

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved Judgment

Court No. 1(List B)

Original Application No. 281 of 2013

Wednesday the 01st day of March, 2017

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

Hon'ble Lt Gen Gyan Bhushan, Member (A)

Rajendra Kumar Yadav (No. 156006 Ex-Cook(S), S/O Shri Krishan Pal Yadav, Resident of Village : Piper Gawan, Post : Piper Gawan, District : Kanpur Nagar, State : Utter Pradesh.

..... Applicant

By Legal Practitioner : Shri R. Chandra, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of the Naval Staff, Integrated Headquarters of Ministry of Defence(Navy), New Delhi-110 911.
3. The Bureau of Sailors, Cheetah Camp Mankhurd, Mumbai-400 088
4. The PCDA (Navy), Mumbai -400 039.

.....Respondents.

By Legal Practitioner : Shri Rajiv Pandey, Learned Standing Counsel for the respondents duly assisted by Major Salen Xaxa, Departmental Representative.

JUDGMENT

“Hon’ble Lt. Gen. Gyan Bhushan, Member (A)”

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby, the applicant has sought following reliefs:-

“(I) The Hon’ble Tribunal may kindly be pleased to set aside the orders rejection of disability pension and invalided medical board (Annexure No A/1, Annexure No A/2, Annexure No A/3 and Annexure No A/4).

“(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension to the applicant with effect from date of along with arrears of disability pension and interest at the rate of 24% per annum thereon.

“(III) Any other appropriate order or directions, which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of litigation.”

2. The factual matrix of the case is that the applicant was enrolled in the Indian Navy on 05.10.2001 as a Cook and was discharged from service with effect from 31 May 2006 due to **“Cannabis Dependence (Relapse)”**. The Medical Board considered his disability as neither attributable to nor aggravated to Naval service and assessed it as 20% for life. The applicant’s claim for disability pension was rejected on 14.03.2007 and subsequently his first appeal was also rejected on 11.08.2008 by the MOD(Navy), New Delhi. The applicant submitted second appeal to the Government of India Ministry of Defence on

30.09.2009, but the same was not accepted. Being aggrieved by the aforesaid order, the applicant filed Original Application No. 113 of 2011 in March, 2011 with a prayer to set aside the discharge order and alternative remedy of granting disability pension. On 03.07.2012, based on the observation of the Court, learned counsel for the applicant deleted the prayer regarding grant of disability pension with liberty to file a separate claim thereof. Original Application No 113 of 2011 was dismissed on merit vide order of this Tribunal dated 03.07.2012. Now the present Original Application has been filed with a prayer for grant of disability pension.

3. Heard learned counsel for the parties and perused the record.
4. Learned counsel for the applicant submitted that the applicant was physically and mentally fit at the time of joining Indian Navy and the disability has occurred during the Naval service. He further submitted that the applicant was admitted at hospital on 22.12.2005 and was treated for a few months only and he was discharged on the basis of the opinion of the Medical Board without examination and that opinion of the Medical Board is not reliable.
5. *Per contra*, learned counsel for the respondents submitted that the applicant was admitted in Hospital for treatment and was examined by a proper Medical Board twice, once in the month of February 2006 and subsequently in April 2006 and the medical documents have been produced in the Court. He denied the allegation made by the Learned

Counsel for the applicant that the applicant was invalided out of service without having been examined by the Medical Board.

6. We have gone through the documents produced before us. The applicant was admitted in INHS, Kalyani on 23.12.2005 and discharged on 10.02.2006. The salient feature of the case, as given in the Medical Board held on 08.02.2006 are reproduced as under :-

“RK YADAV CK (S) 1, NO. 156006K,-UNIT: INS CANNANORE

Summary of Opinion of Surg Cdr Kaushik Chatterjee Classified Specialist in Psychiatry at INHS Kalyani dt 08 Feb 06

Disability : - *Cannabis Dependence ICDF-12.2*

Hospitalisation:- *INHS Kalyani 23 Dec 05- To date*

Reasons for referral:- *Continued to smoke cannabis on board his ship despite being reprimanded on various occasions.*

H/o Present illness:

“This 22 yr old Ck (S) 1 with 04 yrs of service gave h/o using ‘ganja’ off and on over the last couple of years. When he went on leave in Oct 05 he was apparently told by his friends that use of cannabis was a sure way to lose weight. He started taking ganja daily and kept company of some idlers and sadhus at his village. He was repeatedly counseled by his sister against the use of drugs but to no avail. On return from leave in Nov 05 he was apparently found to be overweight during evaluation for annual medical exam. He continued to use ganja daily and also advised other shipmates to do the same, extolling the pleasures of the drug. He was found to be intoxicated on various occasions, counseled by superiors, including his FXO and CO and punished for the same. However he continued to use the

drug despite all efforts of others on board to keep him away from ganja. He found reduced concentration and was unable to carry out work given to him. He was noted to be aggressive in an intoxicated state. In this background he was referred for psychiatric evaluation with escorts AFMSF-10 dated 22 Dec 05 describes him as unpunctual and casual a heavy drinker who indulges in misbehaviour, has below average motivation, average competence, general outlook and social interaction, is impulsive accusative and tends to over react. Mischievous in nature, on return from leave noted to be aggressive absent from place of work, suspicious and to have aversion to work. Retention recommended primarily in the interest of the organization.

Past ,family and personal history:-

No h/o major medical/mental illness. Denies h/o STD/head trauma/convulsions/other neurological sickness.

Halls from a middleclass, rural, agrarian background of Kanpur Dist of UP. His father is a farmer and he is the eldest of 03 siblings. Denied any family h/o mental illness.

Educated up to BSC 1st year (Maths). Enrolled in 2001 to earn livelihood. Motivated to continue in service. Was planning to change provost branch. Received one punishment for intoxication and absence from place of duty in Dec 05. Plans to marry soon. Smokes 506 cigarettes per day since 2003. Takes 2-3 pegs (up to 180ml) of rum on social occasions over last 03 yrs. Denies use of other psychoactive substances. Premorbidly has dissocial and borderline personality traits.

Condition of Admission, management & progress:

Physical examination on admission revealed no abnormalities. There were no marks of recent injury or needle tracks. Relevant

investigations were WNL. Mental state exam showed a guarded and evasive individual who had labile affect and reduced concentration in a clear sensorium with no psychotic features. He reported increase sleep. Gradually rapport improved and he accepted drug related issues and aff(sick) became euthymic. On one occasion he convinced a friend to get ganja for him and was found intoxicated in the ward. He was diagnosed a case of Cannabis. Dependence and managed with intensive individual psychotherapy and group therapy. Fluoxetine was added to control craving. At present he offers to complaints and expresses motivation for abstinence.

Recommendations:

In view of this being first detention of disability, his unit recommending retention in service and his expressed motivation for abstinence after treatment, recommended:-

- i) To be placed in med cat S3A2(S)T-24 and to be reviewed thereafter with fresh AFMSF-1-x3.*
- ii) Not to consume cannabis/other intoxicants/alcohol.*
- iii) To continue Cap Fluoxetine (20mg) 1-0-0 under local medical supervision.*
- iv) Fortnightly review at psychiatric OPD on Mondays at 1030 hrs for group therapy.*
- v) Not to attend functions where alcohol is served.*
- vi) In case of relapse to be admitted with completed AFMSF-16 for invalidment from service.*
- vii) To work under supervision. Not to handle arms/ammunition/explosives.”*

7. Subsequently, the applicant was again admitted in INHS, Kalyani on 14.02.2006. The Medical Board Proceedings have been

produced in the Court. Medical Board held on 12.04.2006 as reproduced at Page No. 7 of the Judgment, covers the condition of the applicant in detail. Medical Board has also given a detailed recommendations. Medical Board held in February 2006 had recommended the applicant to be placed in Medical Category S3A2(S)T-24 for fortnightly reviewed. However after release the Medical Board held in April 2006 recommended the applicant to be placed in Medical Category S5A5. Summary of the opinion of Classified Specialist in Psychiatry namely Surg Cdr Kaushik Chatterjee, in which salient features of the case have been given, which is as follows:-

“RK Yadav CK (S) 1, 156006K, INS Circars
Summary and Opinion of Surg Cdr Kaushik Chatterjee
Classified Specialist in Psychiatry at INHS Kalyani dt 12 Apr 06

Disability :- *Cannabis Dependence (Replaced) ICD F-12.2*

Hospitalisation :- *INHS Kalyani 23 Dec 05 - 10 Feb 06*
14 Feb 06 - To date

Salient features of the case:-

<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>
<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>x</i>

Current admission:-

Following discharge to.....(sick)

On the morning of 14 Feb 06 he was involved in a brawl with civilians in an intoxicated state outside HNHS Kalyani gate. When the duty staff tried to pacify him, he took off his clothes and ran on the road amidst the traffic, in his underwear. He was subdued with difficulty and handed over to Naval Police. He was then alternately calm and violent and was kept in a cell as he was unmanageable otherwise. He was examined

by Medical Officer INS Circars and noted to have contusions over rt shoulder and hand abrasion over rt hand and lt foot and was referred for admission with 03 escorts. Duty medical officer noted him to be confused and violent. He broke the glass on DMO's table and smashed his own watch. He was restrained with difficulty by 05 persons and subsequently admitted.

At admission he was uncooperative and repeatedly demanded to be allowed leave. On reaching the ward he rummaged through lockers and the balcony saying that he was looking for drugs. He then threw books smashed chairs, overturned tables and attacked ward staff. He was restrained with difficulty. Physical examination revealed semi-dilated pupils and tachycardis (108/min). He was intermittently writhing in bed, vigilant, seeping profusely, has strong craving and was verbally and physically abusive towards ward staff. Affect was labile irritable and dysphoric. He was preoccupied with resuming consumption of drugs. He has auditory hallucinations of his father's voice calling him. He was distractible and concentration was ill sustained.

Intoxication rapidly subsided and severe missed drug withdrawal (mainly opiate) was managed with benzodiazepine (Chlordiazepoxide), injectable anti-psychotics (Haloperidol and olanzapine) reassurance and supportive measures. He continued to be aggressive and repeatedly attempted to abscond to obtain drugs. Withdrawal features gradually subsided and he was exposed to intensive individual and group psychotherapy. However he continued to have craving and drug seeking behavior and has developed on motivation for abstinence. He describes himself as powerless to control craving and wishes to

continue drug use. AFMSF-10 dated 20 Feb 06 described him as relapsed, hostile to authority and does not recommended retention as the individual; has become an unacceptable liability to service.

Recommendation:-

This 22 yrs old sailor with only 04 yrs of service was initially admitted in Dec 05 at the behest of his ships authorities when he continued to smoke cannabis on board despite repeated warnings. He had been using the drug for more than 02 yrs. After psychiatric treatment he expressed desire to keep away from drugs and was discharged in low medical category with instruction to strictly abstain from drug use. However he continues to have craving and has no motivation to abstain. His unit report does not recommend retention in service. He is likely to have multiple relapses and unlikely to be an effective sailor. Hence as per provisions of DGAFMS Memo 111/2002 recommended-

- i) To be invalided from service in med cat S5A5.*
- ii) Not to consume cannabis brown sugar, alcohol or intoxicants in any form life long.*
- iii) Regular psychiatric review.”*

8. From the perusal of Medical Boards (salient features of the both Medical Boards held in the months of February 2006 and in April 2006 reproduced above), it is apparent that the applicant was treated at INHS, Kalyani from 23.12.2005 to 10.02.2006 and was discharged thereafter. On the morning of 14.02.2006, he was involved in a brawl with civilians in an intoxicated state outside INHS, Kalyani Gate and when the duty staff tried to pacify him, he took off his clothes and ran

on the road amidst the traffic in his underwear. He was subdued with difficulty and was referred for admission with escorts and was restrained with difficulty by five persons and was subsequently admitted in the Hospital. The Medical Board, in the recommendation has stated that after psychiatric treatment during earlier admission, he expressed desire to keep away from drug and was discharged on 10.02.2006 in low medical category with instruction to strictly refrain from the use of drugs. However, he succumbed to craving soon thereafter and relapsed with escalation to brown sugar. He was again admitted on 14.02.2006 in intoxicated state and developed severe drug withdrawal thereafter. Following detoxification he was again exposed to intensive psychotherapy, however he continued to have craving and had no motivation to abstain. His unit did not recommend retention in service. In the opinion of the Medical Board, he was likely to have multiple relapses and was unlikely to be an effective Sailor, hence was recommended to be invalided from service in medical category S5A5.

9. Having heard Learned Counsel for both the parties and perused proceedings of Medical Boards held at INHS, Kalyani on 08.02.2006 and on 12.04.2006 in which the details of the case and recommendations are given (which have been reproduced above also), we converge to the view that the applicant was treated for **‘CANNABIS DEPENDENCE RELAPSE’** in INHS, Kalyani and was discharged after proper medical examination by Medical Board.

It stands out from perusal of medical documents, that the disease leading to disability is self inflicting and is not even remotely connected with naval service and by no means can be considered as attributable to or aggravated by naval service. Proper procedure has been followed and action taken by the respondents is just and in conformity with rules, regulations and law. Keeping in view the facts and circumstances outlined above, we do not find any merit in the Original Application and the same deserves to be dismissed.

10. Accordingly, the Original Application No. 285 of 2013 is dismissed being devoid of merits.

11. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)
March 2017

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

rpm/-