

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

**T. A. No. 465 of 2009**

**Writ Petition (Civil) No. 4647 of 1998**

**Maj Pawan Mehra**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Ms. Astha Tyagi, Advocate with Petitioner

**For respondents:** Mr. R. Balasubramanian, ASG

**CORAM:**

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

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

**JUDGMENT**

**19.04.2012**

**S.S. Dhillon, Member**

1. This writ petition was filed by the petitioner before the Hon'ble High Court and it was transferred to this Tribunal after its formation.

2. Petitioner vide this petition seeks quashing of the orders dated 04.08.1998 and 20.08.1998 whereby he was released from service on medical ground. He also seeks quashing of the final order of 25.08.1998 whereby he was invalided out of service on medical ground. He also seeks reinstatement in service with all consequential benefits. He has also made specific allegation against the conduct of Respondent no. 4, Col. A.S. Rathore and Respondent no. 5, Col. M.K. Mahapatra.

3. The brief facts of the case are that the petitioner was a Short Service Commission Officer of the 1977 batch and was granted commission in 4<sup>th</sup> Battalion Guards Regiment. He obtained his promotion to Lieutenant, Captain and Major by dint of his hard work. In 1992, he was granted the rank of Major as well as regular commission on completion of his contractual period of five years as a Short Service Commission Officer. The petitioner has highlighted various professional achievements including gradings on various courses of instruction as well as his varied exposure in high altitude/uncongenial areas/schools of instructions wherein he was posted as an Instructor at the Infantry school. The officer served with distinction in 3<sup>rd</sup> Battalion Rashtriya Rifles and all was going very well for him till such time that Col. A.S. Rathore joined as a Deputy Commander of the 30 Infantry Brigade, wherein petitioner was serving at that point of time. It was alleged that Col. A.S. Rathore forced the petitioner to provide various favours which the petitioner's conscience and morality did not permit him to do. The demands made on him were to send construction material to the house of Col. A.S. Rathore which was at distance of 200 k.m. from the Unit, to provide vehicle to Col. A.S. Rathore's wife, obtain diesel without payment from the Army authorities, encourage indiscipline in the other ranks of Brigade HQ, interfering and siphoning of money from the Canteen Store Department, harassing the petitioner in front of his subordinates and indulging in various unethical practices. He was also detailed for various hazardous duties by Col. A.S. Rathore, against the medical employment restriction as given by the medical authority, and execution of such hazardous tasks by the petitioner could have been injurious to his health. All in all, Col. A.S. Rathore subjected the petitioner to acute mental tension and stress and it was he who subsequently prevailed upon

Respondent no. 5 Col. M.K. Mahapatra, Medical Specialist at Jodhpur to have him invalidated out from service.

4. Petitioner argued that Col. A.S. Rathore had spoken to Col. M.K. Mahapatra at MH, Jodhpur and together they had colluded to medically invalid the petitioner and sent him home on medical grounds. The medical history of the petitioner began in December, 1993 when he was admitted to MH, Pathankot for Diabetes Mellitus. He was treated at this hospital from 06.12.1993 onwards and on 31.10.1994 for the first time, he was placed in Low Medical Category P-III (T-24) – NIDDM (Non Insulin Dependent Diabetes Mellitus), P-3 (T24) – Pulmonary Tuberculosis, P-3 (T24) – Diabetic Retinopathy. His medical category was reviewed in April – May, 1995 at MH, Pathankot and his medical category status for Pulmonary Tuberculosis was upgraded from P-3 to P-2. This medical category was confirmed by the Army Hospital, Delhi Cantonment in October, 1995. He next came up for review after 2 years in November, 1997.

5. On 05.11.1997, petitioner reported to MH, Jodhpur which was the closest military hospital to his place of posting and this hospital admission annoyed Col. A.S. Rathore. It was at this point of time that Col. A.S. Rathore spoke to Col. M.K. Mahapatra and it was suggested that petitioner be invalidated out from military service. On 17.11.1997, Col. M.K. Mahapatra who was the In-charge of the medical treatment of the petitioner instructed the medical officer In-charge of the ward of the petitioner to initiate the document for invalidment of the petitioner from service because the intake of insulin was more than 40 units per day. Petitioner was being regularly given a lot of insulin despite which he was having episodes of Hypoglycaemia. The diet of

the petitioner, his insulin intake and other activities of the petitioner were being monitored by the nursing staff. His documents were completed on 28.11.1997 after which he was permitted to go on four weeks sick leave from 02.12.1997 to 28.12.1997. During the sick leave period, petitioner consulted various Endocrinologist of AIIMS, RML Hospital, New Delhi and Rabindranath Tagore Medical College and Government Hospital at Udaipur. All Endocrinologist advised the petitioner to take human insulin which is better and latest medicine and the requirement is about 1/3 less than Bovine Insulin which was being administered to the petitioner. The bias of Col. M.K. Mahapatra against the petitioner was evident on 04.01.1998 when in the absence of Col. M.K. Mahapatra, Lt Col A.S. Deora who was the Medical Specialist (Classified) reduced the petitioner's insulin to 40 units per day. However, when after two days Col. M.K. Mahapatra resumed the duties, he again increased the insulin intake.

6. Petitioner argued that on 08.01.1998, he requested the Commandant, MH, Jodhpur to be sent to the Army Hospital (Referral and Research), Delhi Cantt for a second opinion of the Endocrinologist, since he did not have very much faith in the doctor in MH, Jodhpur. He also requested that he be treated with Human Insulin instead of Bovine Insulin, however no action was taken on this letter. On 20.01.1998, petitioner's Invalidment Medical Board was held at MH, Jodhpur and he was recommended to be invalidated out of service. A show cause notice was also issued to the petitioner by Col Gopal Mittal who was the President of the Medical Board on 20.01.1998. He was informed in this notice that since he was suffering from Insulin Dependent Diabetes Mellitus (IDDM) with Diabetic Proliferative Retinopathy and Sensory Motor

Neuropathy, he was being placed in medical category S1 H1 A1 P5 E3 and had been found unsuitable for further military service. He had been advised by the President of the Medical Board in the letter dated 20.01.1998 that he could appeal against the decision of the Medical Board to the Chief of Army Staff.

7. Accordingly on 01.02.1998 within a week after receiving the show cause notice, he addressed his petition to the Chief of Army Staff. Petitioner accepts that based on his request for second opinion from Endocrinologist at Army Hospital (Referral and Research), Delhi Cantt, the authorities did send him to the Command Hospital (Southern Command), Pune for Endocrinologist consultation, however he had sought an official "opinion" and not mere consultation for which he was sent. It was the opinion which could have affected his case and the process of consultation was meaningless. However, he did proceed to Pune for such consultation with the Endocrinologist which lasted from 19.02.1998 to 21.05.1998. During this period, he was also reviewed for Diabetic Retinopathy by the Classified Specialized Ophthalmology and again reviewed by the Senior Adviser, Ophthalmology at M.H., Pune who found him "Non Proliferative" Diabetic Retinopathy.

8. Learned counsel for the petitioner argued that in accordance with Army Rule 15(a) (4) 2 & 4, if his petition is preferred within the prescribed time specified in Sub Rule 2 (i.e. within 15 days of the receipt of the show cause notice), his appeal should have been forwarded to the Central Government for their decision, however in his case, this Army Rule was violated and it was the Chief of the Army Staff who took the decision in this regard whereas he did

not have the power or jurisdiction to do so, and such authority vests only with the Central Government. Therefore, since this was a major lacuna in the proceedings this alone was adequate to reinstate him in service.

**9.** Petitioner has also placed on record voluminous records of his medical case sheets, investigation reports, opinion of various specialists and other allied medical documents obtained by him after the filing of the writ petition through the RTI. He has drawn our attention to the various comments and investigation report specially the one of Command Hospital of 23.02.1998 wherein his eye disease has been specifically categorized as Non Proliferative Diabetic Retinopathy whereas in his invaliding medical board proceedings this have been stated to be Proliferative Diabetic Retinopathy, which is a far more acute form of disease and which would have prejudiced the medical board to release him. He has also drawn our attention to a medical case sheet of Command Hospital (Southern Command), Pune of 19.02.1998 wherein it is opined that IDDM is probably misdiagnosed in view of insulin therapy. However this Medical Board case sheet does not have the name of the doctor or the specialist who gave such opinion and in what context. However, we have perused the entire medical documents as submitted by the petitioner.

**10.** Respondents have filed their reply contesting the arguments put across by the petitioner. The first and foremost argument mentioned by the learned counsel for the respondents that Respondent no. 6 i.e. The Medical Council of India is beyond jurisdiction of this Tribunal. A detailed reply has been filed by the respondents including a separate reply by Respondent no. 4, Col. A.S.

Rathore and Respondents no. 5, Col. M.K. Mahapatra against whom malafides have been alleged.

11. Respondents argued that the medical record of the petitioner and progressive treatment and opinion have been well documented and that the order of discharge was valid and in conformity with the Army Rules and Regulations. Learned counsel for the respondents argued that the invaliding medical board proceedings of the petitioner were referred to the Ministry of Defence and the Raksha Mantri had sanctioned the invaliding medical board proceedings on 16.07.1998 and, therefore, it was incorrect for the petitioner to assume that his discharge has been sanctioned by the Chief of the Army Staff and not by the Government of India. Therefore full compliance of Army Rule 15A has been complied with and also the appeal of the petitioner has been considered and commented by the Commandant, MH, Jodhpur on 05.02.1998. Thereafter, it had been commented and remarked upon by the Deputy Director, Medical Services, HQ 12 Corps on 27.03.1998 wherein Brig. P.K. Sarkar had specially directed that the consultation with Endocrinologist at any hospital be undertaken to satisfy the petitioner. His appeal was subsequently perused by Maj Gen AVV Rao who was Deputy Director of the Medical Services of HQ Southern Command on 10.04.1998. The Medical Board was subsequently approved by the Chief of the Army Staff and finally by the Raksha Mantri on 16.07.1998.

12. Learned counsel for the respondents drew our attention to the medical proceedings wherein the Medical Board has specifically stated *"To be invalided out in medical classification P5 for IDDM"*. Therefore, notwithstanding the controversy about Proliferative Diabetic Retinopathy, the

fact was that it was on account of his IDDM that he had been invalided out of service in Category P5. Category P5 has been defined in Army Order 43 of 1978 titled "Instructions for Medical Classification of Serving Officers (other than JCOs) which is extracted below :

*"2. Medical classification of a serving officer will be made by a duly constituted medical board after assessing his fitness under five factors indicated by the Code letter S H A P E which represent the following functions :-*

<i>S</i>	<i>-</i>	<i>Psychological</i>
<i>H</i>	<i>-</i>	<i>Hearing</i>
<i>A</i>	<i>-</i>	<i>Appendages</i>
<i>P</i>	<i>-</i>	<i>Physical Capacity</i>
<i>E</i>	<i>-</i>	<i>Eye-sight</i>

*3. Medical classification under this system is based on functional capacity of the individual as a whole for military duties with a view to ensuring that low medical category awarded to an officer for minor physical defects per se of a particular organ or system does not, by itself, restrict his employment. Thus, classification done under this system enables the administrative authorities concerned to assign appropriate appointments to officers depending on their employment capability.*

*4. Functional capacity of an officer under each factor will be denoted by numerical 1 to 5 against each code letter indicating declining functional efficiency. The numerals will be written next to the code letter, except that, where an officer is in Grade I in all the factors, his category may be denoted by writing SHAPE-I instead of writing S1H1A1P1E1. General evaluation of these numerals will denote guidelines for employment of the officers as under :-*

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|----------|----------|--|
| <i>1</i> | <i>-</i> | <i>Fit for all duties anywhere</i>   |
| <i>2</i> | <i>-</i> | <i>fit for all duties but may have limitations as to type of duties and areas of employability depending on whether the duties involve severe stress or demand acuity of hearing/vision of both ears/eyes.</i> |



- 3 - *Excepting 'S' factor, fit for routine or sedentary duties but may have limitations of employability at high altitude (above 2,700 meters) extreme cold areas/hilly terrain and for lone assignments.*
- 4 - *Temporarily unfit for military duties on account of hospitalisation/sick leave*
- 5 - *Permanent unfit for military duties*

13. Since the petitioner had been insulin dependant for over four years prior to his invalidment out of service and he had been receiving 40 units or more of insulin for many years, he was released from service on medical grounds in conformity with Para 10 (c) (ii) of the Director General Armed Forces Medical Services Medical Memorandum No. 107 which reads as under;

*“(ii) If on completion of this period, the insulin dose remains above 40 units and/or complications have not regressed, they will be invalided out. If the insulin requirement is 40 units or less and complications have regressed, they will be placed in P-3 permanent.”*

14. It stipulates that on completion of this period, if the insulin dose remains over 40 units and if the complications have not regressed then they will be invalided out. Therefore, the Medical Board had acted in accordance with the advice of the medical specialist. The opinion of the Ophthalmology has been separately recorded in this Medical Board wherein the Ophthalmology has graded the petitioner as E3(P). Therefore, it was not on account of his Proliferative Diabetic Retinopathy that he was invalidated out but because of his P5 status. The medical board proceeding had been

approved by the accepting authority i.e. the Director General Armed Forces Medical Services on 03.07.1998.

**15.** The malafides that have been alleged against Respondent no. 4, Col. A.S. Rathore have been explained by him in a separate reply, however the issues raised by the petitioner against the officer are not of a medical nature and rather of an administrative nature. However, Col. A.S. Rathore has replied that all the allegations are frivolous and irrelevant. The issue pertaining to the case that is about any conspiracy between him and Respondent no. 5, Col. M.K. Mahapatra has been denied.

**16.** Another separate reply has also been filed by Respondent no. 5, Col. M.K. Mahapatra who has stated that the allegations of the petitioner are false and without jurisdiction and that no malafides can be attributed against him as he never met the individual before 08.11.1997. He was posted in Jodhpur whereas petitioner was posted in Udaipur which is about 250 kms from his duty station. He has also stated that he has known the petitioner only in his official capacity as Senior Advisor (Medicine) at MH, Jodhpur and had no past dealings with him. Col. M.K. Mahapatra has vehemently denied ever having any conversation with Col. A.S. Rathore about the petitioner, therefore, there was no question of any bias or prejudice which is against the ethics of a doctor. Col. M.K. Mahapatra has stated that since the last many years petitioner's Insulin (Bovine) requirement was more than 40 units, it was likely to affect his retinopathy as well as sensory motor neuropathy which is a serious progressive complication of IDDM affecting the peripheral nervous system. Accordingly, a decision was taken to invalid the petition from military

services in medical category P5. He has also stated that once the petitioner came to know that he is being invalided out of military service for the reason that his insulin requirement was more than 40 units a day, petitioner started various means to cause hypoglycaemia despite medical advice, like missing a meal in the ward while he had taken insulin, doing more exercises despite medical advice. He had lost further weight.

**17.** Col. M.K. Mahapatra has also stated that though there is no doubt that Human Insulin is better than Bovine Insulin, however Human Insulin being costly is not available at every nook and corner of India where Army is deployed, therefore, Bovine Insulin is usually prescribed as a matter of routine. He has also stated that Invalidating Medical Board was held by 3 officers who considered the opinion of the specialist officer to come to a decision. In the petitioner's case, IMB was held on 20.01.1998 and was presided over by Offg Comdt Col G Mittal and invalidment of the petitioner was approved by a Senior Administrative Medical Officer, Brig P.K. Sarkar on 27.03.1998 and also confirmed by Senior Administrative Medical Officer i.e. DDMS HQ Southern Command Maj Gen AVV Rao on 07.04.1998. After that IMB was accepted by the Director General Medical Services, Army at Army HQ on 31.07.1998. It is further stated that invaliding of the petitioner was in conformity with the standing directives from higher medical authorities on Diabetes Mellitus (DGAFMS Medical Memorandum No. 107 issued in Oct 1977 Para 10 (c) (ii).

**18.** Learned counsel for the respondents argued that time and again the various Courts had upheld the argument that finally it was the recommendation and decision of the Medical Board which would be treated as the final authority, until and unless some bias or other serious infirmity had taken place in such board proceedings. In the case of the petitioner, there was no infirmity in the proceeding of IMB and the petitioner has been very correctly invalidated out on account of his P5 medical category status. The same Medical Board had also granted him disability as attributable to military service and had assessed the degree of disability as composite 50% for 5 years. In view of the Government of India letter of 31.01.2001, since it was an invalidment case post 1996, the percentage of disability was to be treated as 75% and this is being rightly paid to the petitioner. There has been no infirmity in the complete proceedings and the authorities have proceeded in accordance with law in the matter.

**19.** Keeping in view the above, we do not find any need to interfere in the matter. Accordingly, the petition is dismissed. No order as to costs.

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

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

**New Delhi**  
**April 19, 2012**  
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