

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 186 of 2010
(Delhi High Court W.P (C) No. 3917 of 1998)**

IN THE MATTER OF:

Ex Sgt V.K Verma

.....Applicant

Through Mr SS Tiwari counsel for the applicant

Versus

Union of India and Others

.....Respondents

Through: Mr Ankur Chhibber counsel for the respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 30-6-2010

1. The applicant had filed WP(C) 3917/1998 in the Honb'le Delhi High Court appealing against his discharge on medical grounds and praying for reinstatement into service. The same was transferred to the Armed Forces Tribunal on 24/9/ 2009.

2. The applicant was enrolled in the IAF on 10/8/1974 and employed in the trade of Crane Driver. Subsequently he rose to the rank of Sgt. During the course of his duties he was exposed to

loud noises the result of which he suffered difficulty in hearing. He also suffered from TB and was administered antibiotic drugs. In 1987 the applicant was placed in low medical category CEE(P) because of low hearing capacity. The applicant states that since restrictions were placed on him in performing the job of Crane Driver it was recommended on 23/10/90 that his services be utilised for another job.

3. In April 1992 the applicant was posted to Bangalore and underwent a medical check up on 22/08/92. The applicant was due for recategorisation on 19/8/ 1993 and the ENT Specialist Sqn Ldr Ajay Kumar opined "***to continue in medical category CEE (P). Not to be employed on duty requiring hearing activity. Excused driving. Not to take any ototoxic drugs or be exposed to loud noises.***"(Annexure C).

4. On 23rd August 1993 the applicant was again referred to Command Hospital (CH) Bangalore where the same ENT specialist Sqn Ldr Ajay Kumar opined "Present ENT evaluation reveals no change in condition and he is not likely to improve. In view of this the patient is recommended to be invalided out in medical category EEE, attributable to service. Disability 60%"(Annexure D). There

was no change in his condition and his further medical down gradation into EEE category was an account of biased attitude of the respondents to facilitate his discharge from service on medical grounds. The applicant contends that the second medical board was conducted to complete mere formalities.

5. An invaliding medical board was held on 25/9/1993 at CH Bangalore. The medical board proceedings were approved by the competent authority on 14/10/93 and the applicant was struck off strength wef 12/11/93 as per discharge order dated 18/10/93 (Annexure A). The applicant contends that he represented against the discharge in Jan 1994.

6. The applicant has prayed that the order of his discharge on medical grounds dated 18/10/93 be quashed and he be reinstated in service with all consequential benefits.

7. The respondents in their counter affidavit have stated that the applicant was enrolled in the IAF on 10/08/1974 and discharged with effect from 11/11/1993 under the provisions of Air Force Rule 15 (2) (C) "**having been found medically unfit for further service by a duly constituted invaliding medical board**".

8. The respondents have stated that the applicant was posted to a squadron where the noise of the aircraft could have affected the hearing ability of the applicant. He had also been administered strong antibiotics to treat TB of the ribs. These drugs are known to have affect on hearing.

9. The applicant was reviewed by an ENT specialist in August 1992 as he was a low medical category CEE (P). The applicant was again reviewed in August 1993 at CH Bangalore. This could be taken as his examination report of the case as the case sheet is on form AFMSF-7 which is not part of medical board proceeding (AFMSF-15A). Subsequently a medical opinion is recorded on the applicant's medical board proceeding wherein the applicant was to be invalided out of service in medical category EEE as there was no further chance of improvement in his medical condition.

10. The applicant was allowed to serve a long period in low medical category C (P) but since there was no chance in improvement and the applicant was not of much utility to the service a decision was taken to invalidate him by a duly constituted medical board. The petitioner's contention that invaliding medical board had not recommended his boarding out from service is

totally incorrect as the invaliding medical board dated 25/09/93 had recommended his discharge in medical category EEE. The respondents have recommended that the application be rejected.

11. In a rejoinder to the counter affidavit filed by the respondents the applicant has stated that the same ENT specialist had medically examined and had not recommended him to be medically boarded out despite the fact that the medical examination was conducted after an year in Aug 1993. As per the rules the second medical examination was to be conducted after one year i.e in Aug 1994 but second medical examination was conducted within a few days by the same ENT specialist and despite no change in his condition it was recommended that he (applicant) be medically boarded out. The applicant contends since there was no change in his condition how did the same ENT specialist change his opinion within a few days by a second medical opinion without conducting detailed test. It was contended that rules prescribed that medical check up has to be done once in a year and not twice in a one year.

12. We have heard the arguments and perused the records. During the course of arguments board proceedings were examined

by us. The first medical board in April 1992, which the applicant has averred did not recommend that he be boarded out is not factually correct as contended since it imposed several limitations on his employability. In view of these restrictions the applicant was subjected to another medical board which downgraded him medically to EEE category and recommended to be invalided out. Seeing the requirements and importance of hearing ability in the Air Force the contentions raised are not justifiable and tenable. The applicant was suffering from severe hearing disability and could not be usefully employed in any job not requiring hearing ability. Persons in the Air Force are subjected to frequent and loud noises. The utility of the applicant to the Air Force because of his hearing disability was very limited. The Air Force was at liberty to re-examine him medically at any time and applicant has been discharged after duly constituted invaliding medical board and has been granted 60% disability. The contentions raised by the applicant are not tenable. No further relief is warranted. Application dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U.SHAH
(Administrative Member)

Announced in the open court
Dated: 30-06-2010