

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 313 of 2019****Tuesday, this the 5th day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Army No. 15455473Y Rect. Ashish kumar Singh son of JC-766959W
Retd. Sub Anil Kumar Singh permanent address village and Post
Office Khejuri Distt Ballia U.P. present address Chaurasiya Gali Shard
Nagar Neelmatha Cantt, Lucknow (UP).

..... Applicant

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

Versus

1. Union of India, through its Secretary, MoD (DHQ) Post Office,
South Block, New Delhi.
2. Chief of Army Staff, Integrated H.Q Ministry of Defence (Army),
West Block II R.K. Puram, New Delhi.
3. The Commandant, AMC Centre and College Records, Lucknow.
4. Lt General OIC Records, AMC Lucknow.

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu,**
Central Govt Counsel.

ORDER(Oral)

2. The instant Original Application has been filed on behalf of applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“(a) Issue an order or directions for quashing the order dated 13.11.2018 as contained in annexure no 1 to this O.A.

(b) Issue an order or directions in the nature of directions calling for the records and quashing the order of discharge dated 04.01.2017 as contained in annexure no. 2 to this O.A.

(c) To issue an appropriate an order or directions in the nature of directions to take the work from the petitioner and permit him to assign the duty on the post held by him.

(d) Issue a directions to the respondents to pay the decent compensation to the applicant in view of the harassment caused to him by the respondents in all these days years.

(e) Issue any other order or directions which this Hon’ble Tribunal may deem fit just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.

(f) To award the cost of this petition to the petitioner against the opposite parties”.

3. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 28.09.2015 and was invalided out from service on 05.01.2017 in low medical category under Rule 13 (3) VI of the Army Rules, 1954. Prior to invaliding out from service, the Invaliding Medical Board (IMB) held at Command Hospital, Central Command, Lucknow on 26.11.2016 assessed his disabilities (i) **‘MENTAL AND BEHAVIOURAL DISORDER DUE TO USE OF**

ALCOHOL CANNABIS' @ 40% for life (ii) **'INTENTIONAL SELF HARM'** @ 6-10% for life and composite disability for both disabilities @ 50% for life and opined these to be neither attributable to nor aggravated (NANA) by military service. Applicant preferred representation/appeal dated 02.02.2017 for quashing of his discharge order dated 04.01.2017 which was rejected vide order dated 20.05.2017. Thereafter, applicant filed original application No. 434 of 2017 which was heard on 22.10.2018 and disposed off with directions that "respondents are directed to decide the pending appeal dated 02.02.2017, if not already decided, preferred by the applicant within two months from the date production of a certified copy of this order alongwith a copy of appeal dated 02.02.2017 by a reasoned and speaking order with due communication to the applicant. With the aforesaid direction, the OA is disposed off finally. The order dated 22.10.2018 was complied with a reasoned order dated 13.11.2018 and informed to applicant vide letter dated 13.11.2018. Now, in this perspective that the applicant has preferred the present Original Application for quashing the discharge from service and permission for reinstate in service.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that applicant had gone to market with due permission on 31.07.2016 and when he was coming back from the market, saw Lt Col Shatrughan Singh who was in his car and he had blown the horn but the applicant could not understand the horn warning and the officer had beaten the applicant even after he realised his mistake.

After reaching his unit line Nb Sub AK Singh enquired into the matter and had beaten the applicant, and he was mentally and physically tortured. The aforesaid officer harassed upon the applicant and admitted him to Command Hospital, Lucknow on 01.08.2016 and applicant was brought before the invaliding medical board and he was discharged from service on medical grounds. Further contention of learned counsel for the applicant is that being invalided out from service on medical grounds, any deterioration in his health subsequently is to be presumed due to service conditions. He pleaded that the deterioration in health of applicant was due to stress and strain of military service which may have led to his invalidation. He further stressed that since Medical Board has assessed percentage of disabilities @ 50% for life, therefore, the aforesaid disabilities should be accepted as either attributable to or aggravated by military service having arisen while in service. Learned counsel for the applicant pleaded for cancellation of discharge order of the applicant and to re-instate him in service.

4. On the other hand, learned counsel for the respondents submitted that the IMB has opined the disabilities as NANA on the ground that the aforesaid disabilities were caused due to excess consumption of liquor as also cannabis. He further submitted that the applicant was absent from unit line from 1000 hours to 1600 hours and had consumed 06 bottles of beer outside his unit campus and showed abnormal behaviour in unit lines by threatening to commit suicide, and by inflicting an injury on his right hand. His further submission is that his behaviour was aggressive and erratic. He was

sent for special sick report and he was referred to Base Hospital, Lucknow and after giving symptomatic treatment he was reverted back to unit. On 01.08.2016 AFMSF-10 was raised and he was admitted in Command Hospital, Lucknow with history of intoxication and intentional self-harm. During investigation he was assessed as a case of (i) **'MENTAL AND BEHAVIOURAL DISORDER DUE TO USE OF ALCOHOL CANNABIS'** @ 40% for life (ii) **'INTENTIONAL SELF HARM'** @ 6-10% for life and composite disability for both disabilities @ 50% for life and the medical board opined these to be neither attributable to nor aggravated (NANA) by military service. Subsequently applicant was invalided out from service in low medical category **S5H1A1P1E1**.

5. Learned counsel for the respondents further submitted that applicant has been correctly invalided out from service by the competent authority in view of para 21 of Army Order 3/2001 as amended vide Army Order 9/2007/DGMS which stipulates that "Alcohol dependence and drug substance abuse are incompatible with military service/ethos and all such cases should be invalided out of service unless the PBOR shows an unequivocal determination to give up the use of alcohol/drug for good in the shortest yet reasonable time span, which has been mentioned in revised DGAFMS memorandum 171". He pleaded that in the facts and circumstances of the case, as stated above, Original Application deserves to be dismissed.

6. We have heard learned counsel of both sides and perused the material placed on record.

7. On careful perusal of the medical documents, it has been observed that applicant was enrolled on 28.09.2015 and he was found to be suffering with the aforesaid disease during August 2016, i.e. within 01 year of joining the service. He was administered treatment at Command Hospital, Central Command, Lucknow and he was evaluated. On admission in the hospital the case history of the applicant was endorsed by way of Summary and Opinion by Lt Col RN Mani, GD SPL (PSYCHIATRY) Comd Hosp (CC), Lucknow dated 06.09.2016 as under:-

Disability:- *Mental and Behavioral disorder due to use of alcohol/cannabis (ICD-F-10/12) Internal self-harm (X-68).*

Category:- *in Shape-I*

Date of admission: *25 Feb 2016 onward at CHCC Lucknow*

Reason for present referral: *He has been sent for psychiatric referral at behest of unit with history of intoxication and internal self-harm of a day's duration.*

HOP: *This 20 years old recruit with 10 months of training has been training well. He was found in an inebriated state pm 31.07206 and was reprimanded by an officer. In the aftermath of event the individual was seen to be enraged and had driven his hand through glass which resulted in a lacerated wound in his right hand. He was seen to be agitated and was thus admitted to the hospital.*

AFMSF-10 – 01.08.2016 “indl is punctual, undisciplined, casual, drinker, uncontrolled, misbehaviour, professionally – satisfactory, psychosocial profile reveals him to be average in general outlook, recessive in social interaction, and has abnormal traits – excitable, tends to overreact and suspicious. He was absented from unit lines since 31.07.2016 wef 1000 hrs

to 1600hrs. He consumed 06 bottles of beer outside and started abnormal behaviour in unit lines, threatening suicide, made self –inflicted injury on right hand. His behaviour was aggressive and was moving here and there. He was referred to BH Lko as special report at 2100 hrs when he was reverted back to unit. During interview by Cdr, he told that he is having domestic problem due to mother illness & brother in civil jail. He needs psychiatric evaluation before undergoing tech trg in No 1 TT wg.

History of use of alcohol predates to adolescent years (10 std) when he had started it experimentally, in peer group. He was also consuming cannabis which used to be smoked in a group. He used to consume the substance almost on daily basis (one puff of a stick admixed with tobacco) and soon started feeling that it was becoming a habit. Over time he could smoke about a whole stick and continue to school. His level of use over the two the two years reflected a pattern of fluctuating level of craving, salience with guilt and socio-vocational decline which spurred the period of abstinence. Such period lasted for about 2-3 months and then he once again lapsed to previous pattern of use. He stopped using cannabis completely from 2015 onwards. During this period he started consuming alcohol. He started from about 50 ml of beer and increased its use to about 500ml with ability to tolerate its effect and work. As he was planning to join Army he tried to cut it down but had days when he thought he'll consume about ½ a bottle of beer but ended up using more. After joining Army he started drinking on Sunday and said that he was going home but went to a local pub and used to indulge in alcohol till about noon before starting back. He was afraid of being caught but he had carefully managed to keep his trips to the pub under wraps. He wanted to cut down but considered it harmless. The day of the incident also being a Sunday he visited the pub and had thought of consuming about 1 or 2 bottles of beer but he ended up

consuming about 6 bottles. He was not able to hold himself and walked back to the unit. Some place along the way he heard a commotion and he looked back and found that he had inadvertently blocked the road as he was meandering across it. He moved to the side but psychiatric, medical or surgical illness.

He hails from Ballia. His father is serving in Army and he is the younger of two siblings. His elder brother is also in the Army but has been embroiled in some civil case involving relationship with a girl and is now in jail. He hails from mid SES, semi-urban background. Both his parents are alive and healthy. His father and brother drinks alcohol in moderation. No h/o any other psychiatric illness in family.

He was born in 1996 and studied upto 12th Std. He enrolled in Army in 2015 and had started training. He is as yet unmarried and denies any high risk behaviours.

Present evaluation: General and systemic examination was unremarkable except for lacerated wound on his right hand. MSE revealed kempt indl who maintained social and service etiquettes. He sat still and was anxious in affect. He cooperated during interview and was can did about his substance use. He was repentant about his outburst and had craving, salience, dyscontrol with respect to use of alcohol and was motivated to quit in future. There were no cognitions suggestive of depression, anxiety and he was in clear sensorium with normal biodrives.

Opinion: This 20 years old recruit with 8 months service without past or family history of psychiatric illness had come under psychiatric care while undergoing training with behavioural oddity in background of alcohol intoxication. History reveals a pattern of alcohol use with salience, tolerance, dyscontrol and social decline with multiple attempts to cut down with relapse owing to cues. He also has past history of use of

cannabis in a similar dependent pattern but is abstinent since about 8 months.

Clinical evaluation reveals primitive defence for use of alcohol without any other active psychopathology. Laboratory investigations were all normal.

In view of relapsing remitting nature of illness, current dependent pattern of use of alcohol, past use of cannabis in dependent pattern, coupled with intentional self-harm which is predictive of future attempts, having manifest with substance use disorder during initial period of training (<2 years of service) and tenets regarding disposal of such cases as defined in DG memorandum 171 (2002) – para 9 (a) (vi) he is recommended to be invalided out of service in S5.

Adv:-

1. *Lifelong complete abstinence from alcohol/opioid/psychoactive substance.*
 2. *To continue medication under supervision of local psychiatrist.*
8. From the pleadings on record and aforementioned endorsement made by Classified Specialist (Psychiatry), we are clear that applicant was correctly sent to Command Hospital for evaluation and an inference may be drawn that he was an alcoholic and had consumed cannabis and had resorted to intentional self-harm. The applicant may have had these traits prior to enrolment and the same manifested again during course of training. Thus, it can be concluded that this disease has no relation to stress and strain of military service. Additionally, it is well known that mental disorders can escape detection at the time of enrolment, hence benefit of doubt cannot be given to applicant merely on the ground that the disease could not be

