

E-Court No- 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO 364 of 2018**

Tuesday, this the 31st day of August 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Sepoy (SKT) Kirpal Singh, S/o Bhagwan Singh, Resident of Village- Amheda, Tehsil- Mandi Dhanoura, District- Jyotiba Phule Nagar (U.P.)

....Applicant

Ld. Counsel for the: **Shri Rohit Kumar, Advocate**
applicant

Verses

1. Chief of the Army Staff, DHQPO, New Delhi- 110011.
2. Commandant cum Chief Record Officer, ASC Centre(s) and Records, Bangalore.
3. Union of India, Through Secretary Ministry of Defence, New Delhi.

...Respondents

Ld. Counsel for the : **Shri RKS Chauhan,**
Respondents. **Central Govt Counsel**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

(a) For quashing the rejection order of the officer in charge ASC Centre (South) and Records Bangalore bearing no. Sep/Kirpal Singh/CC-1/Legal Cell dated 16 May 2018 with all the consequential benefits to the applicant.

(b) For ordering respondents to grant reenrollment in DSC relying on provisions of paragraph 142 of the Defence Service Regulation (Regulations for the Army) 1987 so that the applicant could complete pensionable service and applicant would also get an opportunity to lead honorable life in the society.

(c) To issue any other order or direction considered expedient and in the interest of justice and equity.

(d) Award cost of the petition.

2. Counter affidavit filed by respondents is taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 23.06.1994. He was tried by Summary Court Martial (SCM) and was awarded three months RI coupled with dismissal from service for being absent from duty without proper leave. Applicant filed petition against SCM and his petition was allowed and dismissal of the applicant was converted into discharge. Applicant submitted petition under paragraph 368 of the Defence Service Regulations (Regulations for the Army) 1987 for re-enrolment in Defence Security Corps (DSC) which was rejected by the respondents. Being aggrieved the applicant

has preferred the present Original Application for enrolment in DSC to complete the shortfall of service to earn service pension.

4. Learned Counsel for the applicant submitted that applicant was enrolled in the army on 23.06.1994. During the year 1997 the applicant was granted leave from 31.12.1996 to 07.03.1997, but he could not rejoin duty. Later on the applicant reported for duty voluntarily, but he was charged for desertion. He was awarded punishment of three months RI in Civil Prison and dismissal from service. Applicant filed petition against the punishment of dismissal and his petition was allowed and punishment of dismissal was converted into discharge. Thereafter, the applicant submitted a petition for re-employment in DSC under the provision of paragraph 142 of Defence Service Regulation (Regulations for the Army) 1987. Extract of paragraph 142 of the Defence Service Regulation (Regulations for the Army) 1987 reads as under:-

“An ex serviceman is permitted to re-enroll in accordance with following conditions provided his military character has shown as good or above.

(a) *He must declare his previous service at the time of his second and subsequent engagement and definitely state whether he wishes to count his previous colour service towards the completion of the total combined colour and reserve service and towards pension or gratuity, good service pay and four increments of pay. If he elects to count his previous colour service towards the completion of the total combined colour and Reserve Service of regular engagement for which re-enrolled, the benefit of former service for*

pension and gratuity will be allowed in accordance with the provisions of Rule 126 Pension Regulations for the Army Part I. No relaxation to this rule will be permitted.”

5. Learned counsel for the applicant submitted that applicant is entitled all the privileges and protections available to army personnel and its denial is against the law on the statute and paragraphs 142 of Defence service Regulations, for the Army, 1987. He prayed that directions be issued to respondents to re-enroll the applicant in DSC.

6. Per contra, learned counsel for the respondents submitted that applicant was enrolled in the army on 23.06.1994. He absented himself from duty for 1033 days and was declared deserter. He joined his duty voluntarily and was awarded punishment of three months RI in Civil Jail and dismissal from service on 18.03.2000. Applicant filed petition against the SCM which was allowed and his punishment of dismissal was converted in discharge. Applicant again filed petition for re-enrolment in DSC, which was rejected being devoid of merit. For reenrollment in DSC, there are certain guiding principles like age, discipline, character etc and the applicant does not fulfill this criteria, hence he cannot be re-enrolled in DSC. Learned counsel for the respondents submitted that instant Original Application is not tenable in the eye of law and as such is liable to be dismissed with cost.

7. We have heard learned counsel for both the parties and perused the record. We found that moot question involved in this case is whether the applicant can be reenrolled in DSC or not?

8. Army Headquarters letter dated 05.08.2014 deals with criteria for re-enrolment of Ex-servicemen into DSC as Sepoy. Relevant paras are as under:-

Para 1 to 2 x x xx x

3. **Character.** *As per para 3 of this letter, Character assessed at the time of discharge from former service as well as re-assessed in terms of Para 170 (d) of Regulations for the Army 1987 should be VERY GOOD or EXEMPLARY.*

4. **Discipline.** *Only those personnel who do not have more than one red ink entry during the last five years of former service and not more than two red ink entries during the entire former service are eligible for re-enrolment into DSC. However, those personnel who have been awarded one red ink entry under army Act Section 48 for intoxication during the last five years of former service are not eligible for re-enrolment in to DSC.*

5. **Service.** *Personnel from Army/Navy/Air Force should have rendered minimum five years colour service. Service counted for pension/ gratuity is treated as qualifying service. Ex- TA personnel must have rendered three years embodies service with minimum attendance of seven Annual Trg Camp (ATC).*

Para 6 to 13 x x x x x

14. *In addition to the above, personnel discharged from service under Army Rule 13 (3) item III (v) for the following reasons are not eligible for re-enrolment into DSC:-*

- (i) Service no longer required.*
- (ii) Unsuitable for further Military service.*
- (iii) Unlikely to become an efficient soldier.*
- (iv) Ineligible for further retention upto enhanced service limit.*

9. Further Army Headquarters policy letter dated 20.06.2016 states about age and service conditions of JCOs/OR for enrolment into DSC. As per this policy letter age for enrolment of Other Ranks as Sep (GD) will be 46 years and age for Sep Clk (SD) will be 48 years. It further states that maximum gap between discharge from previous service

and enrolment into DSC for Other Ranks will not be more than 02 years.

10. On perusal of above policy letters laid down for re-enrolment in DSC, it transpires that applicant does not fulfill eligibility criteria laid down for re-enrolment in DSC. As per Army Headquarters, Min of Def, service Note dated 20.02.2016 applicant does not fulfill the criteria for his re-enrolment in DSC as Sepoy/ General Duty as the applicant has crossed the age of 46 years and became overage. Further applicant being SKT of Army is not eligible for re-enrolment as Clerk in DSC. Secondly, maximum gap between discharge from previous service and enrolment into DSC in respect of Other Ranks should not be more than 02 years. In the instant case, gap of service is more than two years, hence applicant is not eligible for re-enrolment in DSC. Thirdly, for enrolment in DSC, a candidate should have rendered minimum 5 years colour service in army. In the instant case, the applicant was enrolled in the Army on 23.06.1994 and dismissed from service on 18.03.2000 and during this period applicant had a non qualifying service of 1033 days, hence not eligible for re-enrolment in DSC. Thirdly, as per para 142 (a-c) Regulations for the Army, an ex serviceman is permitted to re-enroll in DSC if his military character has been assessed 'good' or above while in the instant case character of the applicant has been assessed 'Fair' hence not eligible for re-enrolment in DSC.

11. In view of above we are of the considered opinion that the present O.A. lacks merit and the impugned order does not seem to suffer from any irregularity or illegality hence deserves to be dismissed

12. The O.A. is **dismissed** accordingly.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: 31st August, 2021
Ukt/-