

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
17.

O.A. No. 32 of 2011

Recruit Haseen Ali

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. R. Archana, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

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

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

ORDER
21.02.2012

Petitioner vide this petition has prayed that direction may be issued to respondents to reinstate the petitioner in the light of the Re Medical Board Proceedings dated 02.07.2009 (**Annexure A-4**) in terms of Para 143 of Defence Services Regulations as quoted in the judgments (**Annexure A-1**) with all the consequential benefits to meet the ends of equity, justice and fair-play.

Petitioner after having found medically fit was enrolled in the Indian Army in the Bengal Engineering Group, Roorkee on 17.08.2005. However due to onset of Seizure in July 2006, he was medically boarded out on 03.07.2007. Then he filed an appeal before the Appeal Medical Board and vide letter dated 13.05.2009 (**Annexure A-3**), petitioner was called for re-examination. Petitioner was re-examined and as per MRI Brain report dated 25.06.2009, no significant abnormality was detected. It is submitted that as per finding of medical board dated 02.07.2009 (**Annexure A-4**), petitioner is fit

for military duties, therefore, he be reinstated in the service with all consequential benefits.

Respondents have filed their reply and it is pointed out that petitioner was invalided out of service due to Low Medical Category w.e.f. 04.07.2007. The Invalidment Medical Board of the petitioner was held on 12.05.2007 at Military Hospital, Roorkee which had assessed the disability "Seizure Disorder" as neither attributable to nor aggravated by military service. The disability was assessed at 20% for life with nil qualifying disability and the petitioner was not found entitled to Disability Pension in terms of Para 179 of the Regulations for the Army 1961 (Part 1). Thereafter petitioner preferred First Appeal dated 11.02.2008 against the rejection of disability pension which was rejected vide letter dated 12.11.2008.

Petitioner filed a Civil Writ Petition No. 8939 of 2008 before the Hon'ble Delhi High Court praying to conduct an Appeal Medical Board for re-consideration of his disability pension which was disposed of vide order dated 17.12.2008 with the direction to the respondents to hold an Appeal Medical Board. Accordingly, the Appeal Medical Board was held on 13.07.2009 at Base Hospital, Delhi Cantt where his disability was assessed as neither attributable to nor aggravated by military service and percentage of qualifying disability of the petitioner was assessed as Nil percentage for life.

Thereafter petitioner again filed a Civil Writ Petition No. 4485 of 2010 before the Hon'ble Delhi High Court praying for re-instatement in service with all consequential benefits. The same was dismissed as withdrawn vide order dated 15.07.2010. Then petitioner filed a O.A. No. 418 of 2010 before this Tribunal which was dismissed as withdrawn vide order dated 15.07.2010 with liberty to move an application for re-enrolment before the concerned Record

Office, however no such application was filed by the petitioner. Now the petitioner filed the present petition seeking the aforesaid relief.

We have heard both the parties and perused the record. This Bench vide order dated 19.10.2011 directed the Director General of Medical Services for constituting a fresh Medical Board and examine the petitioner and give its report whether petitioner is fit to be re-enrolled in service or not. In compliance of our order, Medical Board was constituted and petitioner was re-examined. The proceedings of the Medical Board dated 24.12.2011 have been placed before us for perusal. As per the opinion of the Medical Board dated 24.12.2011, petitioner has remained seizure-free for more than four years and eight months after the diagnosis without drugs and his epilepsy is not active. It is further opined that petitioner is presently considered fit for re-enrolment. As per the opinion of the Medical Board dated 24.12.2011, petitioner is no more suffering from seizure.

Petitioner is said to be a Musician by trade and he is more than 23 years of age and, therefore, the only difficulty is coming in his way that he has become overage by one and half year for the said trade. Be that as it may, petitioner has been litigating since 2008 when he was well within the age limit. Since he has been litigating the matter before the courts since 2008, it will be unfair now to deny him reinstatement due to the reason of overage. He filed the writ petition before the Hon'ble Delhi High Court in 2008 when he was well within the age limit, therefore, he cannot be now put to disadvantage because of the period spent in prosecuting the case before the courts. Had he come beyond the age of enrolment perhaps we would have declined to grant him relief. He has become overage during the course of litigation, therefore, this cannot operate against him.

Consequently, we direct the respondents to condone the age restriction and to reinstate the petitioner back in service. However, he shall not be entitled for any back wages or other benefits.

Accordingly, the petition is allowed. No order as to costs.

**A.K. MATHUR
(Chairperson)**

**S.S. DHILLON
(Member)**

**New Delhi
February 21, 2012**
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