

**Court No. 1**  
**RESERVED**

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

**Original Application No. 252 of 2014**

Wednesday, this the 29<sup>th</sup> day of September, 2021

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

Ex AC MD Samsul Haque Service No. 934310-H  
S/o Late Abdul Hakim  
Village – Yairipok Changamdabi  
PO – Yairpok, Tehsil – Keirao Bitra  
TO – Imphal East, Dist – Imphal East, Manipur-795149

.... **Applicant**

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

Versus

1. Union Govt. of India through Defence Minister Govt. of India, South Block, New Delhi – 110011.
2. Chairman-DMCCP Ministry of Defence, Govt. of India, New Delhi.
3. Chief of Air Staff, Air HQ Vayu Bhawan, Rafi Marg, New Delhi.
4. Director Air Veteran, Air HQ, Subroto Park, New Delhi.
5. The AOC, AFRO, Subroto Park, New Delhi.

... **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:-

“8.1 This Hon'ble Tribunal may graciously be pleased to pass an order to set aside the proceeding and recommendation

of IMB dated 15.05.2012 (Annexure A-1 to this OA) presided by Col B Mangala.

- 8.2 This Hon'ble Tribunal may graciously be pleased to pass an order to set aside the order RO/3012/934310/P&PWW(DP/IMB) dated 14.08.2012 (Annexure A-2 to this OA) signed by JWO B Adak.
- 8.3 This Hon'ble Tribunal may graciously be pleased to pass an order to set aside the impugned discharge order (Annexure A-1 to this OA).
- 8.4 This Hon'ble Tribunal may graciously be pleased to pass an order to set aside the first appellate order Air HQ/99798/5/93/12/AC/DP/DAV dated 19.07.2013 (Annexure A-5 to this OA) signed by Ranjeet Singh, Dy Director DDAV-III.
- 8.5 This Hon'ble Tribunal may graciously be pleased to pass an order to reinstate the applicant in the service in the same status as he was before discharge with all consequential benefits.
- 8.6 This Hon'ble Tribunal may graciously be pleased to pass an order to conduct medical review of applicant and in case still found medically unfit then grant disability pension for life.
- 8.7 This Hon'ble Tribunal may graciously be pleased to pass an order as it deemed fit, just proper reasonable in the facts and circumstances of the case as pleaded and prayed.
- 8.8 This Hon'ble Tribunal may graciously be pleased to pass an order to set aside the second appellate order Air HQ (99798/5/2<sup>nd</sup> Appeal 140/934310/DP/DAV dated 24.6.2015 (Annexure RA-1 to this RA) signed by Ranjeet Singh Dy Director DD Appeal.
- 8.9 This Hon'ble Court may be pleased to set aside Resurvey Medical Board (RSMB) as conducted on 11.02.2017 to

15.02.2017 at 5 AF Hospital Jorhat, declaring applicant as unfit for service.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 03.06.2010. After training, examination of Module-I for Jaguar TETTRA course was conducted on 01.11.2011 and applicant scored only 60% of marks. The applicant was issued verbal warning by Chief instructor as per Air HQ Training instruction 02/1995. Module-II examination for the said course was conducted on 16.11.2011 in which the applicant scored only 36% of marks which is termed as 'Fail' by Air Force Order 01/1995. As per Air HQ Training Instructions 02/1995, any trainee who scores less than 60% of marks in any of the Module examination, is categorized as weak trainee for extra care and improvement in his training. Thereafter, applicant was put in the list of weak trainees in the class which demoralized the applicant and he maintained calm and cool in the class ever then. Without analysing and realising applicant's mental pain, the instructor considered that applicant is suffering from mental disorder. On 24.11.2011 applicant was admitted in AF Hospital, Gorakhpur and transferred to Command Hospital, Lucknow on 27.11.2011 for medical examination and was given treatment for 'Unspecified psychosis'. Invaliding Medical Board (IMB) held at Command Hospital (CC), Lucknow on 15.05.2012 recommended applicant to be released in low medical category S5H1A1P1E1 for Unspecified Psychosis and considered his disability as neither attributable to nor aggravated by service. The percentage of disablement was assessed @ 40% for life with net assessment qualifying for disability pension as Nil for life. On

receipt of approved IMB proceedings, discharge order, List No. 191/12 was issued by AFRO under the provision of AF Rules, 1969, Chapter-III, Rule 15 clause 2 (c), 'On having been found medically unfit for further service in IAF'. Accordingly, the applicant was discharged from service w.e.f. 27.07.2012. The disability pension claim of the applicant was rejected by AFRO vide order dated 14.08.2012. First appeal of the applicant dated 06.12.2012 was rejected by first appellate committee vide order dated 19.07.2013. Second appeal of the applicant dated 15.09.2013 has not been decided so far. The applicant being not satisfied with his invaliding out from service, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant has been hale and healthy since the childhood and never suffered from any mental illness and neither he has any background of such disease in his family. The applicant passed High School and Higher Secondary in second division and never failed in his examinations. The applicant appeared in Airmen recruitment examination in the year 2010 wherein he was subjected to physical test, written test, interview and was also subjected to medical examination wherein recruiting medical officer found the applicant fit in all respects and he found no evidence of mental backwardness or emotional instability and did not find any disease or abnormality in the behaviour of the applicant. Thus, the applicant was in sound physical and mental condition upon entering in the service of Air Force. The applicant was enrolled on

03.06.2010 as Airman in accordance with provision of AF Act 1950 with initial terms of engagement for 20 years till age of 57 years if granted extension. The applicant underwent three months basic training from 30.06.2010 to 27.09.2010 with above average grading. Thereafter, applicant was sent for trade training in MTI Tambaram for one year and did trade training from 28.09.2010 to 01.10.2011 and passed out with AA grading. The applicant was attested as per AF Rules, 1969. After training, applicant was posted to 4 TETTRA School at Gorakhpur (UP) for TETTRA-1 course.

4. He further submitted that normally after passing out from training, Airmen are sent on posting to a station where there is practical job of that particular trade, but in the applicant's case it was not done and subjecting the applicant to further rigorous training, after trade training gave extra mental stress, fear and insecurity. The applicant reported to 4 TETTRA School. In the middle of Nov. 2011 some weekly test was conducted and applicant did not do well in one paper and was badly reprimanded by the concerned instructor which was shocking to the applicant and that caused not only tremendous mental pain, stress, strain but also fear and fright in the mind. Thereafter, applicant was put in the list of week trainees in the class which demoralized the applicant and he could not bear such insult and demoralization which caused mental tension and stress. However, he tried his best to deal with the situation with full patience but the tension and fear caused adverse effect on applicant including mental weakness and he started maintaining 'calm and cool' in the

class. Without analysing and realising applicant's mental pain, the instructor considered that applicant is suffering from Mental disorder. On 24.11.2011 applicant was admitted in AF Hospital, Gorakhpur and transferred to Command Hospital, Lucknow on 27.11.2011 for medical examination and was given treatment for 'Unspecified psychosis' merely because applicant was maintaining 'calm and cool' and talking less.

5. He further submitted that treatment given to him in Command was without obtaining his consent and in violation of law laid down by the Hon'ble Apex Court in case of **Samira Kohli vs. Dr Prabha Manchanda** JT 2008 (1) SC 399 (Refer para 32 of the judgment). This also had adverse effect on applicant and applicant was given Antipsychotics dosages in the hospital. In March 2012, Col KP Seshadri made up his mind to invalidate applicant out of service and on 05.03.2012, CO 4 TETTRA AF recorded his statement in Part III that applicant's character is good and his trade proficiency is also good. This shows that CO himself found applicant fit by all accounts. In his findings, Col KP Seshadri found that applicant suffered from major Psychotic illness but he has recovered and presently he is better and therefore, there was no cogent reason for rushing to IMB. The said doctor proceeded with the presumption in a hypothetical manner saying further relapses cannot be ruled out. Such finding is wholly perverse and illegal and based on his presumption, the doctor recommended for IMB which was wholly unjustified and unreasonable. In such situation, the applicant became a possible for

claim under Section 47 of disabilities (equal opportunities protection of right and full participation) Act 1995.

6. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in **Anil Kumar Mahajan vs. UOI** (CA 4944/2013), decided on 02.07.2013. The IMB was approved by Gp. Capt A Vyas, Dy PMO, HQ CAC. It was mentioned in IMB that his disability case will not interfere with suitable civil employment. Col AK Mishra, Sr Advisor (Psychiatry), Command Hospital, Lucknow approved Col KP Seshadri disposal stating that "*case of major psychiatric disorder with less than 2 years of service will be invalided out of service. The patient is likely to suffer of the illness in future as the disability is reaching chronicity and is likely to be permanent liability to the service*". The applicant was invalided out from service on 27.07.2012.

7. Learned counsel for the applicant also submitted in his O.A. that:-

(a) Mental stress and strain was caused to applicant by Air Force service therefore, IMB was not justified to say that there was no stress due to service.

(b) IMB itself recorded finding that no disability existed before entering into service therefore alleged Unspecified Psychosis was caused by service, IMB failed to appreciate this.

(c) The applicant was treated in violation of law laid down by the Hon'ble Apex Court in **Samira Kohli** case (supra) and this caused prolong alleged illness, thus aggravated by service.

(d) The opinion of Col KP Seshadri that applicant has improved and is better therefore rushing for IMB was unjustified in violation of law as laid down in **AK Mahajan** case (supra).

(e) Col KP Seshadri recommended for IMB merely on assumption which is bad in law.

(f) IMB recorded contradictory finding; applicant suitable for civil employment and not for Air Force service, hence recommendation of IMB cannot be relied upon and same is liable to be set aside.

(g) The applicant has more than 2 years of service and not less than 2 years as on 27.06.2012 therefore, para 9(a)(vi) of DGAFMS medical Memorandum No. 171 of 2002 is not applicable in applicant's case.

(h) The impugned approval order dated 07.06.2012 by Dy PMO HQ CAC is bad in law.

(j) Contention of AFRO that disability is neither attributable to nor aggravated by military service is wholly wrong and unjustified.

(k) Disability of the applicant is attributable to and aggravated by military service as it was caused during the service. Applicant's cousin never said before any authority that applicant has behavioural problem in the past, therefore, first appellate committee give unfounded reasons which is not tenable.

(l) Second appeal of the applicant dated 15.09.2013 has not been decided so far.

(m) Discharge order dated 27.07.2012 passed by AFRO on the basis of IMB is wholly illegal and liable to be quashed.

He pleaded that discharge order of the applicant has been issued in an illegal and arbitrary manner and therefore, his discharge order to be quashed and applicant should be reinstated into service.

8. Learned counsel for the respondents submitted that Psychiatrist opinion dated 27.03.2012, being important in the case is quoted below :-

“The warrior was referred from his unit for not attending to classes, not talking with others and remaining withdrawn. Further history revealed that he had come to his present unit for a training course since 24.10.2011. He had appeared for a mid course exam and not attempted any of the question, in one paper and had failed. He had been reprimanded for same, but then noted to be withdrawn, not attentive in the class and not talking with anybody and looked gloomy and anxious. His sleep and appetite also were disturbed. On being questioned he would remain quiet or only mumbled some irrelevant answers. Seeing his condition he was admitted to a peripheral hospital, where he was, noted to be withdrawn, generally mute, resisting and examinations, expressionless faces, occasionally smiling to self with poor eye contact and poor rapport.

According to his cousin, the applicant had some behavioural problem in past and had taken treatment from faith healers with permission and had no recurrence to date. However, the applicant denied any formal treatment for any mental illness in pass. AFMSF-10 dated 23.03.2011 documented below average/unsatisfactory/gloomy/ reclusive/ depressed psychosocial profile and also documented him to be withdrawn and not responding to any question.

On admission, physical and systemic examination with details neurological examination did not reveal any organic causation. MSE revealed an ill groomed person with poor rapport, no eye contact, remaining restless and fidgety, reduced PMA, low tone, irrelevant speech, mostly monosyllabic replies with affective range and reactivity markedly reduced. No hallucinations or delusions elicited, though occasional talking to self and smiling to self noted. No cognitive deficit with lack of insight and impaired judgment. Biodrives were disturbed.

He was initially kept under observation without any medications and was noted to be very erratic in behaviour with poor rapport. Initially a diagnosis of depression was thought off and was put on TCSs/SSRIs with very little improvement. Also became progressively withdrawn/irrelevant talk/absconding behaviour. Possibly went in to a catatonic state and his diagnosis was revised to Unspecified Psychosis as no other characteristic features of Schizophrenia elicited. He now was put on antipsychotic and also on ECTs (8) with a slow and gradual recovery. Presently he is better and is in remission and on regular antipsychotics maintenance dosages.

He presented with an acute onset of behaviour problem in form of remaining withdrawn, remaining mute with poor rapport, generally resisting all treatment/examination. Affectively range grossly reduced with impaired insight/judgment with disturbed biodrives over a clear sensorium. As no typical Schizophrenic features were found, he was diagnosed as a case of Unspecified Psychosis and managed with antipsychotics/ECTs with response. He has suffered from major psychotic illness and though has recovered, further relapses cannot be ruled out. He will not be a fit soldier/Air Warrior and has hardly put in service of less than 02 years. Hence, cannot be retained in service and recommended to be invalided out of service in LMC S5 of SHAPE factor or equivalent Air Force category A5G5(P) (Psychological)".

9. Learned counsel for the respondents further submitted that Invaliding Medical Board (IMB) held at Command Hospital (CC), Lucknow on 15.05.2012 and recommended the applicant to be released in low medical category S5H1A1P1E1 for Unspecified Psychosis and considered his disability as neither attributable to nor aggravated by service. The percentage of disablement was assessed @ 40% for life with net assessment qualifying for disability pension as Nil for life. The IMB was approved by JDMS (MB), Air HQ, RK Puram dated 09.07.2012.

10. Learned counsel for the respondents further submitted that applicant's Primary Medical Examination (PME) was done at the time of enrolment vide AFMSF-2A. However, as per para 7 (d) and (e) Chapter II of GMO (MP) 2002, the diseases which ordinarily escape detection on enrolment are :-

(d) Disease which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member, e.g. Gastric and Duodenal ulcers, Epilepsy, mental disorder, HIV infection.

(e) Relapsing forms of mental disorder which have intervals of normality.

11. Learned counsel for the respondents further submitted that applicant was posted to 4 TETTRA School from Mechanical Training Institute and was detailed to undergo Jaguar TETTRA course at 4 TETTRA School vide AFRO letter dated 09.09.2011 which commenced from 24.10.2011. He further submitted that air warriors are reclassified to LAC after completion of two years of reckonable service without undergoing any exam. This training of MPT air warrior is spread out in 3 modules. This training is imparted on need to know basis. After Mod-I and TETTRA-I course air warriors are posted to field units. Air Warriors are detailed for Mod-II and TETTRA-II after three years of service. The examination of Module-I for Jaguar TETTRA course was conducted on 01.11.2011 and applicant scored only 60% of marks. The applicant was issued verbal warning by Chief instructor as per Air HQ Training instruction 02/1995. Module-II examination for the said course was conducted on 16.11.2011 in which the applicant scored only 36% of marks which is termed as 'Fail' by Air Force Order 01/1995. As per Air HQ Training Instructions 02/1995, any trainee who scores less than 60% of marks in any of the Module examination, is categorized as weak trainee for extra care and improvement in his training. True copies of result sheet dated 01.11.2011, copy of verbal warning issued by chief Instructor, copy of relevant portion of Air HQ Training Instruction 02/1995, copy of result sheet dated 16.11.2011, copy of relevant portion of Air Force Order 01/1995 and copy of relevant portion of Air HQ Training Instruction 02/1995 have been annexed as CA-3, CA-4, CA-5, CA-6, CA-7 and CA-8 to the counter affidavit.

12. In reply to applicant's question that applicant has been issued with a civil employment certificate as fit for civil employment, learned counsel for the respondents submitted that applicant is invalidated out of service solely on medical grounds. He is unfit for the Air force service in the existing disability Unspecified Psychosis. The Air Force service is a demanding service which includes rigorous duties, dealing with arms and ammunitions and strict protocols. The applicant is suffering from the disability Unspecified Psychosis which is a dangerous disability indicating risk to life especially while performing duties handling arms and ammunitions. He would be unable to bear the rigors of military service in existing disability. He is issued with a civil employment fitness certificate as it would be incorrect to deprive an individual of his human rights to earn a livelihood.

13. He further submitted that as per DGAFMS Memorandum 171/2002, para 9 (a) (vi), "All individual who are unlikely to be reasonably productive in the discharge of their duties shall be invalidated out of service after adequate treatment. As a general rule, following cases will be invalidated out : cases with less than 2 years of service, and where chronicity is likely (Major Psychiatric Disorders, Generalized Anxiety Disorder, Obsessive Compulsive Disorder, Alcohol/Drug dependence and other). In the present case, onset of disease is in peace area and there was no close time association with stress and strain of field/CI Ops/HAA as per para 54 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002 as amended in 2008, hence the disability was considered neither attributable to nor

aggravated by military service vide AFMSF-16 dated 15.05.2012. In opinion of Psychiatrist dated 27.03.2012, it is mentioned that "*As per his cousin brother, applicant had some behavioural problem in past and had taken treatment from faith healers with permission and no recurrence to date*".

14. On receipt of approved IMB proceedings, discharge order was issued by AFRO under the provision of AF Rules, 1969, Chapter-III, Rule 15 clause 2 (c), '*On having been found medically unfit for further service in IAF*'. Accordingly, the applicant was discharged from service w.e.f. 27.07.2012

Learned counsel for the respondents pleaded that ground raised in O.A. are not tenable in the eyes of law and applicant is not entitled to reliefs prayed in O.A., the same deserves to be dismissed being misconceived.

15. Heard learned counsel for the parties and perused the IMB/RMB proceedings and material placed on record

16. From perusal of records, we find that as agreed by both the parties, this Tribunal passed an order in the present case to conduct Review Medical Board of the applicant vide order dated 21.09.2016 which was conducted from 11.02.2017 to 13.02.2017 at 5 AF Hospital and findings and recommendations of the Medical Board are reproduced as under :-

1. The individual had behavioural problems even prior to joining service (As per opinion of Psychiatrist dated 27 Mar 2012, which required intervention of his family members and faith healers.

2. The individual had suffered from a major Psychotic illness (Unspecified Psychosis). This illness is of recurring and relapsing nature. He presented with the illness in the initial years of his service career on 24 Nov 2011. He was treated and invalidated out of service as per existing guidelines of DGAFMS (vide para 9 (a)(vi) of Medical Memorandum No. 171 issued in 2002).

3. The individual presently has residual features of his illness in form of reduced psychomotor activity, reduced social interaction and restricted affect, despite being in a supportive environment of his family in a civil setup.

4. This individual's reinstatement into service for accommodation in some trade with lesser responsibilities is not recommended, as the individual had suffered from a major psychiatric illness (Unspecified Psychosis) which is of chronic and relapsing nature. Considering the requirements of Defence services and individual's established Psychotic illness, he is Unfit for military duties in any trades."

17. In view of IMB proceedings dated 09.07.2012 and findings and recommendations of Medical Board dated 13.02.2017 held in compliance of this Tribunal's order dated 21.09.2016, applicant is not entitled for reinstatement into service as the Medical Specialist has not recommended the applicant's reinstatement into service for accommodation in some trade with lesser responsibilities and the medical specialist has specifically opined that the applicant is Unfit for military duties in any trade.

18. We find that on approval of IMB proceedings, applicant's discharge order was issued by AFRO under the provisions of AF Rules, 1969, Chapter-III, Rule 15 clause 2 (c), 'On having been found medically unfit for further service in IAF' due to his disability Unspecified Psychosis. Accordingly, the applicant was invalidated out from service w.e.f. 27.07.2012 as per rules and regulations under

the provisions of DGAFMS Memorandum (vide para 9 (a)(vi) of Memorandum No. 171 issued in 2002). Hence, the relief prayed in Original Application to reinstate applicant in service with all consequential benefits is hereby **dismissed**.

19. The case laws referred by the applicant are not relevant in the present case being based on different facts and circumstances.

20. As far as disability pension is concerned, the applicant's disability originated on 24.11.2011 within 1 ½ years of service and he was invalided out of service in low medical category S5 as recommended by IMB for his disability 'Unspecified Psychosis' having no stress of military service. We are in agreement with the opinion of IMB proceedings and Appellate Committee that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

21. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, ***Bhartendu Kumar Dwivedi vs. Union of India and others***, vide order dated 23.05.2011 wherein applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000 as he was suffering from 'Schizophrenia'. Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

