

Court No.3

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

ORIGINAL APPLICATION NO 210 of 2013

Thursday, this the 10th day of December 2015

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

Lalit Prakash Bhatt, son of Sri Madhvanand Bhatt, Resident of
Dhungadhara, Tehsil and District Almora.

.....Applicant

Ld. Counsel for the: **Shri A.K. Pandey, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,
New Delhi.
2. Senior Record Officer, Defence Security Corps Records,
New Delhi.
3. Chief Controller of Defence Accounts (Pension),
Allahabad.
4. The Adjutant General's Branch Additional Directorate
Gen., Personnel Services, New Delhi.

...Respondents

Ld. Counsel for the : **Shri Dileep Singh, Advocate assisted**
Respondents. **by Capt Priti Tyagi, OIC Legal Cell.**

ORDER (ORAL)

1. Heard Ld. Counsel for the parties and perused the record.
2. This application under Section 14 of the Armed Forces Tribunal Act 2007 has been preferred by the applicant being aggrieved with the impugned order of discharge in view of the medical report placing the applicant under medical category S5 (Permanent).
3. The applicant was enrolled in the Indian Army on 27.01.1984 and after serving about 6 ½ years, he was voluntarily discharged in the year 1990 on compassionate ground in pursuance to provisions contained in Rule 13 (3) i (v). Thus, initially the applicant has served the Indian Army for about 6 years, 6 months and 5 days of qualifying service. Later on the applicant was reenrolled in Defence Service Corps on 12.04.1994 as a Sepoy and exercised option to count his former service with DSC service. On the basis of medical opinion, the applicant was invalidated out of DSC service with effect from 24.08.2004 due the ALCOHAL DEPENDENCY SYNDROME. The Invaliding Medical Board placed the applicant under category S5 (permanent).
4. The case of the applicant for disability pension was rejected by PCDA (P), Allahabad stating that disability was neither attributable nor aggravated by military service with NIL percentage of disability. The decision was communicated to the

applicant vide DSC Records letter dated 26.10.2005. However, the applicant has been granted service pension and death cum retirement gratuity for 16 years and 09 month aggregate service rendered by him in both the spells. Thus, it is admitted fact on record that the applicant was granted pension and death cum retirement gratuity in lieu of service rendered by him.

5. Earlier the applicant has filed Original Application No 398 of 2011 which was decided finally vide order dated 15.12.2011 directing the competent authority to decide the appeal preferred by the applicant. The appeal was rejected by order dated 24.07.2012. Further while preferring the present Original Application the applicant has not assailed the order passed by the competent authority.

6. While raising grievance, the applicant has submitted that he is still fit and has been engaged in private service as Gunman. Submission is that when the applicant is fit for service in private sector, then there appears no reason to discharge him from DSC service.

7. On the other hand Ld. Counsel for the respondents has submitted that the applicant has been discharged on the report of Invaliding Medical Board and the decision has been taken correctly by the medical board which culminated to declare him to medical category S5 (Permanent). Earlier the applicant was placed in medical category S3 (Temporary) and later on he was placed in S5 (Permanent) category. It is borne out from the record

that the applicant was suffering from ALCOHAL DEPENDENCY SYNDROME in the form of craving and intolerance for alcohol, loss of control and withdrawal symptoms. The decision of the Medical Board is in tune with the observations of the Hon'ble Apex Court in the case of ***Union of India and others vs Rajpal Singh*** reported in [2008(5) ESC 718(SC)].

8. So far as the submission of the Ld. Counsel for the applicant that the applicant is medically fit and may discharge his duty is concerned, ordinarily, it is not open for the Court or the Tribunal to sit in appeal over the decision of Medical Board consisting of experts in their respective fields. Ofcourse, in case some mala fide is attributable the Tribunal may enter into the merits of the matter and appropriate decision may be taken to meet the requirement on the fact of each case. In the present case, no mala fide has been alleged or placed on record, as to why the Invalidating Medical Board may give a biased medical opinion. Almost 9 years have passed. Even if we direct for convening of Re-survey Medical Board, It shall not serve the purpose since after 9 years, the quantity of alcohol in the blood may not be in the same level which the applicant was possessing at the time of discharge. Further more it may be observed that the applicant has already been paid his pension and other service benefits. So far as payment of disability pension is concerned, we leave it open to the applicant to prefer another Original Application for grant of disability pension, if he is so advised.

9. In view of the above, the impugned order does not suffer from any illegality or impropriety.

10. The O.A. lacks merit and is rejected accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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