

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 12749 OF 2017

SQN LDR MUKUND SHARMA

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

O R D E R

The appellant herein filed O.A. No. 7 of 2016 before the Armed Forces Tribunal (hereinafter referred to as the "AFT") for quashing of the orders passed by the respondent-authority *vide* which the appellant was *inter alia* directed to undergo medical evaluation by a competent Medical Board. The challenge of the appellant was predicated on the submission that the appellant was made to undergo the said medical examinations unnecessarily. It was submitted by him that due to certain reasons, some of the Officers became vindicated towards him. They started hatching conspiracy with Senior Medical Officer of the Unit/respondent No. 7 to make a mental case against the appellant.

Though, it is not necessary to go into these allegations made by the appellant, the record reflects that the appellant was admitted in the Mental Hospital, No. 5 Air Force Hospital, Jorhat. He was subjected to many mental tests including NCCT Head etc. However, even after these tests conducted

by the hospital, he was found to be a normal person.

The appellant further states that in spite of the aforesaid, he was again referred to Command Hospital, Kolkata on 27.11.2014 and was subjected to certain mental test/investigation such as MRI Brain, Frontal Assessment Battery test, EEG test and other tests. Even in those tests he was found to be normal and no abnormality was deducted. In spite thereof, he was again sent to civil hospital - Institute of Behavioural Sciences, Kolkata and was subjected to certain tests. This time also he was declared fit. Even, thereafter, he was again asked to report to Mental Hospital, No. 5 Air Force Hospital, Jorhat and again nothing wrong was found about his mental condition. Notwithstanding the same, when the appellant was directed to submit to similar tests again, the appellant opposed the same in the AFT by filing the aforesaid O.A. on 5.08.2015. When the said O.A. came up for hearing before the AFT, it passed orders on 5.02.2016 directing the appellant to appear before the Review Medical Board with further directions to the respondent to constitute such a Board without delay.

The appellant took exception to this kind of order as the nature of this very order passed by the respondent subjecting him to undergo medical evaluation was challenged by him in the aforesaid

O.A. Therefore, the appellant refused to appear before the Review Medical Board.

Taking note of the aforesaid fact, namely, that the appellant did not adhere to comply with orders dated 05.02.2016, the AFT dismissed the O.A. of the appellant *vide* Orders dated 13.04.2016 which is impugned in this appeal.

In our opinion, the aforesaid approach of the AFT is clearly erroneous. In a matter like this when the appellant had produced the medical records of his earlier medical examination and had challenged the order of the respondent(s) subjecting him to undergo medical evaluation once again by a competent Medical Board, the AFT was supposed to look into the said material and see as to whether the challenge of the appellant to the orders was correct or not. Instead, the Tribunal itself passed the same kind of order, *viz.*, directing the appellant to appear before the Review Medical Board. This clearly amounted to accepting the case of the respondent(s) without even going into the merits of the O.A. and, therefore, we find that the appellant was justified in not appearing before the Review Medical Board.

It is stated at the cost of repetition that

before directing the constitution of such Review Medical Board, the AFT was required to undertake an exercise, after scanning through the material, as to whether the insistence of the respondent(s) in directing the appellant for medical evaluation was proper or not. Therefore, we set aside the said order. In normal course, because of the aforesaid reasons, we would have remitted the case back to the AFT to consider the O.A. of the appellant on merits.

Learned Additional Solicitor General of India may be right to some extent that in the medical tests there are certain observations of the Doctor/Medical Board which may reflect adversely about the medical condition of the appellant. However, they are not of serious nature and any normal person can also suffer from mild nature of depression etc. as indicated. Overall "conclusion and impression" in all these reports is favourable to the appellant.

It is not in dispute that the appellant has been performing duties for last number of years. Even after the direction of the respondent(s) to the appellant to appear for medical evaluation by the competent Medical Board, which was given in 2015, the appellant has discharged his duties and that too in difficult circumstances. Nothing has been brought on record by the respondent(s) that in discharging of his duties in the last three years, the appellant has

shown abnormal behaviour. No complaint has been brought to our notice. In these circumstances, we are of the opinion that no such special medical evaluation of the appellant is required. At the same time, it may also be clarified that the appellant is supposed to undergo routine/annual medical check-up and examination(s) to which all other Officers are normally subjected to.

Learned Additional Solicitor General further stated that in January, 2015 the appellant was put in low medical category. His medical category was to be reviewed in July, 2015. The evaluation on this basis, according to us, would be in a routine manner and, if necessary, the appellant would undergo such evaluation.

Subject to above, the O.A. stands allowed. Consequently, the appeal is also allowed in the aforesaid terms.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

.....J.
(S. ABDUL NAZEER)

NEW DELHI,
NOVEMBER 20, 2018

ITEM NO.3

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 12749/2017

SQN LDR MUKUND SHARMA

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 20-11-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Appellant(s) Mr. Shiv Kant Pandey, Adv.

Appellant-in-person

For Respondent(s) Mr. Vikramjit Banerjee, ASG
Mr. Nachiketa Joshi, Adv.
Ms. Archana Pathak Dave, Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. Rajiv Kumar Srivastav, Adv.
Mr. Utsav, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed Order.

Pending applications, if any, stand disposed of.

(SUSHIL KUMAR RAKHEJA)
AR-CUM-PS

(RAJINDER KAUR)
BRANCH OFFICER

(Signed order is placed on the file.)