

**AFR**  
**Court No.2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 71 of 2015**

Monday, this the 25<sup>th</sup> day of April 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Dheeraj Kumar (No 15511338-A) son of Shri Vidya Shankar,  
resident of village Nagla Kadam, Post Office Mohabbatpur,  
district Mainpuri (UP).

.....Petitioner

Ld. Counsel for the: **Shri OP Kushwaha, Advocate**  
Petitioner

Versus

1. Union of India through Secretary, Ministry of Defence,  
(Army), West Block-2, RK Puram, New Delhi.
2. Captain, O.I.C. Legal Cell Kavachit Corps Abhilekh,  
Armoured Corps Records, Pin-900476 C/O 56 APO.
3. Commandant, Basic Training Regiment, Arms Corps  
Centre & School Ahamad Nagar.
4. Senior Specialist Medical Officer, Command Hospital  
(SC) Pune.

...Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal & Lt Col**  
**Subodh Verma, OIC, Legal Cell.**

### ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the record.

2. The applicant went for an Army recruitment rally on 22.11.2012 and after due medical check up on 24.12.2012, he appeared for written test on 27.01.2013 and was enrolled on 03.04.2013. Thereafter he was sent for training. A complaint was received with regard to medical fitness of the applicant. As a consequence thereto, re- medical examination was carried out which submitted a report that the applicant is suffering from 'GENU RECURVATUM' hence he was not fit for military service. In pursuance to opinion of the re-medical examination, the applicant was discharged from Army by means of the impugned order. Statutory appeal preferred by the applicant was also rejected.

3. Being aggrieved with the impugned order of discharge, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007.

4. It appears that at the recruitment stage, some irregularities were committed by the doctors recruiting certain persons though they were not medically qualified.

5. In identical case decided by this Tribunal vide order dated 29 Jan 2016 passed in Original Application No. 197 of 2014: ***Vishvendra Singh vs. The Union of India and others***, we have held that the illegalities or irregularities committed during

course of recruitment shall disentitle a person to continue in Army services and order of discharge was held to be correct. For convenience sake, paragraph-6 of said judgment/order is reproduced as under:

*“It is vehemently argued by Ld. Counsel for the respondents that the applicant has committed fraud in collusion with local Army doctor whereby in spite of being unfit, he was granted certificate of medical fitness, hence the order of discharge from Army does not suffer from any illegality. It is not disputed by Ld. Counsel for the applicant that the applicant was again medical re-examined in response to the complaint (supra) and was declared medically unfit to serve the Army. However, Ld. Counsel for the applicant submitted that Section 43 of Army Act, 1954 should have been complied with. The argument advanced by Ld. Counsel for the applicant seems to be misconceived. In the present dispute, the controversy relates back to the initial recruitment of the applicant where allegation is of commission of fraud. It is well settled proposition of law that fraud vitiates solemn act and once fraud is proved, or not disputed, no further procedural formality is required to be completed and such person may be discharged from service without any*

*further action. Otherwise also it is well settled that the Tribunal shall not interfere with the order in case the respondents have right to discharge Army personnel on account of commission of fraud.”*

6. In the present case, since the applicant has been declared unfit for Army service in pursuance of re-medical examination carried out at Command Hospital, Pune and was checked by a Senior Surgical Specialist, there appears to be no reason to interfere with the impugned order of discharge.

7. Subject to above, we do not find any reason to interfere with the impugned order of discharge.

8. The O.A. lacks merits and is accordingly dismissed.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**