
(2002) 07 DEL CK 0188

In the Delhi High Court

Case No : Civil Writ Petition No. 1334 of 1997

Corporal Vijay Kumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 104 DLT 738 : (2003) 3 SLJ 480

Hon'ble Judges : Ramesh Chand Jain, J;A.D. Singh, J

Bench : Division Bench

Advocate : Party in perso, for the Appellant; Rekha Palli, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, J:

1. By this writ petition the petitioner inter alias challenges the order of his discharge from Army service on account of medical disability.
2. The petitioner joined Indian Air Force on 27th May, 1986 as Technical Trade Airman. Some time in the year 1981, he was promoted to the rank of Corporal w.e.f. 27th May, 1991. On 3rd January, 1992 he was transferred to 24 Wing, Air Force, also known as Tetra School Air Force.
3. In January 1992-93, the petitioner made certain allegations and grievances against his Commanding Officer. Thereafter he submitted an application for redressal of grievance (ROG) against his Commanding Officer. This was followed by several ROGs during the year 1992-93. The allegation of the petitioner has been that he was ill-treated and harassed by his Commanding Officer. His belongings, including his books and papers were stealthily removed. According to the petitioner there was a delay in forwarding the ROGs by the Commanding Officer, Group Captain P.P.S. Kehlon. It was only subsequently in the absence of the Commanding Officer, that the Officiating Commanding Officer, V.K. Chopra forwarded the ROGs but they were declared to be invalid. On 8th June, 1993, the

petitioner sought interview with a visiting VIP under the provisions of sub para g of para 621 of the Air Force Regulations. However the application seeking interview has allegedly suppressed. It is also the case of the petitioner that during a hot summer month he was ordered to work at tarmac. He was harassed and was not made to work on MIGs though he was specifically trained for the job. He was in fact removed to Ground Equipment Section (GES) where junior persons were being employed. In July 1992-93 he was posted to yet another unit. Even a court of inquiry was ordered against him. The petitioner was given movement order and directed to report to 11 BRD Air Force, Nasik, on posting. According to him all this led to stress and strain and emotional shock which affected him physically.

4. It is also alleged that he remained in hospital in his home town in the state of Kerala for treatment, for a period of three months until October, 1993, for Jaundice and Insomnia. The petitioner was declared as a deserter though he remained confined in the hospital for his treatment. He was even arrested, handcuffed and paraded through the streets of his home town by the respondents despite the fact that he was bed ridden due to sickness.

5. On 29th October, 1993, he joined 11 BRD Air Force, Nasik after recovering from jaundice. Subsequently his absence was recorded as "absence without leave". Some time in December, 1993, the petitioner moved an application for interview with the Commanding Officer 11 BRD but the application was allegedly suppressed. According to the petitioner since he was not able to ventilate his grievances and due to his helplessness and bitter experience with the organisation he attempted suicide on 28th February, 1994. He was laid up for three days in MHD and subsequently transferred to INHs, Asvini, a naval hospital in Bombay where he was referred to a psychiatrist for opinion and remained in the hospital for two months.

6. On 28th April, 1994, a medical board constituted by INHS, Bombay, lowered his medical category to "BEE temporarily for six months for the purposes of psychiatric observation. On May 5, 1994, the petitioner gave a reminder to the Air Officer Commanding, Air Force, Ojhar District, Nasik, with the request that his ROGs be forwarded to higher authorities as he was not satisfied with their disposal. On August, 4, 1994, the petitioner again sought an interview with the Officer Commanding, 11 BRD, Air Force, but the interview was not granted. On September 4, 1994, in connection with ROGs, the petitioner again requested for an interview with AOC-in-C during latter's proposed visit to the Air Force Station.

7. It appears that the petitioner's mother moved an application to the defense Secretary, Government of India, to seek discharge of the petitioner from service and also with a further request for award of compensation due to the ill treatment meted out to her son. In response to her letter dated November, 1, 1994, she was informed by the Headquarters, Maintenance Command, that pursuant to her representation to the defense Ministry, investigation was made and it was revealed that the petitioner while on the strength of 31 Squadron had submitted

ROGs which were considered at Headquarters, Western Air Command, IAF, and were rejected being devoid of merit. But despite their rejection, the same were forwarded to the Air Headquarters. The petitioner's mother was also informed that the ROGs against Station Commander, 9 Wing AF, had also been examined, but the contents thereof were concerning administrative matters which do not appropriately fall under heading ROG. She was advised that in case the petitioner wanted discharge, he could apply for discharge on compassionate grounds.

8. In November-December 1994, the petitioner was again sent to INS Asvini, Bombay, for review of his medical condition. On review, medical category BEE was further extended for six more months.

9. The petitioner who is stated to have been elected as NCO In/C, Airmen's Mess in December 1994, allegedly issued five charge sheets against some employees of the mess in his capacity as Corporal and NCO/Mess. According to him, one of the charge sheets has yet to be looked into by the authorities while rest of the four have been disposed of by them after fake trials.

10. In April 1995, the category of the petitioner was upgraded to category A/E after his examination by a medical board. In May 1995, the petitioner wrote to the Air Officer Commanding No. 11 BRD, Air Force Station, Ojhar, that some of the superior officers had compelled the mess staff to accept adulterated and sub-standard rations. He also allegedly claimed therein that further disclosures shall be made to Air Officer Commanding by the petitioner in person.

11. On July 7, 1995, the petitioner wrote a letter to the Air Officer Commanding, Air Force Station, Ojhar, giving expression to his grievances that in case redressal of his grievances was not possible he should be discharged from service on compassionate grounds. This was followed by another letter of the petitioner dated August 8, 1995 addressed to the Air Officer Commanding, No. 11 BRD, AF AF Station, Ojhar. In this letter the petitioner made an elaboration of para 9 of his letter dated July 7, 1995 by providing reasons affecting the morale of the soldiers. In letter dated August 8, 1995 the petitioner alluded to conditions of service, which according to him were very bad. The letter runs into several pages. It deals with the following topics:-

1. Miserable married accommodation scenario.
2. Futility of 20 years service bond.
3. Shabby Service treatment of soldiers.
4. Substandard living-in accommodation.
5. Inadequate loan provisions for housing, vehicle, etc. and indifferent treatments towards soldiers.
6. Lack of competition, lack of status advancement on promotions, less chances for commissioning, etc

7. Necessity of a defense tribunal to hear the grievances of serving soldiers.

12. On August 25, 1995, the petitioner wrote another letter clarifying the points raised by the petitioner in his letter dated August 8, 1995. It also contained answers to a questionnaire given to him by the respondents on August 24, 1995.

13. On August, 31 1995 the petitioner was admitted in the Civil Hospital, in Bombay, and after some months he was transferred from the Civil Hospital to INHS Asvini, Bombay, when he was examined by an "Invaliding Board" and his condition was evaluated by Surgeon Commander Dr. VSSR Ryali, Classified Specialist in Psychiatry, and Surgeon Commander Dr. Alok Banerjee, Classified Specialist in Medicine & Neurology. the proceedings of the Invaliding Board dated October 30, 1995 and opinions of the aforesaid classified specialists an on October 20, 1995 and October 24, 1995 revealed that the petitioner was suffering from Affective Psychosis Hypomania.

14. On June 8, 1996, the petitioner was discharged from service since he was found medically unfit for further service in the Air Force.

15. The petitioner by the instant writ petition challenges his discharge from services, claims compensation and damages, and also prays for initiation of court martial proceedings against respondent Nos. 3 ,4, 5 and 6 for the alleged offences committed by them against the petitioner.

16. The petitioner, who appeared in person, submitted that his discharge from service on the ground of his having been found medically unfit requires to be quashed as being arbitrary. It was pointed out by the petitioner that in May 1986 the Recruitment Medical Board found the petitioner to be fully fit for service and the petitioner was not found to be suffering from service and the petitioner was not found to be suffering from any disease, disability or disorder and consequently, the petitioner was placed in category AYE. The petitioner also invited out attention to the Medical Board held in the year 1994 for his examination. The petitioner highlighted the fact that he was found psychologically fit as no feature of any disease, disorder or disability was noted by the Board. Despite this, the petitioner was lowered to category BEE (temporary) for a period of one year from April 1994 to April 1995. After a period of one year, in January 1995 a Review Medical Board was held which found the petitioner to be fully fit. The board accordingly recommended his recategorisation after keeping him under observation for a period of six months. The petitioner submitted that in May 1995 a Recategorisation Medical Board was held and he was upgraded to the original medical category AYE. According to the petitioner, the upgradation of the petitioner to medical category AYE showed that the petitioner was not suffering from any psychological problem. The petitioner called in question the findings of the Medical Board held in October 1995 which found the petitioner to be suffering from bipolar disorder and was of the opinion that that petitioner was not fit for further service in the air force. The petitioner claimed that the findings of the Board were not based on true facts and the

Board ignored the opinions of the earlier medical boards. The petitioner also invited our attention to a Review Medical Board held in March 2002 pursuant to the order of the Division Bench of this Court dated November 22, 2001. According to the petitioner, the Board did not find any features or symptoms indicative of psychiatric disorder. The petitioner, Therefore, submitted that his discharge from service on medical ground is not in order.

17. We have considered the submissions of the petitioner. The Medical Board proceedings dated October 30, 1995 clearly indicated that the petitioner was suffering from "Affective Psychosis Hypomania". This opinion was based on the opinions of Surgeon Commander VSSR Ryali, Classified Specialist in Psychiatry, as on October 20, 1995, at INHS Asvini, and Surgeon Commander Alok Banerjee, Classified Specialist in Medicine and Neurology, as on October 24, 1995, at INHS Asvini. Their opinions read as follows:-

"SUMMARY AND OPINION BY SURG CDR VSSR RYALI CLASSIFIED SPECIALIST IN PSYCHIATRY AS ON 20.10.1995 INHS ASVINI: Record of hospitalization:INHS Asvini 05 Sep to date. Reason of referral and presenting complaint: This IAF Cpl has allegedly misbehaved with some female Indian Airlines staff at Santacruz Airport on 01 Sept 95 following which he was handed over to Civil Police who admitted him to the psychiatric ward of Cooper Hospital, Bombay, in view of abnormal behavior. He was treated as a case of Mania from 02 to 04 Sept 95. He was recovered by the local Air Force unit and admitted to this psychiatric centre for further management. During initial psychiatric interview the Cpl. claimed to have acquired certain powers over the earlier three weeks. He claimed to have left his unit on 31 Aug 95 after collecting temporary duty advance. He boated that he had spent Rs. 3,000/- in a day over food, to help other people and travelled by taxi from Nasik to Bombay. He had Rs. 65/- left with him when he reached Bombay. AFMSF 10 by his AOC dated 05 Sept 95 states Cpl is confused, adamant and erratic. Tends to raise irrelevant issues-Appears reserved, however there has been occasional outbursts, his behavior has been deteriorating. On 30 Aug 95 he had willfully mixed hydraulic oil into a pitcher meant for drinking water. He suffered from depression and attempted suicide and recommended discharge from his service.

Past illnesses: The Cpl was treated by a civil psychiatrist for abnormal behavior while at home enroute to duty station in Aug 93. He has not revealed this fact on reporting back to duty but continued taking antipsychotics. I Feb 94, the Cpl attempted suicide by consuming a overdose of Alprax. He was managed conservatively at MH Devlali for Alprax over dosage and subsequently evaluated at INHS Asvini psychiatric centre when no clear features of psychiatric illness were discernible he was observed in low medical category for one year and upgraded to Medical category AYB in Apr 95.

Family and personal history: Hails from Kerala. V among 6 - Siblings, father consumed alcohol excessively when alive and died in 1993 due to Jaundice. No family history of mental illness or suicide. Cpl has put in 10 years of service

during which he has been charge sheeted thrice and placed in close custody once. He is unmarried and denies home or heterosexual experience. Consumed alcohol and smoked in moderation. Not exposed to drugs.

Clinical condition on admission: Pulse - 90/m. Displayed extra pyramidal side effects of Serenade given in civil like rigidity and tremor. Systemic exam and routine investigations - Psychological evaluation revealed hyperactivity, pressure of speech, elation, flight of ideas. Delusion of grandeur and persecution and impaired insight. Routine urine and blood counts,,,,Renal function tests, Thyroidal hormones and ECG-....

Treatment and progress: Cpl was treated as a case of Hypomania with Serenace (up to 20 mg) and Lithum (900 mg per day in divided doses). He improved rapidly and is currently asymptomatic. There is no hyperactivity Delusions have encapsulated and he has regained insight. He remains cheerful and still wants to pursue his case against the authorities. He is demotivated for further service.

Opinion and recommendations: This 38 years old Cpl with 10 yrs of service suffered a hypomania episode in the back ground of presumably a maniac episode suffered in Aug 93 and treated in civil and a suicidal attempt following short lasting depression which was treated at MH Devlali. He has responded partially to Lithum and Serenace and still displays residual features and is demotivated for service. Longitudinally he is a case of Bipolar disorder who has suffered three episodes of Mania/Depression over last three years. In view of the foregoing he is considered unfit for retention in service.

Recommended (10 Medical category EEE (Psychological) (2) He will be advised maintenance medication, rehabilitation and review schedule at the time of discharge.

Diagnoses: AFFECTIVE PSYCHOSIS (BIPOLAR)

Sd/- x x x

(VSSR Ryali) M.D.

Surg Commander

Classified Specialist

(Psychiatry)

OPINION BY SURG CDR ALOKE BANERJEE S.C. CLASSIFIED SPECIALIST IN MEDICINE AND NEUROLOGY AS ON 24.10.95 AT INHS ASVINI:

(i) A case of Affective Psychosis. Evaluated and opined by Psychiatrist.

(ii) On Exam. Fundus: Bilateral normal. BP: 130/76; Pulse -70/m. no obvious cognitive dysfunction. No neurological signs CVS, Abd, Resp: NAD.

No obvious clinical evidence of any organic disease-responsible for the invaliding

disability.

Sd/- x x x

(Aloke Banerjee) S.C.

Surg Commander

Classified Specialist in

Medicine & Neurology.

In view of the above the individual is brought before an Invalidment medical board.

Sd/- (V.S.S.R. Ryali) M.D.

Surgeon Commander.

Classified Specialist

(Psychiatry)

Head of Department

INHS Asvini"

18. As is clear from above, the specialists came to the conclusion that the petitioner was suffering from Affective Bipolar Psychosis and was recommended to be placed in medical category EEE. It was on the basis of this report of the Medical Board that the petitioner was discharged from service. It also needs to be noticed that according to the own showing of the petitioner, after his discharge from service he was admitted to M.O.S.C.M.M. Hospital, Kolanchery, as in indoor patient and was diagnosed for Bipolar Affective illness. The petitioner was advised to continue medicines and to go in for periodical review. After his discharge from the hospital, the petitioner continued to attend the hospital as an out-patient and continued with the medicines. In this regard the petitioner has himself placed on record the medical certificate issued by the hospital on November 16, 1996. The petitioner is virtually praying for displacing the opinion of the respondents authorities discharging him from service on the ground of disability. Their opinion cannot be brushed aside. It is well settled that where an administrative determination is challenged by invoking Article 226 of the Constitution, the Court exercises a supervisory jurisdiction. It is not entitled to act as an appellate court and substitute its opinion for that of the administrative authority. We cannot sitting in writ jurisdiction, entertain such a plea of the petitioner. There is no reason why the determination of the authority be ignored especially when the petitioner even after his discharge was diagnosed by a civilian hospital as suffering from Bipolar Disorder and was required to continue the medicine. During arguments the petitioner admitted that he was continuing the medicine.

19. In order to give a fair chance to the petitioner a review medical board was constituted pursuant to the order of a Division Bench of this court dated November 22, 2001 but we can not say that according to the findings of the medical boards dated March 22, 2002 and October 30, 1995 and in view of the psychiatric nature of his illness he was not rightly invalidated out of service. It cannot be disputed that the petitioner had attempted suicide on February 28, 1994 by consuming 60 tablets of alprazolam. The Medical Board of 1995 held before his discharge arrived at a clear finding that the petitioner was suffering from a bipolar disorder. The opinion rendered by the expert boards does not suffer from any error apparent on the face of the record. We cannot, Therefore, find fault with the discharge of the petitioner from military service.

20. In so far as the allegation of the petitioner that he was harassed and ill-treated by respondents 3 to 6 is concerned, it cannot be gone into in these proceedings as it is a disputed question of fact which can only be established by means of evidence adduced at a trial.

21. Accordingly, the writ petition fails and is hereby dismissed.