

Court No. 2

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

ORIGINAL APPLICATION No 121 of 2014

Wednesday, this the 07th day of April 2016

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

No. 15187098 N (Rect) Clerk/S.D. Sep Gulab Son of Vijay Bahadur resident of Village Bhagwanpur, Post Office Manikpur District-Jaunpur U.P.

...Applicant

Ld. Counsel for the: **Shri P.K. Shukla, Advocate**
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, (D.H.Q.) Post Office, South Block, New Delhi
2. The Chief of Army Staff, Headquarters DHQ, Post Office, South Block, New Delhi.
3. Commanding Officer 2, Training Regiment, Arty Centre Hyderabad
4. OIC Record Artillery centre Hyderabad

.....Respondents

Ld. Counsel for the : **Shri R.C. Shukla,**
Respondents **Central Govt Counsel assisted by**
Maj Priti Tyagi, OIC Legal Cell.

ORDER (ORAL)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of discharge dated 02.08.2012 during course of training.

2. Heard Ld. Counsel for the parties and perused the records.

3. Admittedly the applicant was enrolled in the Indian Army on 25.12.2010 and completed recruitment training of 19 weeks on 25.05.2011. A show cause notice was served on the applicant to show cause as to why his services may not be discharged. After receipt of reply, the applicant has been discharged from service. The appeal filed against order of discharge has also been rejected.

4. While assailing the impugned order, Ld. Counsel for the applicant submitted that the applicant should have been adjusted in alternative trade. However, Ld. Counsel for the respondents submitted that since the applicant has not completed training in accordance with rules he has rightly been discharged.

5. Attention of the Tribunal has been invited to paras 3 and 4 of the additional affidavit dated 11.02.2016 which reveals that the applicant failed in midterm test as well in one of the technical training and academic subject in spite of another

chance given to him. Paras 3 and 4 of additional counter affidavit (supra) are reproduced as under :-

*“3. That the Advance Military Training of Clerks is designed for 32 weeks, which is further divided into two phases during which a Recruit Clerk has to pass Phase-I termed as Midterm Test i.e. Class –IV which is the lowest class for trade Clerk (Staff Duty) conducted in 16th week, Phase-II termed as Final Test i.e. Class III conducted in 30th week. Advance Military Training of said individual commenced with effect from 27 Jun 2011. On completing of 16th weeks of technical training, the petitioner appeared for midterm Test i.e. Class IV conducted from 17 to 19 Oct 2011 and he failed in the subject test. He was relegated for 28 days to improve his performance. He again appeared in Midterm Test conducted with effect from 14 to 17 Nov 2011 after relegation of 28 days and again failed. He was again relegated for 28 days. Photocopy of result sheet of ‘Midterm Test are attached as **Annexure-II** with this affidavit. He finally passed his Midterm Test conducted with effect from 12 to 14 December 2011 and was, mustered in clerk (Staff Duties) Class –IV.*

4. That on qualifying Phase-I of technical Training i.e. Midterm Test Class –IV, the petitioner was put through his IInd Phase Training for 16th weeks and appeared in the Final Test for Clerk (Staff Duties) Class-III which was conducted with effect from 13 to 16 March 2012. He failed in technical and academic subject and once again relegated for further 35 days as policy on the subject, which was his last relegation. Photocopy of

*result sheet of final test are attached as **Annexure-III** to this affidavit”.*

6. The averments contained in paras 3 and 4 of the additional affidavit have not been disputed by Ld. Counsel for the applicant. In the aforesaid backdrop the applicant has been held not likely to be efficient soldier. In pursuance of the training later dated 28.02.86 which regulates training of Armed Forces personnel since the applicant has not qualified in the required training, he has been discharged on the ground of not completing the training which seems not to suffer from any impropriety or illegality. A person who did not qualify the test during course of training has no right to claim continuance in the services. It is for the Army to look into the matter and take appropriate decision with regard to trainees and may not be subject matter of judicial review by Courts/Tribunals.

7. In view of observations made herein before the impugned order of discharge does not suffer from any illegality or impropriety.

8. O.A. lacks merit and deserves to be rejected, hence **rejected.**

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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