

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 257 of 2021

Saturday, this the 21st day of May, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13993298P Ex Hav Akhilesh Sharma, S/o Hony Capt BN Sharma, R/o 568/60 Kailashpuri, Alambag, Lucknow-226005 (U.P).

..... Applicant

Ld. Counsel for the: **Shri Om Prakash Kushwaha**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, South Block, New Delhi.
3. Officer in charge, AMC Record, Lucknow Pin -226002.
4. PCDA (P), Draupadi Ghat, Allahabad (U.P)

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(a) To issue/pass an order or direction to set aside /quash the AMC Records office, Lucknow rejection letter no. 13993298P/Pen/DP Cores dated 23.02.2021 and Invalided Medical Board /Discharge order to the applicant issued by respondent concerned before completion of his terms of engagement.

(b) To issue /pass an order or direction to re-instate him in service from the date of Invalided Board Out from service w.e.f 22.08.2018 with seniority and promotion to the rank similar to his batch mates during the same periods of service, along with arrears of pay and allowances with interest @18% p.a. on arrears w.e.f. 22. 08.2018.

(c) To issue/pass any other order or direction as the competent authority may deem fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this original application with costs.

2. Brief facts of the case are that the applicant was enrolled in the Army on 11.12.1995 and was invalided out from service on 21.08.2018 in low Medical Category S5H1A1P1E1 under Rule 13 (3) III (iii) of the Army Rules, 1954 due to '**Alcohol Dependence Syndrome F-10.2**'. By way of this O.A. applicant has challenged rejection order of disability element of pension claim dated 23.02.2021, recommendation IMB and discharge order dated 28.03.2016 alleging that he was invalided out from service under

hatched conspiracy of unit in which he was serving at the time of discharge.

3. Learned counsel for the applicant pleaded that the applicant was forcibly admitted in 170 Military Hospital on two occasions as a case of intoxication and his case was referred to Psychiatrist of 166 Military Hospital. On 05.05.2018 during the course of his service he was threatened by the Commanding Officer to sign IMB papers by 1000 hrs otherwise he would face dire consequences. Feeling endanger to his life he absented himself without leave from 06.05.2018 to 19.05.2018 (14 days). His other submission is that on account of threatening by his CO, he approached the Commandant AMC Centre & College but without any result. His wife also appealed to President AWWA, New Delhi vide letter dated 10.05.2018 to intervene in the matter, but nothing could happen and her husband was invalided out from service. The other limb of pleadings are that a conspiracy was hatched in the unit to oust applicant from Army by making false allegations in the back drop of his previous medical history i.e. Alcohol Dependence Syndrome, by sending him for frequent medical check ups, at the behest of unit, to 170 Base Hospital.

4. His other submission is that applicant's father Hon'y Capt BN Sharma also approached the higher authorities on 12.05.2018 and requested that his son be allowed to complete pensionable service of the rank in which he was servicing but no heed was given to his request and he was invalided out of service by well planned

conspiracy of JQM and his staff of 170 Military Hospital. The learned counsel for the applicant pleaded to quash discharge order dated 21.08.2018 and re-instate him into service with all consequential benefits.

5. On the other hand, learned counsel for the respondents narrated the following story:-

“The applicant was enrolled in Army Medical Corps (AMC) on 11.12.1995 and invalided out from service w.e.f. 21.08.2018 after rendering 22 years, 07 months and 07 days service excluding 31 days as non qualifying service. The applicant while serving with 4012 Field Hospital was admitted in Military Hospital, Jodhpur where he was placed in low medical category S3 (T-24) for Alcohol Dependence Syndrome w.e.f. 02.09.2013. Summary and opinion of Graded Specialist (Psychiatry) dated 31.08.2013 have been annexed as exhibit R-1. Thereafter, his various re-categorization medical boards were conducted but he remained in low medical category. The applicant was upgraded to medical category SHAPE-I w.e.f. 05.07.2015 by Military Hospital, Jodhpur, with the result he was granted two years extension of service from 11.12.2019 to 20.12.2021 vide Part-II Order dated 13.02.2018. It was informed to the applicant that in case he becomes ineligible for retention in service being placed in low medical category, his extension period shall be cancelled as grant of extension of service is accorded if the individual meets the service criteria laid down as per guidelines as per Para 301 of ROI 2014 which stipulates that an individual should not have had more than two red ink entries during the entire service and not more than one red ink entry in last five years. The individual was punished six times including one spell of Rigorous Imprisonment as per service dossier. While serving with 170 Military Hospital, he was admitted on 27.01.2018 as a case of Alcohol Dependence Syndrome. He

was brought before the Invaliding Medical Board which recommended him to be invalided out from service and accordingly he was invalided out from service w.e.f. 21.08.2018.”

6. Further submission of learned counsel for the respondents is that applicant was invalided out from service being a case of Alcohol Dependence Syndrome as per recommendation of Invaliding Medical Board (IMB).

7. Heard learned counsel for the parties and perused material placed on record.

8. We have given our thoughtful consideration to the issues raised by the learned counsel for the applicant. On careful analysis, we find that Alcohol Dependence Syndrome is primarily a disease where an individual cannot control his excessive drinking habits. This disease leads to being drunk while on duty and poor performance during discharge of official duties.

9. It is also well known that all efforts are made by military doctors and the organization to help a soldier who has become a victim of ‘Alcohol Dependence Syndrome’ and only when all efforts fail, the soldier is invalided out on ground of ‘Alcohol Dependence Syndrome’.

10. We take note that applicant being a habitual drinker was punished six times during the period 2000 to 2013 as under:-

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| (i) | 31.01.2000 | -14 days confinement to lines under Army Act Section 39 (a). |
| (ii) | 04.07.2000 | -07 days pay fine under Army Act 39 (a). |

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| (iii) | 07.09.2000 | -14 days RI in Military Custody under Army Act Section 39 (a). |
| (iv) | 09.09.2002 | -Reprimand under Army Act, Section 63. |
| (v) | 18.08.2007 | -Reprimand under Army Act, Section 63. |
| (vi) | 03.01.2013 | -07 days pay fine under Army Act, Section 48. |

11. From the above, we observe that during the years 2000-2013 applicant was punished for various offences like intoxication and disobeying orders of superiors which were mainly under the influence of alcohol. The aforesaid punishments were awarded in different units in which he served and not in the unit from where he was invalided out of service due to alleged hatching of a conspiracy by the unit concerned. Thus, keeping in view that applicant was awarded such punishments prior to induction in new unit, there appears to be no reason to believe in the hatched conspiracy theory with regard to award of punishment in new unit as alleged by applicant.

12. Further, the contention of learned counsel for the applicant is that applicant was falsely implicated in intoxication cases on account of some annoyance of senior persons of unit and that he was forcibly admitted in the hospitals by initiating AFMSF-10. On this point we take note that summary and opinion of Graded Specialist (Psychiatry), 166 Military Hospital, C/o 56 APO is relevant, which for convenience sake, is reproduced as under:-

H/o Present Illness. Detailed history and evaluation revealed that he first came under psychiatric care in July 2013 while posted at Jodhpur; he was referred by his unit authorities with history of excessive and habitual consumption of alcohol leading to impairment in occupational domain and day time consumption of alcohol while on duty. On 30th July 13 he was noted to be smelling of alcohol during morning roll call which was the immediate trigger for his referral. Referral case also mentioned various instance of violence with colleagues and with parents (during leave) under influence of alcohol. He did not offer any complaint at the time of psy evaluation.

Further history then revealed consumption of alcohol for the past about 8-9 years before initial admission. Initially as a social drinker but later on began consuming alcohol on most days of the weeks. Consumption of alcohol further increased gradually and by the year 2010 he had begun consuming alcohol almost daily. He was advised by his wife to quit alcohol but consumption of alcohol went on increasing gradually with tolerance, craving on abstinence followed by relief drinking along with primacy of alcohol over other modes of recreation. He was also advised by his seniors to cut down alcohol. Consumption however went on increasing steadily leading to his index hospitalization on 31 July 13 at behest of his unit when he was noted to be smelling of alcohol during morning hours. Physical and systemic exam at the time of psy evaluation was normal. MSE revealed a kempt, cooperative individual with normal PMA. Speech was monotonous however relevant and coherent. Affect was restricted. He was noted to be using denial, minimization and rationalization as alcoholic defences. No features of any mood or psychotic illness noted. Sensorium was clear. He was not noted to have any withdrawal features. Relevant investigations revealed mildly raised GGT-55 IU/L, SGOT-37 U/L, SGPT-50 U/L, MCV-102 if and USG abdomen showed grade 1 fatty liver. He was managed as a case of alcohol dependence syndrome with forced abstinence anti craving drugs, individual and group psychotherapy, and thereafter retained in S3 (T-24) with advice to continue Baclofen 30 mg and abstain from alcohol. AFMSF-10 dt 31 July 13 mentioned him "punctual, disciplined, casual, heavy drinker with 06 punishment in the past."

X x x x x

X x x x x

Present Review. He resumed drinking of alcohol soon after upgradation to S1 in 2015. Initially he used to consume alcohol occasionally. Gradually consumption increased and started drinking 4-5 pegs almost daily to get the desired effect. He tried to cut down on alcohol but could not do due to craving. At home was drinking alcohol excessively in spite of resistance from family members. He further increased consumption of rum to 5-6 pegs daily and whenever possible to get the desired effect. While in the unit he would consume alcohol surreptitiously and during day time too. He was noted to be under the influence of alcohol in

unit on several occasions and was warned by unit authorities but to no avail.

He continued consuming alcohol heavily till 27 Jan 18 when he was again noted to be under the influence of alcohol while on duty. He was admitted in 170 MH at the behest of unit authorities. While in the ward he developed sweating, tremors, tachycardia. He was managed as a case of alcohol withdrawal state with BZD, IV fluids and vitamin supplementation. On improvement he was discharged from hospital with advice to remain abstinent and was given a last chance to recover.

He resumed consumption of alcohol soon after discharge due to intense craving and would procure alcohol from civil shops and consume 5-6 pegs daily. He was again noted to be under the influence of alcohol in unit on several occasions and was counselled. In spite of repeated warnings he continued consuming alcohol and then finally admitted and referred for psy evaluation. At the time of admission, physical examination revealed tachycardia, fine digital tremors, and moist hands. X x x x xx He is also drinking alcohol in morning times. He is so drunk that he cannot stand and misbehaves with other person of the unit.

Recommendations

This 39 yr old Hav who has completed pensionable service. He has presented with repeated relapses and poor socio-occupational functioning as reflected in the successive unit reports. Despite intensive treatment and repeated warnings he remains poorly motivated to abstain. Prognosis is poor and he is not likely to function effectively as a soldier. Hence as per provisions of DGAFMS Memo 171/2002 and AO 9/2007 recommended to be placed in S5. X x x x”

13. We observe that despite giving repeated treatment and advice to desist alcohol consumption, the applicant could not leave excessive drinking, with the result he was placed in medical category S5 and recommended to be invalided out of service. The record also reveals that under influence of excess alcohol the applicant used to quarrel with his wife and father occasionally.

14. The applicant had earned six (red and black ink) entries and, therefore, he can be categorized as a habitual offender. Applicant's contention that consuming alcohol in Army is not an offence as it is supplied in the organization, does not help to applicant as on this

account respondents' submission that consumption of alcohol while on duty is strictly prohibited, seems to be logical.

15. Thus, considering that due process has been followed by Army in invaliding the applicant out of service, we decline to interfere with this process or provide any other relief to the applicant. The applicant has been rightly invalided out of service being 'Alcohol Dependence Syndrome.'

16. In view of the above, the Original Application No. 257 of 2021 deserves to be dismissed, hence **dismissed**.

17. No order as to costs.

18. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 21.05.2021
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