

ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

OA No. 44 of 2019

Lt Col Manav Sabharwal (Retired)I/C 57054A ... Applicant

Versus

Union of India and Ors

... Respondents

For Applicant : Mr S K Choudhury , Advocate

For Respondents : Mr Ajay Chaubey, Advocate

CORAM

HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

ORDER
4.5.2022

1. The Applicant filed this OA

(a) To quash and set aside the Integrated HQ of MoD(Army) letter No.76101/1988/DGMS-5(A) dated 22.3.2019

(b) To direct the Respondents to allow the Applicant to continue in service in a sheltered appointment till the date of superannuation of the Applicant or grant Disability Pension alongwith Rounding Off benefits

2. Brief facts of the case are that the Applicant is a retired Officer who was Commissioned on 7.6.1997. The Applicant submits that he has put in

21 years and 10 months of service and was promoted to the rank of Lt Col on 7.6.2010. The Applicant submits that as per the Discharge Slip issued by MH, Jalandhar Cantt on 10.3.2016, the Applicant was upgraded to Medical Category S1 with the following observations: "This 40 yr old serving officer with about 18 years of service is an old case of Alcohol Dependence Syndrome, observed in LMC S3 (T-24+T-24) S2 (T-24+T-24) w.e.f 18.2.2014 who has now reported for Recat. AFMSF-10 dated 19.1.2016 had internal contradictions and filled in an ambivalent & non-committal manner. Psychiatric evaluation and relevant investigations did not reveal features s/o protracted withdrawal from BZD. He is motivated for further abstinence from alcohol and further military service. Upgraded to Medical Classification S1 of SHAPE factor for Alcohol Dependence Syndrome w.e.f. 10.3.2016. The Classified Specialist (Psychiatry), Command Hospital (EC) Kolkata on 4.12.2017 and 2.1.2018 opined that the disabilities of the Applicant comprised (a) Alcohol Dependence Syndrome and (b) Other Specified Mood (Affective) Disorder. Further on 24.9.2018 the Applicant was issued show cause notice stating that "You are found to be suffering from Alcohol Dependence Syndrome (Relapse), Alcohol induced Mood Disorder (Recent Manic Episode) and as such unfit for any form of further military service. Medical Board of this Hospital intends to place you in Medical Category S5. After formal approval of the Competent Medical/Administrative authorities you will be invalided out from Military Service. You are also in Low Medical Category for the other disabilities, "Anicteric Mild Alcoholic Hepatitis - Resolving with Forced

Abstinence- P2P" and to submit Appeals, if any, to the Chief of Army Staff within 15 days. The Applicant submits that he did not opt to exercise his right to appeal against the decision of the Invaliding Medical Board to obviate his ongoing agony. The Integrated HQ of MoD(Army, issued letter dated 22.3.2019 indicating that Dte General of Medical Services (Army) has obtained approval of the Hon'ble RRM and the Adjutant General for invaliding the Applicant out of service on medical grounds. The Applicant submits that he would suffer irreparable injury if invalided out of service.

3. The Learned Counsel for the Respondents submit that the 42 years old Officer was initially diagnosed and managed as a case of Alcohol Dependence Syndrome in 2014 and upgraded to Medical Category S1 in March 2016. On 26.10.2017, the Applicant was admitted on 27.7.2018 at CH (EC) for behavioural oddities and heavy drinking and he was diagnosed as a case of other Specific Mood (Affective) Disorder. The Medical Board placed him in LMC S3(T-24) on 8.1.2018. On the advice of higher Medical Authorities, the Applicant was asked to be re-admitted for opinion of Consultant Psychiatry. Accordingly, the Applicant was admitted at CH (EC) and then transferred to INHS ASVINI, for opinion of Consultant Psychiatry and the Applicant's diagnosis was revised to Alcohol Dependence Syndrome (Relapse) and Alcohol Induced Mood Disorder (Recent Manic Episode) and recommended Low Medical Category S5. The purported difference in the three options of different Psychiatrists was denied and it was stated that the Consultant (Psychiatry) at INHS ASVINI

who had given his final opinion on the case had taken a holistic view of the longitudinal profile of the case based on the longstanding alcohol use and related social occupational and medical dysfunction. The following documents were placed on record:

(a) Opinion of Graded Specialist (Psy) dated 02.01.2018 and Opinion of Senior Advisor, Psychiatry, Eastern Command dated 08.01.2018 (R I)

(b) Opinion of Consultant, Psychiatry INHS ASVINI dated 14.08.2018 (R II)

Keeping the aforesaid in view of the Learned Counsel for the Respondents prayed for dismissal of the OA being devoid of merit.

4. We have heard the averments of the Learned Counsels as also perused the documents placed on record. The following aspects merit special attention:-

(a) The Applicant was initially diagnosed and medically managed as a case of Alcohol Dependence Syndrome (ADS) w.e.f. 182.2014 and later upgraded to S1 Medical Category on 10 March 2016.

(b) Applicant was admitted on 26th Oct 2017 at CH (EC) Kolkata for behavioural oddities and excessive drinking. He was placed in LMC S3 (T-24) for Specific Mood Disorder by the Medical Board held on 08.1.2018.

(c) On instructions from Superior Medical Authorities the Applicant was readmitted at CH(EC) on 27 July 2018 and transferred to INHS ASVINI for further investigation and examination by Consultant Psychiatry.

(d) After detailed investigation the Consultant Psychiatry diagnosed the affliction as Alcohol Dependence Syndrome (Relapse) and the Applicant was downgraded to Medical Category LMC S5 in consonance with provisions of DGAFMS Memorandum 171/2002. Extracts of Para 9 (a)(iv) are as under:

9. "a(iv) All cases of Major Psychiatric Disorders (as defined in Para 6 d) that have not responded well to treatment or have taken turn to a chronic course, i.e. remaining symptomatic continuously or intermittently for more than 2 years, will be invalidated out of service."

(e) Consequent to holding of Invaliding Medical Board, Show Cause Notice was issued by Commandant, CH (EC) Kolkata dated 24.9.2018 informing the Applicant that the Competent Authority has approved his Invalidment from Military Service due to ALCOHOL DEPENDENCE SYNDROME (RELAPSE), ALCOHOL INDUCED MOOD DISORDER (RECENT MANIC EPISODE) and being found UNFIT for any form of further Military Service. Appeal, if any, must be submitted to the Chief of Army Staff within 15 days of receipt of this letter.

(f) IHQ, MOD(Army) AG Branch, Dte Gen.Medical Services issued Letter dated 2.3.2019 stating that Approval of the Hon'ble RRM had been

obtained fro invaliding the Applicant from Military Service on Medical Grounds.

(g) Appeal to the above Notice was forwarded by the Applicant vide letter dated 24.4.2019 through Proper Channel.

5. The following aspects have a critical bearing on the final determination of the case:-

(a) The Applicant has had a history of ADS which resulted in his downgrading of Medical Category w.e.f. 18.2.2014.

(b) Procedures as per extant Orders vide DGAFMS Memorandum 171/2002 and Army Order 9/2011 and other relevant orders were followed prior to invoking Invalidment Process of the Applicant.

(c) The Applicant was required to Appeal against the Show Cause Notice (SCN), if he desired to within 15 days of receipt of SCN letter dated 24.9.2018 which he failed to do. The Applicant concedes that he wilfully did not exercise his right to Appeal. The reasons preferred for not responding to the Show Cause Notice are indeed specious and merits reiterating. Extracts of Para 4 (xvii) to (xviii) of the OA are as under:-

(xvii) That the Applicant was constrained not to exercise his right to appeal because the Applicant was hospitalised in Command Hospital (EC), Kolkata at that point in time and that the hospital authorities told the Applicant that the Applicant would have to remain in hospital till the finalisation of his appeal.

(xviii) That it may be appreciated that the environment in a "Psychiatric Ward" is excruciating, agonising and unbearable both mentally and physically and above all excessively humiliating. Thus, the Applicant opted not to exercise his right to appeal against the decision of the Invaliding Medical Board to obviate his ongoing agony.

(d) Dte Gen Medical Services vide letter dated 22.3.2019 informed the Applicant that Approval of the Hon'ble RRM had been obtained for Invalidment.

(e) A belated Appeal dated 24.4.2019 was preferred by the Applicant against the decision of the Invaliding Medical Board held in CH(EC), Kolkata on 24.9.2018.

6. A careful study of the belated Appeal dated 24.4.2019 reveal the following:

(i) No infirmity in the Medical Process followed for Invalidation from Service has been raised by the Applicant.

(ii) The only issues raised in the Appeal are connected to pecuniary aspects and family responsibilities and consideration of his invalidment case on sympathetic grounds.

7. The alternate plea for grant of Disability Pension is clearly not sustainable as no extant provisions exist for grant of Disability benefits on account of Alcohol Dependence to an individual who is already in receipt of Service Pension. Not even an iota of evidence has been brought to the fore even remotely alluding to a causal link of Alcohol Dependence to

conditions of Military Service. From the aforesaid, it is clear that issues raised in this OA with regards to the Medical Board are clearly an afterthought and lack strength. The purported contradictions raised by the Applicant with regards to opinion of the Graded Specialist (Psychiatry) Senior Advisor (Psychiatry) and the Consultant Psychiatry of INHS ASVINI circumvent the main issues of the case which is Alcohol Dependence which was diagnosed medically as far back as 2014 and for which the Applicant was medically downgraded. We find no infirmity in the process followed for Invalidment of the Applicant.

8. In fine, we are of the considered opinion that the OA lacks merit on all counts and merits dismissal nor any infirmity in the findings of the Medical Board which merits any interference.

9. No order on Costs.

LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)

JUSTICE ANJANA MISHRA
MEMBER(J)

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