

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

27.

O. A. No. 373 of 2010

Lakhwinder Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

28.4.2011

The petitioner, by this petition has prayed that the respondents may be directed to reinstate the petitioner back in military service in the light of Para 143 of Regulations for the Army (1987 Edition) with seniority, service and inherent pay and allowances with retrospective effect in the light of judgment of Constable Kapil Dev Vs. UOI and N. K. Vidhya Dutt Dhyani Vs. UOI.

2. The brief facts of the case are that the petitioner was inducted in Sikh Light Infantry in the year 2001 in after due medical examination but after 27 weeks of military training, he was medically re-examined and found unfit due to colour blindness and discharged from military service. Aggrieved with that, the petitioner approached PGI Chandigarh which declared him fit with a 6/6 in both eyes with no signs of colour blindness. Thereafter, the petitioner filed a petition bearing no. WP(C) 7594/2008 in Delhi High Court for re-medical examination and Hon'ble High

Court in that petition vide order dated 24.10.2008 observed that the writ petition filed by the petitioner be treated as an application on the part of the petitioner under Regulation 143 of the Defence Services Regulations of the Army and the petitioner be examined to check up the problem of colour blindness as it was not a disease which the petitioner might have outgrown. It was also observed that since seven years had already elapsed, the petitioner would naturally have to prove his medical fitness even otherwise. Therefore, the Hon'ble High Court directed that the petitioner will report at the Base Hospital on 7.11.2008 thereafter he will be given date for his medical examination. With that direction, the petition was disposed of. Then the petitioner appeared before the Medical Board and the petitioner was called for medical examination. After examining the petitioner, the doctor opined that the petitioner was personally examined and re-evaluated by him but this opinion was not forthcoming that whether the petitioner is fit for recruitment in the Indian Army therefore a specific opinion was asked for under the order of this Tribunal and that the opinion was given by Senior Adviser, Prof and head (Ophth), Army Hospital (R & R), Delhi and he opined as under:

"The petitioner was personally examined and re-evaluated by the undersigned. The findings and opinion of Surg Cdr Tarun Choudhary, Classified Specialist (ophth) are reconfirmed.

I Concur. The above mentioned individual has been found to have Colour Vision CP Three (Defective Safe) on MLT and Ishihara. The individual is fit for recruitment into Army."

This shows that the discharge of the petitioner after completion of 27 weeks of training was not correct. As the petitioner had a defective vision but that is not a

disqualification for recruitment into the Indian Army. Be that as it may, the fact remains that the petitioner was discharged way back in 2001 and he approached Delhi High Court in 2008 and thereafter the process of re-examination started. Meanwhile, the petitioner became over age. But one thing is clear that the order of discharge of the petitioner during training *prima facie* was wrong because the petitioner was not unfit to be released from the Indian Army. Now in view of the subsequent development when the petitioner is fit and ought to have been retained in service and has been wrongly discharged from service during training, can he be ordered to be reinstated into Indian Army or not is the moot point. The only thing which is coming against the petitioner is that he has become over age by this time as his date of birth is 4.4.1982 and by this time, he has become 29 years of age. Therefore, now we can not issue directions to the respondents to reinstate the petitioner back into Indian Army as he has become over age for recruitment in the Indian Army. However, the fact remains that on the basis of the wrong medical opinion, the petitioner's service career in Indian Army was put to an end. Therefore, the petitioner has to be adequately compensated for that. Had the petitioner been within the age limit, perhaps he could have got reinstatement into service but now as he has become over age and is 29 years of age, therefore, reinstatement order is not possible. However, on account of medical negligence and wrong medical opinion given by the concerned doctor, the petitioner has lost his service in the Indian Army and he needs to be properly compensated for this. Looking into the facts of the case that a young man's career has been spoiled by a wrong medical advice, he needs to be compensated and we quantify it to Rs.5,00,000/- as compensation for termination of his service in the Indian Army on wrong medical opinion. The respondents are

directed to compensate the petitioner and pay him Rs.5,00,000/- within a period of three months. The petition is disposed of accordingly. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 28, 2011