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Court : Armed forces Tribunal AFT Chandigarh Bench Chandimandir

Decided On : Jan-18-2011

Judge : Ghanshyam Prasad, Judicial Member & the Honourable Lt Gen H S Panag (Retd), Administrative Member

Appeal No. : T.A. No 106 of 2010, (arising out of C S No 956 of 2003)

Appellant : Manmohan Singh

Respondent : Union of India and Others

Judgement :

Lt Gen(Retd) HS Panag

1. This case has come on transfer from Civil Judge(Senior Division) Ambala , arising out of CS No 956 of 2003.

2. In this petitioner, the petitioner has prayed that Suit of the plaintiff be decreed against the defendants in favour of the plaintiff with declaration to the effect

(a) That the invalidment from service of the plaintiff, by the Medical Board due to BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM, and declaring the plaintiff unfit for service while in the case of others, it was not so, thus the invalidment/discharge from service of the plaintiff being illegal, unconstitutional, arbitrary, suffering from the vice of hostile discrimination.

(b) All consequential benefits including all arrears of pay and allowances and seniority etc with penal interest.

3. The petitioner ex Recruit Man Mohan Singh is the son of a retired Havildar from SIKH Regiment. As per the family tradition, the petitioner was keen to join Army and offered himself for recruitment before the Branch Recruiting Office Ambala. After the Medical Examination, Intense Physical Tests and the written test, the individual was recruited on 20.03.2002 and reported for duty at ACC and School Ahmednagar on 23.03.2002. At the time of recruitment, he was put through a Medical Examination as per the rules on 05.02.2002 and was found fit in all respects. This was duly recorded in AFMSF-2A (Primary Medical Examination Report). From ACC and S Ahmednagar, he was sent for Second Medical Examination on 28.05.2002 to Military Hospital Kirkee where he was examined by Col KR Salgotra, Orthopedic Surgeon. After the examination, Colonel Salgotra enquired from the petitioner whether he had paid any money to the BRO at Ambala for recruitment. The petitioner replied in the negative. On his denial, Col Salgotra lost his temper and threatened the petitioner to say Yes, otherwise he would get the petitioner thrown out of the Army. The petitioner pleaded his innocence and reiterated that he had not paid any money at the time of recruitment and was recruited on merit due to his own fitness. On hearing this, Col Salgotra shouted at the petitioner and said that he had known the BRO Ambala personally and that he was a corrupt officer and was declaring the petitioner unfit for service in the army.

4. After the Medical Examination by Col Salgotra on 28.05.2002, Invaliding Medical Board (IMB) was held at Military Hospital Ahmednagar on 12.11.2002. The Board consisted of Commandant Military Hospital and Lt Col SK Jha, Graded Specialist Surgery. The said Board made its recommendations based on the recommendations of Col Salgotra and did not carry out any fresh Medical Examination. The Board recommended that the petitioner was unfit for all military duties due to BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM. The recommendations of the Invaliding Medical Board were perverse and against the ground realities. The rejection of the petitioner is the result of personal vendetta carried out by Col Salgotra against the

Branch Recruiting Officer Ambala Cantt and the petitioner has been made a scape goat while there are hundreds of soldiers having similar defects who are serving in the army. Col Salgotra declared the petitioner unfit for military service either due to vindictiveness or some consideration which the plaintiff could not fulfill. The case of the petitioner is falling in the category of hostile discrimination qua other soldiers/recruits who had been declared fit for Military duty by the same officer Lt Col SK Jha and other Branch Recruiting Medical Officers due to to BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM. A few cases are cited as under :-

(a) Recruit Maheshwar Sethi son of Shri J Sethi recruit by the BRO Gopalpur on 10.11.2001.

(b) No 15487256W Rect Tamil Maran son of Shri G Mani.

(c) Kan Singh Chauhan son of Shri Bhanwar Singh of Village Makarana Distt Nagaur.

(d) No 15487242W Ganage Vinod Diwakar, son of Diwakar of Buldana.

(e) No 15487132F Rakesh Singh, son of Dharamveer Singh.

5. The entire action of declaring the petitioner unfit for military service is contrary to Medical Regulations and ethics as different yardstick has been applied for declaring one person unfit and others fit for the same alleged disability. The petitioner is ready to undertake any physical and medical test to show that he is not suffering from any disability calling for invalidement from the army. Thus his invalidment is not only illegal but perverse against all canons of justice and is suffering from the vice of discrimination.

6. The petitioner had sent a petition dated 31.01.2003 but no decision has been received so far. The petitioner has also served the defendants a notice under Section 80 CPC but no action has been taken by the authorities.

7. The cause of action has arisen against the defendants, firstly when the defendants illegally, arbitrarily and unconstitutionally declared the plaintiff unfit for

service due to BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM and invalidated him out from service on 13.11.2002 without following the due process of law, in an illegal arbitrary and unconstitutional manner, and thereafter on the expiry of sixty days from the date of notice under section 80 CPC.

8. The defendants filed a written statement in the Court of Civil Judge (Jr. Division) Ambala. It was averred that the petitioner has been rightly invalidated out of army service w.e.f. 15.12.2002 under Rule 13(3) item IV, Army Rule 1954. The suit of the plaintiff is against the provisions of law, devoid of merits, and deserves to be dismissed. The Medical Examination, at the time of recruitment is carried out by the Single Medical Officer and not by the Specialists Medical Officer or by a constituted Medical Board of Officers. His primary Medical Examination was carried out by Maj RK Gopal, RMO Hamirpur on 06.02.2002. The petitioner was recruited on 23.03.2002 and not on 20.03.2002 as alleged by the plaintiff and was dispatched to Armoured Corps Centre and School, Ahmednagar for training. In accordance with Army Headquarters letter No 76263/DGMS-5A dated 29 May 1998 and even No. dated 06 July 1999 all recruits are required to undergo a Medical Examination on joining the Armoured Corps Centre and School. The plaintiff was also put to the Second Medical Examination as per procedure and was found to have BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM by Medical Officer i.e. Lt Col BK Shukla. Therefore, the plaintiff was referred to Military Hospital, Kirkee for opinion of Senior Advisor (Surg and Ortho). The petitioner was examined by Col KL Salgotra, Senior Advisor (Surg and Ortho) and Col HL Kakria, VSM jointly on 28 May 2002 and the plaintiff was found to have gross degree of BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM. It was opined jointly by the two Surgeons that the plaintiff had more than 15 degree of unacceptable CUBITUS VALGUS associated with marked restriction of supination of left forearm based on medical standard laid down for recruits in para 7(f) of Special Army Order 4/S/71 and page 15 Step of IV to X(Group Test Outdoor) of DGMS (Army) Manual for Recruiting Medical Officers dated 30 May 1989. The manual states that the movement of the elbow joint should be looked for, if it is more than 15 degree, the candidate should be rejected. The petitioner was thus

declared unfit as holding of personal arms while firing requires full supination of left forearm. With the existing disability, individual while firing would have not only endangered his own life but also of other soldiers in firing range. It is made clear that Col KR Salgotra had never been known to Branch Recruiting Officer Ambala, therefore allegations leveled upon him are false and self concocted. Moreover, The Branch Recruiting Officer at Ambala Cantt has nothing to do with the Medical Examination of the recruits. The Medical Examination is done by the Recruiting Medical Officer and not by the Branch Recruiting Officer. Further the Recruiting Medical Officer at BRO Ambala Cantt is also not known to Col KR Salgotra. Hence the allegations leveled are wrong and concocted. The petitioner justified his case that the Invaliding Medical Board consisting of Col VN Saxena, CO MH Ahmednager, Lt Col PK Gulunjkar, Lt Col SK Jha, Classified Specialist(SURGERY), Major(Mrs) S Jha was held on 12.11.2002. As per opinion of the Invaliding Medical Board, the disability of the petitioner to BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM was recorded as neither attributable to nor aggravated and not connected with the Army service. The Medical Officer has also opined that disability is Congenital Disorder and not connected with the service. The disability was assessed less than 20% (1 to 5%) and the plaintiff was invalided out of service w.e.f 15.12.2002.

9. There is no question of Col KR Salgotra being vindictive towards the petitioner due to his personal dislike or grudge against either BRO or the RMO as he has not known either of them. It is denied that different yardstick has been followed in the case of the petitioner as compared to other recruits/soldiers with similar defects. Each case is examined on merits and strictly as per the medical standard laid down.

10. On 30.04.2010, this Bench had ordered the fresh Medical Board to be carried out in respect of the petitioner to assess, as to whether he is medically fit to be retained in service? Medical Board was duly conducted on 23.07.2010. During the Medical Board, the petitioner was examined by Brig NC Arora, Consultant (Surg and Ortho) and HOD Surg Div Base Hospital Delhi Cantt. In the opinion of the Medical Officer, the Medical Board recorded that there is evidence of Cubitus Valgus Bilaterally. In addition, he has fixed flexion deformity of 10 degree in right

elbow. No restriction of supination bilaterally. X-ray of both elbows indicated carrying angle as 18 degree for right elbow and 19 degree for left elbow. The individual has carrying angle more than the acceptable limits of 15 degree in both elbows which is acceptable limit for recruitment in the army. The findings of the Medical Board are that the petitioner is unfit for military service due to disability BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM. The disability is 1-5% and not attributable/aggravated by military service as it is a congenital defect. The petitioner was found unfit on account of Cubitus Valgus bilateral.

11. Heard learned counsel for the petitioner and the defendants and perused the record.

12. The petitioner was found fit during Medical Examination at the time of recruitment. However, during the second examination, it was found that he was suffering from the disability - BILATERAL CUBITUS VALGUS WITH RESTRICTION OF SUPINATION OF LT FOREARM which was not within acceptable limits prescribed for the Army. This was substantiated by Release Medical Board held on 12.11.2002 . To give a fair chance to the petitioner, a fresh Medical Board was ordered on 30.04.2010 by the Court. However, the Board also held that the petitioner is unfit for service in the army. The case of the petitioner is only based on the alleged bias shown by of Col Salgotra against the petitioner and also his past knowledge of the BRO and the Branch Recruiting Medical Officer. There is nothing on record to substantiate the same. The petitioner had also alleged that other recruits/soldiers with similar defects have been declared fit for army service. Each individual is examined by the due process as laid down in the army and it is not for this Court to go into the details of such cases. The independent Medical Board has also been ordered by this Bench which also declared the petitioner unfit for service.

13. The petitioner has thus been found unfit by three independent Medical authorities. Firstly at Military Hospital Kirkee on 28.05.2002 where he was referred to Military Hospital Ahmednagar for Second Medical Examination. Secondly by the Release Medical Board held at MH Ahmednagar on 12.11.2002 and thirdly by the

Independent Medical Board ordered by this Bench held at Base Hospital Delhi Cantt on 23.07.2010.

14. Keeping in view the facts and circumstances of the case, we find no merit in the case and do not want to interfere with the opinion of the Invaliding Medical Board and the petition is accordingly dismissed.

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