

Court No.1
RESERVED JUDGMENT

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 35 of 2011

Tuesday this the 9th day of January, 2018

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

1. Union of India Through the Secretary to Govt. of India,
Ministry of Defence, Department of Defence,
South Block, New Delhi.
2. The Commandant Rajput Regimental Centre,
Fatehgarh, District Farrukhabad.
3. Chief of Army Staff,
Integrated Head Quarter (ARMY),
Sena Bhawan, R.K. Puram, New Delhi – 110011.
4. The Director General Medical Services (Army),
Integrated Head Quarters (ARMY), "L" Block,
Sena Bhawan, New Delhi.

..... Petitioners

By Legal Practitioner - Shri Yogesh Kesarwani
Learned Counsel for the Petitioners

Versus

Service No. 3001528M Sanjay Kumar Singh,
Son of Prem Pal Singh
Resident of Village : Kharna Kala
Post : Kurawali
District : Mainpuri (UP)

..... Respondent

By Legal Practitioner - Shri Yash Pal Singh, Advocate
Learned Counsel for the Respondent

ORDER

“Hon’ble Air Marshal BBP Sinha (Member A)”

1. Being aggrieved by the decision of the Civil Judge, Civil Court Farrukhabad for Mandatory Injunction in terms of Section 39 of “Specific Relief Act” against the present petitioners, the Union of India & Others preferred Civil Appeal No. 32 of 2005 in the Court of District Judge, Farrukhabad which has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and has been registered as T.A. No. 35 of 2011.

2. Brief facts, as borne out from the Transferred Application are that the respondent-plaintiff was enrolled in the Army as on 17.06.2000 and discharged on 01.09.2000. The respondent-plaintiff after discharge from Army filed a Civil Suit before Civil Judge, Civil Court Farrukhabad wherein he had pleaded that his discharge is illegal and second medical examination carried out in the Regimental Centre is not mandatory and has been done in a biased manner. The Civil Judge (Junior Division), Farrukhabad in his decision dated 23.11.2012 held that the respondent-plaintiff’s discharge order dated 01.11.2000/31.12.2000 is null and void and he be reinstated into the Army service on the rank held with all consequential benefits.

3. We have heard Shri Yogesh Kesarwani, Learned Counsel for the petitioners, Shri Yash Pal Singh, Learned Counsel for the respondent and perused the record.

4. Learned counsel for the petitioners submits that Sanjay Kumar Singh (Respondent-plaintiff) was enrolled into Rajput Regimental Centre, Fatehgarh on 17 June 2000 under Unit Headquarter Quota (UHQ). He was medically examined by Lt Col AK Jain, Regimental Medical Officer (RMO), The Rajput Regimental Centre on 22 June 2000 during the recruitment rally and declared fit. In accordance with Army HQ letter No. 76063/DGMS-5A dated 06 July 1999, the individual was sent to Military Hospital, Fatehgarh for second medical examination, from where he was further referred to Command Hospital, Lucknow. The individual was diagnosed as having deformity 20 degree carrying angle, CUBITUS VALGUS (RIGHT) and was found unfit in the Second Medical examination by a Medical Board. The disease ‘CUBITUS VALGUS’ was opined by the Second Medical Board conducted in October 2000 to be ‘SKELETAL ABNORMALITY SINCE CHILDHOOD’. The disability was assessed as 6-10% for life which was opined ‘neither attributable to nor aggravated by military service (NANA)’.

5. We have carefully gone through the impugned judgment of learned Civil Judge (Junior Division) Farrukhabad.

6. The learned Civil Judge has held that the onus to prove the reason for referring the respondent-plaintiff for second medical examination was upon the petitioner-respondent which has not been discharged. In this regard, it may be mentioned that Army HQ letter No. 76063/DGMS-5A dated 06 July 1999 provides for a second Medical Examination, thus, the decision of the authority for referring the respondent-plaintiff for second Medical Examination cannot be said to be illegal or against the Rules and

Regulations. For convenience sake, Army HQ letter No. 76063/DGMS-5A

dated 06 July 1999 is reproduced as under :-

“Tele : 3011063

*Dte Gen of Medical Services (Army)
Adjutant General's Branch
Army HQ "L" Block N. Delhi-110001*

76063/DGMS/5A

06 July 99

*Headquarters
Southern Command (Med)
Eastern Command (Med)
Central Command (Med)
Northern Command (Med)
Western Command (Med)*

RECRUITING MEDICAL PROCEDURES : ZROs
MODIFICATION

1. *Changes as under have been made in the second medical examination procedures for candidates recruited through ZROs/BRO, UHQ quota :-*

(a) **Candidates recruited through UHQ quota will be subjected to a second medical examination at the authorized hospital.** *Centres will liaise with the Commandants/CO's hospital for the necessary arrangements. Candidates found fit/unfit will be dealt with in accordance with the procedure so far followed for ZRO/BRO recruited candidates second medical examination. ZRO/BRO recruited recruits will continue to undergo a second medical examination as hither to.*

(b) *Status of recruits found unfit at second medical examination. It has been clarified by the Rtg Dte that the personnel being subjected to the second medical examination are recruits. They will thus be treated as Recruits and not judged by standards for fresh Recruitment. Thus recruits with correctible disabilities like hydrocele etc will be referred to the authorized hospitals for treatment and retained in series in accordance with the stipulations of MT 3 letter No A/203/4/MT-3 dated 20 Feb 86 (Photocopy attached). All concerned and in particularly Sr Advisers in all specialties may be advised to ensure action on the subject. Present practice of declaring recruits unfit for treatable disabilities will cease forthwith.*

2. *Contents of this letter may be disseminated to all concerned under your jurisdiction.*

3. *Please ack.
(Auth : Minutes of the meeting held in AG's office on 26 Apr 99).*

*Sd/- x x x x x
(AB Pradhan)
Col
Dir MS (PS)
For DGMS (Army)*

Encls : As mentioned

Copy to :-
 AG/Rtg Dte 6SP - Necessary instructions for subjecting UHQ candidates
 to a second medical examination be issued at earliest.
 AG's Sectt - for information."

(Emphasis Supplied)

7. The respondent-plaintiff was recruited in the Unit Headquarter Quota (UHQ). Thus, the petitioner-respondents were well within their right to refer the respondent-plaintiff for second Medical Examination. As per Army Headquarter letter, quoted hereinabove, every recruit enrolled in the Army is required to undergo a mandatory second medical examination. On the basis of said Army letter the respondent-plaintiff was referred for Second Medical Examination in which he was found suffering from deformity of 'CUBITUS VALGUS (RIGHT) which according to the Second Medical Board would persist throughout life.

8. It is also worthwhile to mention that vide order dated 31.08.2017, this Tribunal directed the respondent-plaintiff to appear before the Medical Board on 08.09.2017 in Command Hospital Lucknow for further examination and re-assessment of his disability. On re-assessment of the disability of the respondent-plaintiff, the Medical Board found that his disability "CUBITUS VALGUS BOTH ELBOW" is 6% to 10% due to non service factor with remark "***Disability is normal developmental condition of elbow and not acceptable as per standard of recruitment of Army***".

9. The opinion of Graded Specialist (Orthopaedics), Base Hospital, Lucknow exhibits that "*Individual was detected to be having a carrying angle of both elbow of 20°. This was more than the cut off limit of 10° as*

required for army recruitment at that time which was later revised to 15°.

The Medical Specialist in his Opinion in Part III observed that *“This is a normal developmental condition of elbow. However the cut off degree of carrying angle for requirement for recruitment in army has been laid down as 15°, presently by relevant Army Orders.”*

10. There being mandatory requirement of Second Medical Examination of individuals recruited under the Unit Headquarter Quota, there is no bias on the part of the concerned Medical Officer of the Army in referring the respondent-plaintiff for Second Medical Examination. The respondent-plaintiff was invalidated due to medical deformity which as per Medical opinion would persist throughout the life and is not permissible as per Military standards which would have disallowed the respondent-plaintiff to become an efficient soldier. The learned Civil Judge has not taken all these vital factors into consideration while allowing the case of the respondent-plaintiff.

11. The learned Civil Judge (Junior Division), Farrukhabad while allowing the claim of the respondent-plaintiff has held that the action of the petitioner-respondents suffers from the vice of arbitrariness, bias and the principles of natural justice have not been followed. The learned Civil Judge (Junior Division) Farrukhabad has held that the petitioner-respondents have not produced the Medical Officer concerned to refute the grounds taken by the respondent-plaintiff and the order invalidating out the respondent-plaintiff suffers from bias. We are of the opinion that the ground taken by the learned Civil Judge (Junior Division) Farrukhabad is per se wrong inasmuch as the respondent-plaintiff had not arrayed the

Medical Officer in personal capacity. Thus, the learned Civil Judge (Junior Division) Farrukhabad committed a legal wrong while arriving at a finding that the petitioner-respondents have not produced the Medical Officer to disprove bias. Thus, the findings recorded by the Civil Judge (Junior Division) Farrukhabad on this count cannot be upheld.

12. We have carefully gone through the judgment of the Court below and are of the considered opinion that it does not deal with the vital issue of medical fitness necessary for recruitment and continuance in the Army for an efficient soldier. The medical disability suffered by the respondent-plaintiff does not entitle him to be retained in the Army service.

13. In the result, Transferred Application No. 35 of 2011 is allowed and the order dated 23.11.2002 passed by Civil Judge (Junior Division) Farrukhabad is set aside.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : January, 2018

SB/ANB