

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI
CIRCUIT BENCH AT HYDERABAD**

O.A.(Appeal) No.53 of 2014

Tuesday, the 19th day of January, 2016

The Honourable Justice S.S.Satheesachandran
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex No. 15317589W Sep Adinarayana Pandaram
Age 35 years, S/o P Krishna Reddy
Vill Chinnasingamala, Post Padakannali
Taluk Shrikalahasthi, District Chittoor (AP)
PIN – 517 642

...Applicant

By Legal Practitioner:
Mr.B.A.Thayalan

vs

1. The Government of India, Ministry of Defence (Army)
Through the Secretary, South Block, New Delhi
PIN: 110 011
2. The Chief of the Army Staff
Army Headquarters, Sena Bhavan
DHQ Post, New Delhi – 110 011
3. The Officer in-Charge, Records
The Madras Engineering Group
PIN 900493, C/o 56 APO
4. The Commanding Officer
Training Battalion III, MEG and Centre
Bangalore – 33
5. The Principal Controller of the Defence Accounts (Pension)
Draupathi Ghat, Allahabad (UP)
PIN: 211014

...Respondents

Mr.S.Haja Mohideen Gisthi, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

We have passed an order to this OA (A) No.53 on 03 August 2015 to substitute the punishment of "dismissal from service" awarded to the applicant to one of "discharge from service" and directed the respondents to convene a Release Medical Board for the purpose of assessing the claim of disabilities (i) 'Generalised Seizures'; and (ii) Alcohol Dependence Syndrome', at MH, Secunderabad and to place the said Release Medical Board proceedings before the Tribunal by 15 October 2015. The respondents have now submitted their report of the Release Medical Board and its opinion.

2. We have carefully perused the proceedings and the opinion given by the Medical Board.

3. The Medical Board had found the disability "Generalised Seizure (G.40.3)" was aggravated by service and have opined that the disease had its *"onset while serving in Fd/HAA in May 2005. Hence aggravation conceded due to the stress and strain of mil service in Fd (Para 33, Ch-VI, GMO-2008 & Initial Medical proceeding (AFMSF-15) dt 07 Aug 2006"*. The Board has assessed this disability at 20% composite for life.

4. As for the other disease, i.e., "Alcohol Dependence Syndrome (F10.0;Z09), the disability was held to be 40% for life. However, the Release Medical Board held that the said disease is neither attributable to nor aggravated by military service and opined that the illness is *"due to patient's own habit of alcohol*

consumption unrelated to conditions of mil service, despite treatment and medical advice to abstain. Hence NANA.” Col Harpreet Singh, Senior Advisor (Psychiatry), MH, Secunderabad in his sum-up on the applicant's disease 'Alcohol Dependence Syndrome' has stated : "A case of Alcohol Dependence Syndrome who is currently abstaining from alcohol. Recommended to be placed & released from service in cat S2 (Permt)."

5. It is a settled principle that the opinion of the Medical Board need to be given primacy and credence while awarding disability pension, as has been upheld in various judgments of the Hon'ble Apex Court including in the case of A.V.Damodaran v UOI & Ors reported in (2009) 9 SCC 140. We are inclined to agree with the said opinion of the Release Medical Board. Accordingly, the applicant is entitled for disability pension in respect of ID 'Generalised Seizure' alone at 20% for life and the claim for disability pension for Alcohol Dependency cannot be conceded.

6. In accordance with Para 7.2 of the Government of India MOD letter No.1 (2)/97/I/D (Pen C) dated 31.01.2001, when an Armed Forces person is invalided out under circumstances as given in para 4.1 of the said order, they are entitled to broad-banding of disability pension. Since the applicant's invalidment falls within the above-mentioned parameters, he is entitled to broad-banding of the said disability element from 20% to 50% for life.

7. In reversal of the order of dismissal passed against the applicant this Tribunal has held that he is deemed to have been discharged w.e.f.15.10.2010, under the previous order dated 3.8.2015. He had service of only 11 years and three months and as such not having the qualifying service of 15 years to have service pension. Disability pension with respect

to his disability element of 20% for life rounded off to 50% has to be reckoned with reference to the Pension Regulations for the Army, 2008. The relevant Regulations applicable are Regulations 81, 95 and 98, which read thus:

"81. (a) Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.

Explanation

There shall be no condition of minimum qualifying service for earning service element.

(b) The question whether disability is attributable to or aggravated by military service shall be determined under the Entitlement Rules For Casualty Pensionary award, 1982 as laid down in

APPENDIX – IV of these Regulations.

xxx

xxxx

xxxx

INDIVIDUAL DISCHARGED BEING PERMANENTLY IN LOW MEDICAL CATEGORY

"95. Individual who is placed in a low medical category (other than 'E') permanently and who is discharged because no alternative employment in his own trade/category suitable to his low medical category could be provided or who is unwilling to accept the alternative employment or who having been retained in alternative appointment is discharged before completion of the engagement, shall

be deemed to have been invalidated out of service under the Entitlement Rules for Casualty Pensionary Awards, 1982 as laid down in **APPENDIX-IV** to these Regulations. This provision shall also apply to individual who is placed in a low medical category while on extended service and is discharged on that account before completion of the period of his extension."

xxx

xxxxx

xxxxx

AMOUNT OF DISABILITY PENSION

"98. The amount of disability pension consisting of service element and disability element shall be as follows:-

(a) Service element payable for life –

- | | | |
|------|--|--|
| (i) | Where the individual has rendered sufficient service to earn service pension | Equal to normal service pension as determined under Regulation 50 for qualifying service actually rendered plus weightage as admissible. |
| (ii) | Where the individual has not rendered sufficient service to qualify for service pension. | <p>(a) If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority:- The minimum service pension appropriate to his rank and group, if any.</p> <p>(b) In all other cases:-
Equal to the service pension as determined under Regulation 50 for qualifying service actually rendered plus weightage as admissible. The amount</p> |

of service pension shall in no case be less than $\frac{2}{3}$ rd of the minimum service pension admissible to the rank/pay group. It shall be further subject to the ceiling prescribed for minimum pension.

(b) Disability element on Invalidment -

- (i) The disability element shall be payable for the period for which disability has been accepted. The rates of disability element for 100% disability for the rank last held shall be as under:

Junior Commissioned Officer	Rs.1900/- p.m.
Other Ranks	Rs.1550/- p.m.

- (ii) Disability lower than 100% shall be reduced with reference to percentage as laid down in clause (c) below. Provided that where permanent disability is not less than 60%, the disability pension (i.e., total of service element plus disability element) shall not be less than 60% of the reckonable emolument last drawn by the individual.
- (c) The extent of disability or functional incapacity shall be determined in the following manner for the purpose of computing disability element in:

Percentage of disability element as finally accepted:	Percentage to be reckoned for computing disability element:
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

In the context, it has also to be noted that under the new Regulations as under Regulation 95, it has been emphatically made clear that an individual who is placed in low medical category permanently and is discharged, even where he is unwilling to accept alternate employment, shall also be deemed to have been invalided out of service under the Entitlement Rules for Casualty Pensionary Awards. So much so, in the present case where the applicant is held to have been discharged with an invaliding disease having disability element of 20% for life he is entitled to have disability element of disability pension w.e.f. 15.10.2010, the date of his discharge. Regulation 98 spells out that disability pension consists of service element and disability element and further how the same has to be arrived at and paid. In the case of the applicant, who had insufficient service to earn regular pension, his service element for the purpose of providing disability pension to him has to be reckoned in terms of Regulation 98 (a)(ii)(b), i.e., proportionate to the length of service rendered by him. The rates of amount due towards disability element fixed at 20% for life rounded off to 50% has to be determined with reference to Regulation 98 (b) and (c) referred to supra.

8. The applicant though found entitled to have disability pension from the date of his discharge, the arrears on such pension will be restricted to three years prior to the date of filing of the O.A. in accordance with the settled principles laid down by the Apex Court in the case of **Union of India & Ors. V. Tarsem Singh (2008) 8 SCC 648.**

9. In the result the O.A. is allowed directing the respondents to issue PPO granting the applicant disability pension from the date of his discharge, i.e., 15.10.2010, but restricting the arrears payable on such pension to three years prior to the filing of the O.A. The applicant shall also be granted gratuity and such other monetary benefits for his service, if otherwise eligible. Monetary benefits due to the applicant in terms of the order shall be released within a period of three months from the date of receipt of the order, failing which on the sum due the respondents are liable to pay simple interest at the rate of 9% p.a. till payment. No order as to costs.

10. The Advocate's fee for the Legal Aid Counsel appearing for the applicant is fixed at Rs.5,000/- and the Tamil Nadu State Legal Services Authority, Chennai – 600 014 is directed to pay the said fees towards the services rendered by Mr.B.A.Thayalan, learned counsel for the applicant.

Sd/-

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Justice S.S.Satheesachandran
Member (Judicial)

19.01.2016

True copy

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet: Yes/No

Ap

NB to Registry: The order passed by us in OA 53/2014, dated 03.08.2015, shall be attached with this order.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice S.S.Satheesachandran
Member (Judicial)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**O.A.(Appeal) No.53 of 2014****Mondy, the 03rd day of August, 2015**

The Honourable Justice V.Periya Karuppiah
 (Member-Judicial)
 and
 The Honourable Lt Gen K Surendra Nath
 (Member-Administrative)

Ex No. 15317589W Sep Adinarayana Pandaram
 Age 35 years, S/o P Krishna Reddy
 Vill Chinnasingamala, Post Padakannali
 Taluk Shrikalahasthi, District Chittoor (AP)
 PIN – 517 642

...Applicant

By Legal Practitioner:
 Mr.B.A.Thayalan

vs

1. The Government of India, Ministry of Defence (Army)
 Through the Secretary, South Block, New Delhi
 PIN: 110 011
2. The Chief of the Army Staff
 Army Headquarters, Sena Bhavan
 DHQ Post, New Delhi – 110 011
3. The Officer in-Charge, Records
 The Madras Engineering Group
 PIN 900493, C/o 56 APO
4. The Commanding Officer
 Training Battalion III, MEG and Centre
 Bangalore – 33
5. The Principal Controller of the Defence Accounts (Pension)
 Draupathi Ghat, Allahabad (UP)
 PIN: 211014

...Respondents

Mr.S.Haja Mohideen Gisthi, SCGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant Ex-Sep Adinarayana Pandaram has filed this Original Application seeking to set aside the Summary Court Martial proceedings and quash the dismissal order promulgated by the SCM on 21.02.2009, on extreme humanitarian grounds and convert the same into discharge as also to direct the respondents to order a Resurvey Medical Board to assess his disability and to grant him invalid / disability pension.

2. Briefly, the applicant was enrolled in the Army on 12.05.1997 and would state that he had served in the North-East and high altitude postings which resulted in his poor physical and mental condition. While serving in Leh, J&K, he had suffered generalized seizure and the Medical Board held on 25.07.2005 had placed him in low medical category S1 H1 A1 P3 (T 24) E1 and the Board held that the said disability was aggravated by military service due to emotional stress, physical exhaustion and service in high altitude areas. Further, during the Medical Board proceedings held on 08.02.2008, he was also found to be suffering from Alcohol Dependence Syndrome. The said Medical Board proceedings revealed that he was suffering from two disabilities, i.e., generalized seizures categorized as S1 H1 A1 P2 E1 and Alcohol Dependence Syndrome, with effect from July 2007 and categorized as S3 (T 24) H1 A1 P1 E1. He would state that due to his disabilities, his behaviour became erratic and had resulted in him being summarily punished for intoxication and absence without leave and ultimately, tried by SCM on 21.02.2009 on two separate charges of absence without leave, by Trg Bn Cdr III, MEG Centre Bangalore and awarded the punishment of dismissal from service. He would state that the appropriate

authorities ought to have considered his mental state caused due to generalized seizures and alcohol dependence syndrome which resulted in the said offences. He should have been treated for these disabilities or, at the most, invalided out of service. Instead, the authorities chose to punish him through a Summary Court Martial and dismissed him from service. Even though the applicant had pleaded with the authorities to convert his dismissal to discharge from service and to grant him disability / invalid pension, he was given no relief. He would further submit that he is from a poor family and has a wife and two children and aged parents to look after and, therefore, considering the physical, emotional and the mental condition that he was in at the time the offences were committed, these be condoned and he be granted discharge from service and placed before a Re-Survey Medical Board for his disabilities.

3. The respondents, in their reply statement, have not disputed his enrollment in service and the dismissal from service by the SCM for two offences, i.e., (i) absenting himself without leave from the Unit from 2230 hrs on 02.12.2008 to 1900 hrs on 19.12.2008; and (ii) absenting himself without leave from the Unit lines from 0800 hrs on 06.01.2009 to 1700 hrs on 09.02.2009, under Army Act Section 39 (b). At the time of his dismissal from service, the applicant had a total service of 11 years, 9 months and 19 days excluding non-qualifying service. On verification of the service records of the applicant, it is seen that he was habitual of indulging in various unwanted activities like absenting himself without leave, overstaying of leave and intoxication. Prior to the SCM, the applicant already had 5 Red Ink entries and, thereafter, he had been tried by SCM for absenting himself without leave on two separate occasions. They would further state that as per the provisions contained in Rule 1 and 3 of Pension Regulations for the Army (1961) Part I, an individual who is dismissed under the provisions of Army Act is

ineligible for pension or gratuity for previous services rendered and, hence, the applicant is not entitled to disability pension under the framework of rules and orders on the subject. They would state that the punishment given by the SCM is commensurate to the previous disciplinary record of the applicant as well as the offences for which he was charged by the SCM. They would further contend that there is no record of psychiatric treatment found on the service records of the applicant and his claim of disability, "Alcohol Dependence Syndrome", is due to his mentally disturbed condition cannot be accepted. In view of the foregoing, the respondents pray for the dismissal of the case being devoid of substance and merit.

4. We have heard the arguments of Mr.B.A.Thayalan, learned counsel for the applicant and Mr.S.Haja Mohideen Gisthi, learned Senior Central Government Standing Counsel, assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents and perused all the documents submitted before us.

5. Flowing from the pleadings on either side, the following questions emerge for consideration:

- (i) *Is the claim of the applicant that his erratic behavior during 2008 was due to the emotional and mental instability caused due to the two disabilities suffered by him, tenable?*
- (ii) *Are the proceedings of the Summary Court Martial conducted in accordance with the provisions of Army Act 1950 and Army Rules 1954?*
- (iii) *Whether the punishment awarded is commensurate to the offences committed?*
- (iv) *What relief, if any, the applicant is entitled to?*

6. It is not disputed that the applicant had served in several field and high altitude areas and that while serving in Leh, J&K he was found to be

suffering from 'generalized epilepsy' for which the Medical Board opined that it was aggravated by military service due to emotional stress, physical exhaustion and service in the high altitude areas. The applicant, thereafter, was also found to be suffering from Alcohol Dependence Syndrome. The learned counsel for the applicant would further argue that the generalized seizure, together with alcohol dependence syndrome, is a heady cocktail and, therefore, he ought to have been treated for these disabilities by a psychiatrist under guidance. He would also plead that the erratic behavior of the soldier manifested itself from 2008 onwards as can be seen from the offences and punishment awarded to him in the year 2008-2009. He would also state that the applicant had only one Red Ink entry punishment in 2006 for absence without leave. Thereafter, in a short span of 10 months from April 2008 to February 2009, he had committed several offences which included absence without leave and intoxication. The Army authorities, instead of looking at the possible reasons for this erratic behavior of the applicant, had merely taken a legalistic view and punished him disproportionately for the offences committed by him. The counsel would plead that the respondents ought to have recognised the linkage between the two disabilities and their possible effect on the mental and emotional stability of the soldier and referred him for psychiatric treatment or, utmost, could have invalidated him out of service for the said disabilities. He would, therefore, plead that the SCM ought to have taken into consideration the mental state of the applicant before finding him guilty of the two offences and dismissing him from service.

7. *Per Contra*, the respondents would state that the applicant was a habitual offender and he was a bad example to the organisation and he had five Red Ink entries prior to the conduct of the SCM and they would deny the claim

of the applicant that Alcohol Dependence Syndrome was due to mentally disturbed condition; they would state that the medical records would show that he was in the habit of drinking from the year 2002 onwards and that Alcohol Dependence Syndrome is basically a weakness for liquor and is not due to any mental condition. They would also buttress their claim by stating that no other soldier from the Unit has suffered from such a disability due to military duties. They would further submit that Alcohol Dependence Syndrome was caused due to his own fault, i.e., by consuming excessive quantity of liquor and nobody else can be blamed for this.

8. We have examined the documents placed before us, the copies of offence reports as well as his previous disciplinary records. The applicant had one Red Ink entry punishment for overstaying of leave in the year 2006. All other offences for which the applicant was punished appear to have commenced from April 2008; he had committed a series of offences which were in the nature of absence without leave / overstaying of leave and intoxication. He was sentenced to 28 days of RI for absenting himself for a period of 3 days from 22.04.2008 to 25.04.2008 which appears to be a grossly excessive punishment. Similarly, he received further 3 punishments for absenting himself without leave and two punishments for intoxication and absence without leave for one day. Finally, he was tried by SCM for absenting himself on two separate occasions under Army Act Section 39 (a).

9. *Prima facie*, the series of offences committed by the applicant since April 2008 till his dismissal from service are in the nature of absence without leave and intoxication. These offences occurred in a span of 8 months which leads us to question this sudden and erratic behavior of a soldier who, otherwise, had only one Red Ink entry till then. There seems to be some

credence to the argument of the applicant's counsel that the behavior of the applicant during this period is due to his mentally disturbed condition. We have examined the medical records of the applicant for clues, if any, for such behavior. We note that he had suffered generalized seizure while serving in High Altitude areas in Leh, Ladakh (J&K) on 14.05.2005 and the Medical Board had opined that the disability was contracted in service and in circumstances over which the applicant had no control. Even though it was not directly attributable to service, the Medical Board opined that it was aggravated by service due to emotional stress, physical exhaustion and service in high altitude area. As per the doctor's records, the applicant suffered two episodes of seizures and he was to be continually placed in medical category S1 H1 A1 P1 E2. Further, we observe that he was hospitalised on 25.07.2007 at the behest of Unit authorities for his alleged misbehavior with civilians due to the influence of alcohol the previous day. It was reported that he was an uncontrollable drinker and his performance was unsatisfactory under stress. However, he was recommended for retention in service. He was placed in medical category S3 (T 24) H1 A1 P1 E1 with effect from 17.08.2007 for the said disability. However, in the last review conducted in August 2008 in AF Command Hospital, Bangalore, the doctors opined that the applicant had shown improvement and did not show any significant alcohol dependence syndrome, craving or substance seeking behavior. He was recommended to be placed in medical category S2 (T 24) and was recommended to continue in the same category. He was advised strict abstinence from alcohol and was given medication as well as recommended for regular review by the AMA (Authorised Medical Attendant).

10. A perusal of the Summary Of Evidence (SOE) recorded by Maj HS Wazir from 12 to 14 February 2009 on charges of Absence Without Leave (AA

Sec 39(a)) regarding his absence without leave shows, virtually all witnesses have stated that the applicant had been kept under close surveillance and there were several episodes of drunken behavior both within and outside the Unit. For a better understanding of the behavior of the applicant, statements of PW-1 and PW-4 during the recording of Summary of Evidence is reproduced below:

Prosecution Witness No.1

1. *I, No.JC 306293L Sub Aravindakshan PM of BHQ, Training Battalion III, MEG and Centre states that:-*
2. *I recognize No.15317589W Spr Adinarayana Pandaram of Michael Coy, Trg Bn III, MEG and Centre, in front of me as accused.*
3. *I have been posted to Trg Bn III, MEG and Centre from GE Dinjan, Assam on 24 Apr 2006 and posted to BHQ to work in A Branch. I was Offg Head Clk of the Bn from 05 Jul 08 to 04 Dec 2008 when Sub Maj/Clk R Suresh Kurup proceeded on discharge.*
4. *No 15317589W Spr Adinarayana Pandaram was posted to Trg Bn III, MEG & Centre from 3 Engr Regt on 28 Mar 2008. The indl was in low med cat P2 (P) for 'GENERALISED SEIZURE' wef 07 Jan 2008 and P2 (T 24) for 'ALCOHOL DEPENDENCE SYNDROME' wef 08 Feb 2008 and the indl had the following red/black entry when he reported to the Bn:-*
 - (a) *28 days RI and seven days Pay Fine from 3 Engr Regt under AA Sec 39(b)(OSL) and 39(a) (AWL) on 22 Aug 2006.*
 - (b) *14 days Pay Fine from 753 BRTF (GREF) unde AA Sec 39(a)(AWL) and 54(b)(Loss of Iden Card) on 01 May 2007.*
5. *After seeing the above record from his docu, I had advised him to be proper in his duties and desist from becoming AWL/OSL in future which may adversely affect his career. I interact with him very closely whenever I met and used to repeat my advise. But, despite my advise, he continued his bad habits and had committed the following offences between the period from Jun 2008 to Nov 2008:-*

<i>Ser No</i>	<i>Date of offence</i>	<i>Offence</i>	<i>Punishment awarded</i>
<i>(a)</i>	<i>22 Apr 2008</i>	<i>Absent without leave from 22 Apr 08 to 25 Apr 08 (04 days)</i>	<i>Awarded 28 days RI on 03 Jun 2008</i>
<i>(b)</i>	<i>26 Apr 2008</i>	<i>Intoxication on 26 Apr 2008 while on duty</i>	
<i>I</i>	<i>07 May 2008</i>	<i>Absent without leave from 07 May 08 to 15 May 08 (09 days)</i>	
<i>(d)</i>	<i>19 May 2008</i>	<i>Absent without leave from 19 May 08 to 25 May 08 (07 days)</i>	
<i>(e)</i>	<i>17 Jul 2008</i>	<i>Absent without leave from 17 Jul 08 to 22 Jul 08 (06 days)</i>	<i>Awarded 14 days RI on 25 Jul 2008</i>
<i>(f)</i>	<i>04 Sep 2008</i>	<i>Intoxication on 04 Sep 2008 while on duty</i>	<i>Awarded 14 days RI on 05 Sep 2008</i>
<i>(g)</i>	<i>14 Nov 2008</i>	<i>Intoxication on 14 Nov 2008 while on duty</i>	<i>Awarded 14 days RI on 19 Nov 2008</i>
<i>(h)</i>	<i>15 Nov 2008</i>	<i>Absent without leave from 15 Nov 08 to 19 Nov 08 (05 days)</i>	

6. Besides the above, the indl had become AWL in two occasions for 30 days & 35 days during Dec 08/Jan 09 for which discp action against the indl is pending.
7. The indl had been directed to med auth whenever he fell sick and for re-cat med bd along with AFMSF-10 as per directions from medical authority.
8. The above statement has been read over to me in the language I understand I sign it as correct.

Station: C/o 56 APO
Date: 12 Feb 2008

Sd/-xxx
(JC-306293L Sub Aravindakshan PM)

"Prosecution Witness No.4

1. I, JC-307052X Sub & Hon Lt K Nagarathinam of Trg Bn III, MEG and Centre states that:-
2. I recognize No.15317589W Spr Adinarayana Pandaram of Michael Coy, Trg Bn III, MEG and Centre, in front of me as accused.
3. I have been posted to Trg Bn III, MEG & Centre from Dep;ot Bn, MEG & Centre during June 2006. No.15317589W Spr Adhinarayana Pandaram joined the Bn on 28 Mar 2008 from 3 Engr Regt and was directed to Michael Coy. Ever since his arrival in the Company our efforts were being diverted towards guarding this individual from going out of bounds, intoxication, etc.
4. He has never personally confessed about his family problems of any sort. In fact, the Coy has facilitated him to live with his family. He was allotted family quarter at Meanee Lines (77/2) on 22 Jul 2008 when he suddenly landed up with his family in Jul last year. In spite of his wife and small child being with him, he failed to correct himself. He still used to get drunk. At times, he was absent from both place of duty and his house. Apparently he did not have maj medical problems. He was however once directed by the CO to CHAF Bangalore on AFMSF-10. He remained admitted there for a few days during which I had visited him. The CO also had visited him in the upper medical ward. He had informed that he was thoroughly examined including CT Scan. In the discharge slip recd, no special abnormality has been ascribed to him. I hereby produce copy of discharge slip. oHe is however in LMC for 'GENERALISED SEIZURE' and 'ALCOHOL DEPENDENCE SYNDROME'.
5. During his tenure in the Bn he has had four red ink entries for offences committed under Army Act. He became absent from the Coy on 02 Dec 2008. This was the day he was released from 14 days RI.. He rejoined voluntarily on 31 Dec 08. He had been again absent wef 06 Jan 2009 and thereafter declared deserter. On 09 Feb 09, he was found in a Bar near Mukunda Theatre from where he was picked up. He was in uniform and apparently wanting to report back to the Company. During the current period of absence there were many reports from the civilians in Bangalore regarding his misdeeds. There was a report from a pub in Bangalore that he had consumed liquor from their shop and thereafter refused to pay. He had run away from their custody when they had tried to lock him up. It also heard that he had taken a taxi on hire from some car rental shop to proceed to Thirupathi from Bangalore and on reaching Thirupathi he had run away without paying the taxi owner.
6. To summarise, I must state that ever since he arrived in the Bn, he has not done any productive work for the Bn and has been more of a nuisance. Our efforts of trying to reform him have been wasted.

7. *The above statement has been read over to me in the language and I understand and I sign it as correct.*

*Station: C/ 56 APO
Date: 14 Feb 2009*

*Sd/. (JC-307052X Sub & Hony Lt K
Nagarathinam)"*

[Emphasis supplied by us]

11. Further, the medical records would show that the applicant was placed in medical category S3 (T 24) for Alcohol Depedence Syndrom with effect from August 2007 and was further reviewed at Air Force CH, Bangalore in February 2008 and where he was placed in medical category S2 (T 24) and, thereafter, again in August 2008. From the opinion of the Graded Medical Specialist (Psychiatry), it appears that he was hospitalized on 25 July 2007 at the behest of the Unit authorities for his history of misbehavior with civilians under the influence of alcohol. Even though he was a social drinker, his consumption levels gradually increased and by 2001 – 2002 he was having 2-3 large pegs of alcohol almost all evenings, associated with features such as craving and tolerance. The Psychiatrist further opined that he had 5-6 episodes of generalized seizures which were also likely to be alcohol withdrawal seizures. Even though he was under strict instructions not to consume alcohol he, however, continued consumption. The doctors would further state that he was managed with forced abstinence and detoxication, vitamin supplements, individual and group therapy and was advised strict abstinence from alcohol and reviewed by AMA. For a better understanding, extracts of the Psychiatric opinion is reproduced below:

“ xx xx xx xx

He was managed with forced abstinence, detoxification, vitamin supplements, individual and group therapy, alcohol psychoeducation, relapse prevention counseling including his wife and other supportive measures. He responded to treatment and was then placed in S3 (T 24).

During next review in Feb 2008, he reported complete abstinence from alcohol. AFMSC-10 dt 31 Jan 08 reported him to have improved to preillness

level, abstinent from alcohol, satisfactory vocational performance & recommended retention in service.

During current review and recat, physical exam & ward observation did not show any alcohol withdrawal features, craving or substance seeking behaviour. AFMSF 10 dt 09 Aug 2008 describes him to be having weakness for alcohol and recommends his retention in service. MSE revealed a kempt individual with relevant & coherent speech, euthymic affect, no depressive cognitions or psychotic features, clear sensorium and stable biodrives. Relevant investigations incl MCV & LFT were WNL.

He has been given the benefit of indl & group psychotherapy & relapse prevention counseling and is motivated for complete abstinence from alcohol.

In view of absence of no clinical or biochemical evidence of relapse, satisfactory response to treatment & unit recommendation to retain him in service, he is recommended to continue in LMC S2 (T 24) and to be reviewed with fresh AFMSF-10 x 3 thereafter.

Advised:

- (1) Strict abstinence from alcohol*
- (2) Tab Topiramate (25 mg) 3 HS*
- (3) Employability restrictions as per AO 3/2001*
- (4) Review by AMA weekly.*

*Sd/- Lt Col
Graded Psychiatrist"*

12. From the statement before the Summary of Evidence as well as the Psychiatric report, it is evident that, though the applicant was advised strict abstinence from alcohol, he continued to have several episodes of drunkenness and intoxication. Further, his Commanding Officer had himself admitted that "he was a heavy drinker and apparently there are no stresses, the applicant has a weakness for liquor". Even though the applicant was alcohol dependent and as advised by the Psychiatrist, he was to be reviewed by AMA (Authorised Medical Attendant) which, in this case, ought to have been Regimental Medical Officer or O I C MI Room. There is no record to suggest that the applicant was reviewed by the AMA on a regular basis, despite the fact that he was found to be in intoxicated state on several occasions, as is evident from the statements of PW 1 and PW 4 above.

13. It is pertinent to note that even after the last review by the medical authorities on 25 August 2008, the applicant was found intoxicated on 04 September 2008 and again on 14 November 2008 for which he was punished. We also observe that on completion of punishment of 14 days RI awarded to him on 19 November 2008, he again became absent on the day he was released from RI, i.e., 02 December 2008 till he rejoined duty on 31 December 2008. Further, the applicant again absented himself from 06 January 2009 and on 09 April 2009, he was again found at a bar in a drunken state in Bangalore. During this period of absence, as per the statement of PW 4, there were many reports from civilians in Bangalore regarding his misdeeds which include consuming liquor and refusing to pay.

14. In view of the foregoing, we find some substance in the plea of the learned counsel for the applicant that the erratic behavior of the applicant was due to the continued effect of seizure coupled with alcohol dependence and, therefore, he ought to have been admitted to hospital for psychiatric counseling as advised by the Graded Medical Specialist or, invalided out of service for the said disease. Even though his Commanding Officer and superior authorities were legally correct in punishing the applicant for the said offences, merely punishing a soldier who needs psychiatric support and help, would not cure the problem but would only lower the self-esteem of the soldier and further perpetuate such erratic and unsoldierly behavior. This is all the more evident from the fact that the applicant had only 1 Red Ink entry prior to 2006 and after joining the new Unit in February 2008, he has been involved in a series of offences culminating in 4 more Red Ink entries and the SCM. While, *prima facie*, we do not find any procedural infirmities in the conduct of the SCM, we are of the view that the conduct of the SCM itself was not really warranted for the nature of the offences committed and he could well have been dealt with under Army Act Section 80. However, we do not wish to pass any further

observations on the choice of trial chosen by the Commanding Officer as it is entirely his prerogative. The applicant was found guilty by the SCM and he was awarded punishment of 'dismissal from service'.

15. The question that remains to be answered is whether the punishment given by the Court, i.e., 'dismissal from service' is commensurate to the offences committed. In awarding the said punishment, the Commanding Officer observed the following with respect to the applicant:-

"It is evident from the Summary of Evidence that the accused has without reason committed the offence of absenting himself without leave. The recording of Summary of Evidence also brings out the fact that he has been a habitual offender. He had been awarded five red ink and two black ink entries on charges of intoxication and absenting himself without leave. He has shown no improvement in spite of regular counseling and medical support. His habits have caused avoidable waste of organizational effort in guarding him. Through his absence he has not been able to serve the organization fully. His continued absence in active service is setting a bad example for others and is detrimental to the interests of the service and the organization. The punishment of Dismissal (to be dismissed from service) awarded to him meets the end of justice."

16. From the above, it is evident that in awarding the punishment "Dismissal from Service", the Commanding Officer was influenced by the disciplinary aspects of absence without leave and intoxication, both punishable under Army Act and the need to give exemplary punishment. However, he seemed to have ignored the fact that the applicant was suffering from Alcohol Dependence Syndrome and that all offences committed by him were linked to craving for alcohol which lead to erratic behavior. Though, the Commanding Officer has claimed that he was being given medical support for the said diseases, as we have observed earlier, no such support was provided by the AMA, as mandated by the Review Medical Board. On the other hand, it is evident from the statements of Prosecution Witnesses that the applicant

was suffering from serious Alcohol Dependence Syndrome. An early intervention and appropriate medical support and treatment would have been more prudent. In view of the foregoing, and considering the medical condition of the applicant and

circumstances under which the said offences were committed, there are sufficient grounds favouring mitigation of the punishment of dismissal from service.

17. In fine, we are inclined to agree with the counsel for the applicant that the punishment of dismissal from service is unduly harsh considering the circumstances and the medical condition of the applicant. We, therefore, substitute the punishment of 'dismissal from service' to one of 'discharge from service'.

18. Since the applicant was in medical category for two IDs, i.e., 'Generalised Seizures' and 'Alcohol Dependence Syndrome', at the time of termination of service and the first ID was accepted as aggravated by the military service, he is entitled to be placed before a Release Medical Board at the time of discharge from service. Accordingly, we direct the respondents to convene a Release Medical Board for the applicant at MH, Secunderabad within one month from the date of this order. The respondents shall intimate the date of convening of the Board to the applicant, whereupon, he shall present himself for the said medical examination. The respondents are directed to place before us the result of the proceedings of the Release Medical Board by 15 October 2015.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

03.08.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Secretary, Ministry of Defence
South Block, New Delhi
PIN: 110 011
2. The Chief of the Army Staff
Army Headquarters, Sena Bhavan
DHQ Post, New Delhi – 110 011
3. The Officer in-Charge, Records
The Madras Engineering Group
PIN 900493, C/o 56 APO
4. The Commanding Officer
Training Battalion III, MEG and Centre
Bangalore – 33
5. The Principal Controller of the Defence Accounts (Pension)
Draupathi Ghat, Allahabad (UP)
PIN: 211014
6. Mr.B.A.Thayalan
Counsel for the applicant
7. Mr.S.Haja Mohideen Gisthi, SCGSC
Counsel for the respondents
8. The Member Secretary
Tamil Nadu State Legal Services Authority
High Court Campus
Chennai – 600 104
9. Officer in-Charge
Legal Cell
Dakshin Bharat Area
Chennai-600009.
10. Library, AFT, RB, Chennai.

Hon'ble Justice S.S.Satheesachandran
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.(Appeal) No.53 of 2014

Dated : 19.01.2016