

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 492 of 2018

Friday, this the 17th day of September, 2021

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

Depanshu Shekhar Awasthi, Service No. 503517-H
S/o Mr. Atul Kumar Awasthi,
R/o 736, Abbass Bagh, PS – Unnao,
District – Unnao, UP – 209801

..... Applicant

Ld. Counsel for the Applicant: **Shri Devendra Upadhyay &**
Shri Shrikant Mishra, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence New Delhi.
2. The Flag Officer Commanding-in-Chief, Staff Officer (Health) HQ Southern Naval Command, Naval Base, Kochi, Kerala – 682004.
3. Commander SSO (Admin), IHQ MOD Navy, Sena Bhawan Rajaji Marg, New Delhi – 110011.
4. MC-AT-ARMS-II, Regulating Office, INS Garauda, Travenkore Gate, Naval Base, Kochi, Kerala -682004.
5. General Officer Commanding (GOC), 1st Floor, New Command Post Building, Near Tiger Gate, Ballard Pier, Mumbai – 400001.
6. Air Commodore, Command Hospital, Air Force, Cambridge Road, Cambridge Layout, Bangalore, Karnataka – 560007.
7. The Director (For HOF Training), NIAT, Naval Base, Kochi – 682004.
8. Surg Capt, Capt (MS)-H, Integrated Headquarters of Ministry of Defence (Navy), New Delhi – 110011.
9. President Medical Board, Kochi.
10. The Commodore (OIC Release Centre), Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai – 400088.

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterji,**
Central Govt 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 for the following reliefs:-

- “(a) To set-aside the order of discharge of service of the applicant dated 16.04.2018 passed by the Respondent No. 4 and order file no. ADM/0101/503517H/BIS dated 27.03.2018 passed by the Respondent No. 3 and order no. MH/1802 dated 20.08.2018 passed by the competent authority/opposite party no.8 by the office Integrated Headquarters of Ministry of Defence (Navy) New Delhi and also other consequential orders which are passed by the opposite parties may kindly be set aside in the interest of justice.
- (b) Issue directions to respondents to reinstate the Applicant in service on the regular basis and restore the ‘S1A1’ medical category of the applicant from the date when Tuberculosis (T.B.) found negative and direct to the opposite parties to provide all consequential benefits to the applicant.
- (c) Issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (d) Allowing this Application with cost.”

2. The brief facts of the case are that the applicant was enrolled in the Indian Navy on 19.08.2014 and was invalided out of service on 16.04.2018 in low medical category. The IMB assessed his disability ‘Sputum Positive Pulmonary Tuberculosis’ @ 100% for two years and was considered as Attributable to service as per Para 81 (a) of

Chapter VI of Guide to Medical officers – 2008, amended 2010. The applicant with history of cough, weight loss, evening rise of temperature and skin rash, reported to Indian Navy Hospital Ship Sanjivani on 31.05.2016. The applicant's X-ray revealed Non-Homogenous Opacity with cavity in both lungs and the applicant was on Anti-Tubercular treatment. Thereafter, applicant was transferred to Military Hospital, (Cardio-Thoracic Centre), Pune for further evaluation and management. On evaluation at Military Hospital, Pune, sputum for Acid Fast Bacilli dated 21 and 22.06.2016 showed scanty Acid Fast Bacilli (Tubercular Bacilli) and Chest X-ray revealed Non-Homogenous Opacities in lungs and hence, the diagnosis of Sputum Positive Pulmonary Tuberculosis was confirmed. The applicant was placed in low medical category (LMC) P3 (T-24) and sent back to Indian Navy Hospital Ship Sanjivani on 01.11.2016. At Indian Navy Hospital Ship Sanjivani, the applicant's categorisation medical Board was held and he was placed in LMC S3A2 (P) (T-24) w.e.f. 09.11.2016. In May 2017, the applicant reported back to Indian Navy Hospital Ship Sanjivani for re-categorization. On evaluation, the applicant had not recovered completely from the disease and therefore, the specialist advised for placing the applicant in LMC for further three months. However, since the applicant had spent more than one year in LMC, as per extant rules and regulations, "in case of recruits the total period of hospitalization, sick leave and low medical category cannot exceed one year (365 days)" vide IHQ of MOD (Navy) letter dated 04.02.2013, hence, the applicant was invalided out of service w.e.f.16.04.2018. The applicant has filed the present Original Application to re-instate him in service.

3. Learned Counsel for the applicant submitted that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service and it was assessed by IMB @ 100% for two years considering its attributability to Military Service.

4. Learned counsel for the applicant further submitted that applicant completed basic training of two months in the INS Chika, Odessa, thereafter, successfully completed 15 days basic training in INS Aditya (Ship) at Karnataka. The applicant successfully completed one year basic professional training of electrical artificer at INS Valsura, Jaam Nagar and thereafter, the applicant was sent for professional training in Aeronautical Technology at Naval Institute Aeronautical Training (NIAT), Garuda at Southern Naval Command for one year. After completing seven months training applicant became ill due to fever thereafter, the applicant took treatment in 7 Air Force Hospital, Kanpur and there he was not diagnosed T.B. On 31.05.2016, opposite party admitted the applicant in INHS Sanjivani Hospital where he was diagnosed T.B. After treatment for about 5 months and 11 days the applicant was discharged only when he was found Tuberculosis negative from the said hospital on 11.11.2016. The respondents have not complied with Regulations 3a(i), (ii), (iii) and 442 of Regulations for the Medical Services of the Armed Forces – 2010 and passed order of discharge in illegal and arbitrary manner.

5. Learned counsel for the applicant also submitted that when the applicant was found Tuberculosis negative, he was again sent for training in Aeronautical Technology at SNC for one year on the recommendation of HQ SNC as mentioned in their letter dated 26.07.2017. While he had already completed 7 months training previously, but the respondents restarted the said training afresh for one year after aforesaid approval of HQ SNC. After completion of 11 months 11 days of training, the opposite parties have ordered for discharge from service without any opportunity of hearing and without serving any show cause notice. It is against the principles of natural justice as per Article 14, 16, 21 and 31 of the Constitution of India. The total period of absence of applicant is 165 days as per letter dated 04.08.2017 issued by the Command Medical Officer and not 365 days. As per their letter, applicant is negative from Tuberculosis from 14.11.2016 till date.

6. The applicant has drawn attention to Regulation 143 of the Defence Service Regulations, 1987, which reads as under :-

“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 applied for re-enrolment and claims that he is entirely free from the disability for which he was invalided, he will be medically examined by the Rtg 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 a 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.

If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service, subject to the following conditions:-

(i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the colours and his previous colour service will count towards the minimum service required for transfer to the reserve.

(ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve”.

7. On the other hand, Ld. Counsel for the respondents submitted that applicant failed in four subject in Phase-I of EARR/APP course and total period of absence from course and hospitalization was 169 days against permissible limit of 54 days. Thus, the applicant was liable to be relegated from course and accordingly, he was relegated from Electrical Artificer Air Radio/Apprentice EAAR/APP course on academic grounds (failed in four subjects of Phase I). After discharge from INHS Sanjivani, the applicant reported at NIAT on 15.11.2016 and commenced training for Phase I again from 15.11.2016. The academic performance of the sailor after relegation was satisfactory.

8. Ld. Counsel for the respondents also submitted that Sputum negative does not mean that the individual is completely cured Tuberculosis or its Sequelae and is fit for military duties. However, notwithstanding that he was medically invalided out of service as his total period of hospitalization and low medical category had exceeded

more than 365 days in accordance with IHQ of MOD letter dated 04.02.2013, the applicant was invalidated out by following due procedures as per extant rules and regulations and no injustice has been done to the applicant. He pleaded for dismissal of the O.A.

9. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and perused the record.

10. From perusal of records, we observe that Low Medical Category period from 09.11.2016 to 31.05.2017- 203 days has also been added in total period of absence of 365 days. The investigation reports in respect of Tuberculosis reveal as follows :-

- (a) Sputum for Acid Fast bacilli (Tubercular Bacilli) (dt – 21 & 22 Jun 16) – **Scanty Acid Fast bacilli seen.**
- (b) Sputum for Acid Fast bacilli (Tubercular Bacilli) (dt – 20 & 21 Jul 16, 19 Oct & 20 Oct. 2016) – **No Acid Fast Bacilli seen.**
- (c) Sputum mycobacterium Tuberculosis Culture & Sensitivity (No. 1233, 12049 dt 19 & 20 Jul. 2016) – **No growth.**

It is evident from above represented reports that the applicant was a case of Sputum Positive Pulmonary Tuberculosis and later became Sputum negative due to anti tuberculosis treatment. The applicant was detected and treated for tuberculosis in May 2016 and was declared sputum negative after treatment in Oct 16.

11. We also observe that in NIAT, Kochi letter dated 26.07.2017, it has been agreed to by the Head of Faculty (Training) that applicant was in low medical category from 14.11.2016 to 23.05.2017 but he was undergoing training at NIAT and his performance in the course

has been satisfactory and therefore, it was requested in the letter to consider retention of the applicant favourably in service.

12. In another letter of Headquarters Southern Naval Command, Kochi dated 04.08.2017, Command Medical Officer has also stated/admitted that during LMC period, applicant was undergoing training and recommended to waive off invalidation of the applicant considering total absence period 165 days and not 365 days. The letter dated 04.08.2017 is reproduced below :-

“REGISTERED
Headquarters
Southern Naval Command
Kochi – 682004.
04 Aug 17

MD/2270/12

The Director General Medical Service
(for PDMS(HS))
Integrated Headquarters
Ministry of Defence (Navy)
New Delhi – 110011

HOSPITAL/SICK LEAVE BEYOND 365 DAYS
DS AWASTHI, EARR (APP), No. 503517-H

1. Refer to INIAT letter no. 26 Jul 17 (copy enclosed).
2. The case pertains to prolonged Hospitalization/sick leave/med cat in respect of the above named trainee undergoing ab initio professional training at NIAT Diagnosis: Sputum Positive Pulmonary Tuberculosis (Now negative).
3. As per details, the individual was in patient for Tuberculosis at MHCTC/INHS Sanjivani as follows:-

SI No.	Date	Remarks
(a)	31 May 16 to 17 Jun 16	INHS Sanjivani
(b)	18 Jun 16 to 04 Nov 16	MH CTC
(c)	06 Nov 16 to 11 Nov 16	INHS Sanjivani

4. Individual further remained in Low Medical category at NIAT and continued training :-

SI No.	Date	Remarks
(a)	09 Nov 16 to 31 May 17	S3A2(P) T-24
(b)	01 Jun 17 to till date	S2A2 (P) T-12

5. The individual has been Low Medical Category for more than 365 days (period including Hospitalisation, Sick Leave and LMC), however the total absence from training amount to only 165 days. The same has been compensated by relegation to the subsequent course. Response to medical treatment and performance in course has been satisfactory as stated vide Medical Specialist opinion and NIAT letter enclosed. Individual is asymptomatic and likely to be upgraded to s1a1. Recategorisation

Medical Board for upgraded S2A2(P) T-12 dated 01 Jun 17 is pending processing/approval at this headquarters.”

6. in view of above, it is recommended that a one time sanction may be accorded to waive off invalidation which should have been contemplated during hospitalization for Tuberculosis at MH CTC as per para 4(d) of NO (Spl) 01/2008. However, due to oversight the same was omitted and individual continued in Low Medical Category. All medical documents are enclosed herewith for perusal.

7. Sanction will be in the interest of State by saving on training wastage on account of communicable disease from which individual is likely to recover completely without residual disability.

Sd/- x x x x x
(G Vishwanath)
Surgeon Rear Admiral
Command Medical Officer
For Flag Officer Commanding-in-Chief”

13. The applicant’s case is also covered by the judgment of AFT (PB) New Delhi in OA No. 32 of 2011 **Recruit Haseen Ali vs. Union of India & Ors**, decided on 21.02.2012 and therefore, applicant deserves to be re-instated in service.

14. In view of above, we find that applicant’s total absence period during training on account of hospitalization, sick leave and low medical category has not exceeded one year (365 days) as admitted by the respondents themselves in their aforesaid letters. The applicant’s invalidment from service after becoming negative from Tuberculosis cannot be said legal as per rules and regulations and policy letter dated 04.02.2013. Therefore, applicant deserves to be reinstated in service as per Para 143 of Defence Service Regulations, 1987.

15. Consequently, Original Application is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to reinstate the applicant back in service in the same rank in which he was invalided out of service on 16.04.2018. However, applicant shall not be entitled to any back wages or other benefits. The respondents are further directed to comply with the order within

four months from the date of production of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: Sept., 2021
SB