

RESERVED
Court No.3

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

TRANSFERRED APPLICATION NO 43 of 2013

Tuesday, this the 01st day of December 2015

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

Jitendra Kumar S/o Raju Singh, Resident of Urja Nagar, Gevra,
District Korba, Chhattisgarh.

.....Petitioner

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

Versus

1. Union of India, through the Secretary, Ministry of Defence,
New Delhi.
2. Dte. Gen. of Medical Services (Army), Adjutant General's
Branch, Army Headquarters, 'L' Block, New Delhi-110001.
3. Branch Recruiting Officer, Raipur, B.R.O. Raipur,
Chhattisgarh.
4. Capt/Maj Coy Cdr 'M' Coy No.1 Training Battalion, BEG &
Centre, Roorkee.

...Respondents

Ld. Counsel for the : **Shri Mukund Tewari, Central**
Respondents. **Govt Counsel assisted by**
Lt Col Subodh Verma,
OIC, Legal Cell.

ORDER**“Air Marshal Anil Chopra, Member (A)”**

1. The writ petition No. 1043 of 2003 was filed in the High Court of Judicature at Bilaspur, Chhattisgarh and later transferred to Armed Forces Tribunal, Regional Bench, Lucknow under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 43 of 2013.

2. The petitioner has come against the discharge from army vide an order dated 28.01.2003 (**Annexure P-7**). The brief facts of the case are that the petitioner was selected by the Recruiting Officer, Raipur and issued a Rahdari Certificate No. BEGR/09/RPR (**Annexure P-1**).

3. The petitioner was on duty at Roorkee where he worked between 17.04.2002 to 31.12.2002. Army No. 15342707A was assigned to him. An amount of Rs. 1,500/- was also being deducted as Provident Fund from his monthly salary.

4. At the time of selection at Raipur, it was discovered that the petitioner was suffering from **cubitus vulgus** i.e. both the hands are not straight as usually happens in other cases. When this fact came to the knowledge of the Selection Board, the petitioner was sent to Military Hospital, Jabalpur for medical checkup. The petitioner was examined by Lieutenant Colonel Atul Gupta (Surgical Specialist) who concluded that the petitioner was not suffering from the disease. The petitioner was examined on 06.03.2002 by the Military Hospital, Jabalpur and fitness

certificate was issued on 06.03.2002 (**Annexure P-3**). On the basis of this report the petitioner was permitted to appear in the written test. The petitioner appeared in the written test and then only on 17.04.2002 Rahdari Certificate was issued to him.

5. In June 2002 the petitioner was asked to appear before the Military Hospital, Roorkee. The petitioner reported to Military Hospital, Roorkee on 28.06.2002 from where the petitioner was sent to Military Hospital, Dehradun. On 01.07.2002 it was opined that the petitioner is unfit on account of disability and the matter was referred back to Roorkee, a copy of the report of Military Hospital, Dehradun, is filed as **Annexure P-5**. On 09.11.2002 Military Hospital, Roorkee constituted a Medical Board which reached to the conclusion that the petitioner is unfit which is evident from report dated 21/22-11-2002 vide **Annexure P-6**. Thereafter the petitioner was discharged from service on 30.01.2003, a copy of termination letter is filed as **Annexure P-7**.

6. It is further stated that the petitioner was recruited and because of the recruitment in the army the petitioner left his studies in the Polytechnic Institute, Ambikapur and could not prosecute his IVth term in the polytechnic Institute. Once the petitioner had been employed in army service without any fault of his and he has not suppressed any material fact pertaining to his physical defect and the physical defect was well known to the respondents and after his medical he was discharged and the action of the respondent was very harsh and arbitrary.

7. Through a Counter Affidavit, the Respondents have stated that as per Dte Gen of Med Services (Army), Army Headquarters letter No. 76063/DGMS-5A dated 31.07.2001; the training centers should hold second medical examination of the recruits as soon as he joins the centre, preferably before start of any training event.

8. No. 15342707K Rect Jitendra Kumar Singh was enrolled from BRO, Raipur on 17.04.2002 and he reported to the Battalion on 18.04.2002. On reporting to the Battalion his second medical examination was carried out in No.1 Training Battalion Medical Inspection Room on 11.06.2002 in which he was declared unfit. Then he was referred to Military Hospital, Roorkee on 11.06.2002 and further referred to Military Hospital Dehradun on 28.06.2002. He was placed in Medical Category A-5 on 29.11.2002 vide Invalid Medical Board Proceedings held at Military Hospital, Roorkee. Copies of letter dated 16.08.2001 and Invalid Medical Board Proceedings are annexed as **Annexure No. CA-1 and CA-2.**

9. The petitioner was declared medical category A-5 which implies that he is unfit for service in the Army. According to the direction of Bengal Engineer Group and Centre Records, Roorkee vide their letter No. 14627/Gen/R/115/D2 dated 29.01.2003, the petitioner was discharged from service on 30.01.2003.

10. Heard the Ld. Counsels of both the parties and perused the records. Para 1 of the policy letter dated 31.07.2001 on the subject is reproduced as under :-

“Tele : 3011063 Dte Gen of Med Services (Army)
 Adjutant General’s Branch
 Army Headquarters, ‘L’ Block
 New Delhi-110001

76063/DGMS-5A 31 Jul 2001

Headquarters

Southern Command (Med)
 Eastern Command (Med)
 Western Command (Med)
 Central Command (Med)
 Northern Command (Med)
 Army Trg Command (Med)

SECOND MEDICAL EXAMINATION OF RECRUITS

1. The recruits are selected by different recruiting centres and by different trg centres. They after arriving at trg centre for recruit training undergo a second medical examination by the RMO of the trg centre or at nearest MH by a MO detailed by Commanding Officer of the MH. Those recruits who are detected to have a disability by the RMO/MO, are being sent to the Sr. Adviser in concerned specialist. If in the opinion of the Sr. Adviser the recruit is unfit to pursue further trg he is invalided out of service.

2. x x x x x x

3. x x x x x x

4. x x x x x x

Sd/- x x x x x
 (NK Sundaray)
 Col
 Dir MS (PS)

Copy to

DGMFMS/DG-3A
 AMC Centre & School
 DGMS (AIR)/Med-7
 DGMS (NAVY)/MB
 AG/Rtg 5 (OR (A))”

11. The report of Senior Adviser Surgery, Col RK Bajpai at MH, Dehradun is reproduced below :-

“Referred for Cubitus Valgus detected during re-medical. Clinically gross bilateral Cubitus Valgus present. Carrying angle vide X-Ray No. 3993 dated 03.06.2002 measures (L) side 30° (150°) and Rt side 33° (147°). Unfit for this disability.

Transferred back to MH, Roorkee for further disposal”.

12. Based on the Senior Adviser Surgery report of MH Dehradun, MH Roorkee initiated Invalidment Medical Board (IMB).

13. The DGMS (Army) letter dated 31.07.2001 (supra), clarifies the need for a second medical at the training centre and in case some disability was detected, a detailed medical was required as per policy. The second medical test of the petitioner was initiated in less than 2 months of joining. In view of his disability, he was referred to Senior Adviser Surgery at MH, Dehradun. On his recommendations, invaliding proceedings were initiated. Medical authorities at Military Hospital, Roorkee carried out an Invalid Medical Board (IMB) and this became basis for discharge of the applicant.

14. We find no reason in question to interfere in the medical decisions. The disability is an established fact and has not been disputed. The disability was detected at the very initial stage and medical process started within 2 months of the recruitment. The applicant had not yet been subjected to any significant training.

The respondents have followed the existing policy on second medical opinion. We find no reason to interfere with the process. In view of the above we find that the petitioner does not have a case. The decision taken by the respondents for discharge of the petitioner is in accordance to law, reasonable and fair. The T. A. No. 43 of 2013 is liable to be dismissed.

15. Transferred Application No. 43 of 2013 is dismissed as devoid of merit.

No orders to costs.

(Air Marshal Anil Chopra)
(Member A)

gsr

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