

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO 100 of 2015**

Wednesday, this the 09<sup>th</sup> day of December 2015

**Hon'ble Mr. Justice D.P. Singh, Member (J)**

**Hon'ble Air Marshal Anil Chopra, Member (A)**

No. 10406623-L Ex Rect Akhilesh Kumar, S/o Shri Ram Sharan Singh, R/o Village : Nagla Jhala, Post : Dhar Mangadpura, Tehsil and Dist : Mainpuri (UP)-205001

.....Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh, Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ, Min of Def (Army), South Block, New Delhi-110011.
3. Commandant, Military Hospital, Bareilly (UP).
4. Chief Record Officer, Records The JAT Regiment, Pin-900496, C/O 56 APO.
5. Commanding Officer, 114 Infantry Battalion (TA), JAT.

...Respondents

Ld. Counsel for the : **Shri Rajesh Kumar,**  
Respondents. **Central Government Counsel assisted**  
**by Capt Priti Tyagi, OIC Legal Cell.**

**ORDER**

1. Heard Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Capt Priti Tyagi, OIC Legal Cell and perused the records.
2. The applicant was enrolled in the Indian Army in 114 Infantry Bn (TA) on 25.12.2009. Thereafter he joined the required training under the rules. However, on 13.06.2010 he fell sick and was admitted in Military Hospital, Bareilly. During course of training the applicant was subjected to Invalidating Medical Board (IMB). The Invalidating Medical Board in its report dated 01.10.2010 opined to invalidate the applicant from service. The applicant was invalidated out of service on 31.10.2010 on the basis of the opinion of the Invalidating Medical Board. He was declared Low Medical Category S-5 (Permanent) for life with 40% disability but for the purposes of pension, his disability was assessed NIL for life. Relevant portion of reason for referral and condition on admission, treatment and course in Hospital is reproduced as under:

*“SUMMARY & OPINION BY LT COL ARUN SEN, CL SPL  
(PSY) OF MH BAREILLY DATED 29 SEP 2010*

*Disability*                                  *Severe Depressive Episode (F 32.2)*

*Record of Hospitalization*                  *MH Bareilly 24 Jun 2010 to  
date.*

*Reasons for Referral:* *This 23- yrs old Rect with 03 months of trg was hospitalized at the behest of unit auth with c/o abnormal behavior of approx one week’s duration. He had been avoiding the trg activities & had run away from the barracks on multiple occasions. He was finally referred for*

*psychiatric evaluation after he attempted to commit suicide on 21 Jun 2010.*

HOSP: *Apparently asymptomatic before the second week of May 2010 when he was undergoing routine trg at the JRC. He initially lost interest in daily activities & thereafter started feeling lethargic & was unable to complete the physical requirements of trg. He subsequently developed persistent low mood, became irritable, lost all interest in daily activities, would not participate in recreational activities, lost his appetite, started sleeping very late & fel tired the whole day. These symptoms increased in severely over the next four weeks and by the 15<sup>th</sup> of Jun 2010, he started feeling suicidal. On the 19<sup>th</sup> of Jun 2010, at 2330 he ran away from the barracks, hid in the adjoining shrubs & voluntarily returned at 0530h. On the 20<sup>th</sup> of Jun 2010, at 0300h, he again attempted to abscond, was stopped by the sentry. On 21<sup>st</sup> Jun 2010, attempted to jump off the 2<sup>nd</sup> floor of the barracks, was physically restrained & on being interviewed, reported that he did not wish to live any more & wanted to kill himself. Was refd for psy evaluation thereafter.*

*There was no h/o fever, head injury, jerky convulsive movements or drug intake.*

*No past history for similar symptoms.*

Family & Personal History

*Resident of Mainpuri (UP) from a rural background. Parents are alive & healthy, has four sisters & one brother. No family h/o substance abuse, mental illness, childhood & adolescence was uneventful, studied upto Std X, enlisted voluntarily, has three months of trg. Unmarried, no psychoactive substance abuse.*

Condition on Admission, Treatment & Course in Hospital:

*Gen physical & systemic evaluation was WNL. Relevant hematological, biochemical & serological parameters*

were normal. MRI brain did not reveal any organic lesion. MSE revealed a sullen, il kempt, revealed indl, with retarded psychomotor activity. Repeatedly stated his intent & desire to kill himself, also reflected on his inability to continue with trg. He appeared to be apathetic, his speech was low toned with increased latency & decreased spontaneity, thinking displayed poverty of content with suicidal rumination. He spoke of seeing a strange apportion at night but was unable to elaborate any further. Mood was depressed with severe restriction of affect. Concentration was impaired, insight was not present & biorhythms were reduced.

He was treated with antidepressants & ECTs (06) to which he responded partially with resolution of depressive symptoms & stabilization of biodrives. His insight remains impaired with a complete inability to gauge the nature & type of disability, hence his compliance to therapy would remain poor, thus leading to relapses & a threat of bodily harm to self & others. The indl remains psychologically crippled and so is refractory to therapy. Retention of the indl would be detrimental to the indl's recovery to a unit's operational readiness & is inconsistent with army ethos. He is unfit to be an able soldier & is incapable of tolerating the rigors of combat duty in spite of adequate treatment.

*Recommended to be invalided for service in S5 for Severe Depressive Episode (F 32.2)"*

3. While assailing the impugned order, Ld. Counsel Shri Shailendra Kumar Singh submitted that once the applicant was fit for all purposes, there was no occasion to invalidate him from service and not permit him to complete the training for enrollment in the Army. Further submission of Ld. Counsel for the applicant is that 40% disability assigned by the Invalidating Medical Board is based on unfounded fact. He submitted that the applicant is physically fit and he should not have been invalidated from service.

4. Ld. Counsel for the respondents, on the other hand submitted that report of the Invalidating Medical Board shows that the applicant had some times intended and desired to kill himself apart from suffering from psychiatric problems. Thus, he was not fit to be retained in Army service.

5. The fact remains that the applicant was still under training with the Army and before completion of training, he was found to be suffering from certain physical problems. During course of judicial review it is not open for the Tribunal to sit in appeal over the opinion of the Invalidating Medical Board. Report of the Invalidating Medical Board, prima facie, seems to be final so far as physical condition of army personnel is concerned. The Court or the Tribunal are not expert in the field to interfere with the report of the Medical Board unless some mala fide is alleged. There appears no reason to doubt the opinion of the Invalidating Medical Board. Accordingly, we decline to interfere with the opinion of the Invalidating Medical Board.

6. So far as payment of disability pension is concerned, it is for the applicant to approach appropriate forum and we leave it open for the applicant to file Original Application with regard to payment of disability pension.

7. Subject to observations made above, we dismiss the O.A.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

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