

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

**E-Court**

**O.A. No. 220 of 2018**

Friday, this the 27<sup>th</sup> day of August, 2021

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

Jagvir Singh (No 6503792-K Ex Rect/ASH) son of Shri Ghure Singh, resident of Village-Unnao Paschim Kheda, Post-Unnao, Tehsil-Unnao, District-Unnao (UP).

..... Applicant

Ld. Counsel for the: **Shri R. Chandra**, Advocate  
Applicant

Versus

1. Union of India, through the Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, New Delhi-110011.
3. Commandant, Army service Corps Centre (North), Bangalore-560007.
4. Officer-in-Charge, ASC Records (Animal Transport), Bangalore-560007.
5. The Commanding Officer, No 1 Training Battalion (Animal Transport), ASC Centre (North), Pin-900493, C/O 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani**, Advocate.  
Respondents Central Govt Counsel.

**ORDER (Oral)**

1. Being aggrieved with impugned order dated 27.12.2015 applicant has filed the present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 and prayed for the following reliefs:-

*“(i) The Hon’ble Tribunal may be pleased to set aside the order dated 27.12.2015 (Annexure No A-1).*

*“(ii) The Hon’ble Tribunal may be pleased to direct the respondents to give one more chance to clear the Commandant Drill Test/PPT Test in the ASC Centre (North) or in other Training Centre. Further if applicant pass the tests reinstated in service with all consequential benefits.*

*“(iii) The Hon’ble Tribunal may be pleased to summon the results of the physical proficiency Tests (PPT)/Commandant Drill Test in respect of applicant were taken by the respondents in which applicant is fail for perusal.*

*“(iv) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that applicant was enrolled in the Army on 16.09.2014 through Army Recruiting Office, Lucknow and was sent to Bangalore to undergo basic military training. During the course of military training, he could not pass mandatory tests i.e. Bn Cdr PPT and Drill Test. He was relegated thrice to pass the requisite tests in which he could only pass Bn Cdr PPT on 04.03.2015 and could not pass Drill Test on 04.03.2015. Applicant was issued Show Cause Notice dated 09.05.2015 and on receipt of reply dated 10.05.2015, he was discharged from service as an undesirable soldier w.e.f. 26.05.2015 (AN) in terms of para 3 (c) of

Army Headquarters policy letter dated 28.02.1986. Against discharge from service, applicant submitted representation dated 03.06.2015 and during pendency of aforesaid representation, he filed O.A. No. 153 of 2015 which was heard and decided on 15.07.2017 and respondents were directed to decide applicant's representation with speaking and reasoned order. The aforesaid representation was rejected vide reasoned and speaking order dated 27.12.2015. Earlier, in the year 2016 applicant filed execution application with prayer that his representation should be decided by Chief of the Army Staff. The Execution Application was rejected by this Tribunal vide order dated 01.07.2016 stating that Commandant 1 ASC Trg Centre is the competent authority to decide his representation. This O.A. has been filed for grant of a chance to appear in Drill Test and to reinstate applicant in service if he passes the test.

3. The applicant's version is that he was enrolled on 16.09.2014 and went through strenuous training. While undergoing basic military training he was not given sufficient chance to pass mandatory Command Drill Test even after mentioning in reply to Show Cause Notice dated 10.05.2015. His further submission is that before passing of discharge order, the Commanding Officer has not applied his mind and the order of discharge has been issued due to mandates of the policy letter dated 28.02.1996. His further contention is that the Commanding Officer has no material before him to arrive at a finding that the applicant was undesirable to

become an efficient soldier. He pleaded for an additional change to pass the mandatory test.

4. The respondents' version is that applicant, while undergoing basic military training, has failed in mandatory PPT and Drill Test even after giving additional chance by relegating him thrice in terms of policy letter dated 26.02.1986. His further averment is that applicant could pass only PPT test on 04.03.2015 in last chance but could not pass Drill test even after giving additional chance as per policy in vogue. Thereafter, Show Cause Notice dated 09.05.2015 was issued to applicant and after receipt of reply dated 10.05.2015, which was found insufficient, he was discharged from service in terms of Rule 13 (3) (iv) of Army Rules, 1954 being an undesirable soldier. Further version of respondents is that as per existing policy, the applicant was bound to pass mandatory tests during his basic military training, but, inspite of providing sufficient opportunities he could not pass the mandatory test. As per respondents the applicant was well aware as to why he has been discharged during basic military training and no prejudice has been caused to him and there had been no violation of principles of natural justice. He pleaded for dismissal of O.A.

4. We have heard Shri R Chandra, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents and perused the records.

5. From the perusal of record, it emerges that during basic military training, the applicant was required to pass mandatory Drill Test. It appears that applicant was provided enough opportunities to pass

the said test but every time he failed. It shows that inspite of sufficient chances provided to the applicant, he could not pass the Drill test, which was mandatory criteria for completion of the basic military training. Consequently, the applicant was found unsuitable to become an efficient soldier and he was discharged from service under Rule 13 (3) Item IV of Army Rules, 1954.

6. The instant case relates to an individual, who has been enrolled under the Army Act, 1950, but, has not been attested and unless he is attested, he cannot get the status of a soldier. The applicant has failed to clear the basic military training and was never attested and hence, he was discharged from service.

7. It is worthwhile to mention that while undergoing training, a recruit is trained and then attested for the training imparted. If he fails, then he is imparted extra training and extra chances to clear the tests which are mandatory for a recruit to become an efficient soldier fit for service in the Army.

8. In this background and after perusing the details, we are of the considered opinion that the respondents have been very fair and have given sufficient opportunities as provided in policy letter dated 26.02.1986 to improve himself at all stages of training. Therefore, we donot find any merit in the contention of applicant that he was not provided enough opportunities to pass the mandatory test. His pleading that reasoned order dated 27.12.2015 be set aside and he be given another opportunity to clear the test, is not sustainable being policy constraints. We also donot find any merit in the defence of the applicant that he could not pass mandatory Drill Test on

account of not being given sufficient chances. It is amply clear that the applicant has a long history of poor performance and failures during his entire basic military training as he was provided enough opportunities by relegating in junior platoons to clear the test.

9. In this context, we would also like to clarify that the status of a trainee in Army is like a probationer and, therefore, if he fails to meet the organisational requirements during basic military training, the respondents have every right to discharge him from training and service. This aspect of law has been clearly established by the Hon'ble Supreme Court vide its judgment in the case of ***Union of India & Others vs. Manoj Deswal & Others***, reported in (2016) 15 SCC 511 which clearly lays down that a recruit can be discharged from service by his Commanding Officer if he does not meet criteria to become an efficient soldier.

10. Thus, in light of the above mentioned facts, the applicant's contention that he could not have been discharged from service without giving sufficient opportunities to pass the test, has no substance. Since the applicant had failed to clear the mandatory Drill Test, therefore, he could not have been retained in the Army and the respondents were justified in discharging the applicant from service as UNLIKELY TO BECOME AN EFFICIENT SOLDIER after following the due process.

11. In view of the above, we find no illegality, irregularity or impropriety in the order dated 27.12.2015 passed by the respondents.

12. The O.A. is devoid of merit and is hereby **dismissed**.
13. No order as to costs.
14. Pending misc applications, if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 27 Aug, 2021  
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