quash his discharge order and to reinstate him in service.

4. Learned counsel for the applicant submitted that applicant has been discharged from service illegally and arbitrarily without giving him proper opportunity of hearing over the issue. The applicant was served notice dated 09.09.2015 to the effect that he is physically unfit for service ignoring the compelling facts brought on record by the officials of IAF at different stages and also the medical certificate regarding the applicant's fitness for civil employment. The discharge of the applicant declaring medically unfit for service is by all means contrary the provisions and rules applicable in the service. The provisions of Rule 15 (2)(c) of Air Force Rules, 1969 is not applicable against the applicant but for the reasons best known to the officers concerned they deliberately without giving proper opportunity of hearing served the impugned notice discharging the applicant from service. The perusal of opinion of the Senior Advisor (Psy) dated 22.12.2014 is well evident that he concluded in his opinion specifically

stating that the applicant may be given a chance to retain in service but the authorities has taken inhuman and hyper technical view in the case and discharged him from service, therefore, discharge notice dated 09.09.2015 terminating the service of the applicant speaks volumes regarding the arbitrary functioning of the respondents which is untenable and is liable to be quashed and applicant should be allowed to join duty by reinstating him in service.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant while posted at 28 ED AF, allegedly attempted suicide on 15.04.2014 while undergoing Mod II Course. A Court of Inquiry was conducted at AFT Station Tambaram on 15.04.2014 to investigate into the circumstances under which applicant allegedly attempted suicide by shooting himself at right side of stomach from his service pistol while on duty as duty armourer at Station Armoury (Rest Room) and administrative action was approved by AOC Air Force Station Tambaram against the applicant on 27.10.2014. The applicant was discharged from service on having been found medically unfit by invaliding Medical Board (IMB) due to his under mentioned injuries/disabilities :-

- (a) Moderate Depressive Episode.
- (b) Intentional Self harm with pistol.
- (c) Gunshot wound abdomen (Optd).

6. Learned counsel for the respondents further submitted that applicant was on continuous medical supervision/treatment for aforesaid injuries/disabilities, hence administrative action as

recommended by AOC, Air Force Station, Tambaram was not taken against the applicant since the applicant was suffering from aforesaid injuries/disabilities. On approval of IMB proceedings by competent authority at Air HQ, AFRO discharge order of the applicant was issued vide order dated 03.09.2015 under the provisions of Air Force Rules, 1969, Chapter III Rule 15 Clause 2(c), "*On having been found medically unfit for further service in the IAF*". Accordingly, applicant was discharged from service and struck off from the strength of Air Force w.e.f. 25.09.2015. Learned counsel for the respondents pleaded that O.A. may be dismissed.

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

8. We find that appropriate disciplinary action against the applicant was recommended by Court of Inquiry blaming applicant for "(i) Inflicting self injury with the intention of committing suicide and (ii) Misusing the service property which was under his safe custody" and the same was approved by AOC Air Force Station, Tambaram. However, no administrative action as recommended by AOC, Air Force Station, Tambaram was taken by the respondents against the applicant since the applicant was under treatment being suffering from injuries/disabilities mentioned in para 5 above. The applicant was discharged from service after due procedure under the provisions of Air Force Rules, 1969, Chapter III Rule 15 Clause 2(c), "*On having been found medically unfit for further service in the IAF*". Hence, the

applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

9. It is also clarified that applicant has prayed to quash the impugned order dated 09.09.2015 treating it discharge order/notice whereas letter dated 09.09.2015, addressed to father of the applicant was only intimation regarding his discharge from service. This particular point has been clarified by the respondents in para 14 of their counter affidavit that discharge order of the applicant was issued as per Air Force Rules, 1969 vide order dated 03.09.2015 and not 09.09.2015.

10. In view of the above, we do not find any illegality or illogicality in discharging the applicant from service. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

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

Member (A)

Member (J)

Dated: Sept., 2021

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