

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 60 of 2017**

Wednesday, this the 25th day of August, 2021

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

No. 15806009 Y Ex. Rect. (DS) Chander Pal Singh, S/o Ex. Sub. Thakur Prasad, R/o Village Jyoti Nagar Hansari, Post Jhansi, District Jhansi (UP), Pin-284135.

..... Applicant

Ld. Counsel for the Applicant : **Shri D.S. Tiwari**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi.
3. Headquarters Army AD Centre (Tr. Br.) PIN-908801, C/o 99 APO.
4. Army AD Record (ER Coord) Army Air Defence Centre, PIN-908801, C/o 99 APO.
5. Commandant Army Air Defence Centre PIN-908801, C/o 99 APO.
6. The Commanding Officer, Army Air Defence Centre, PIN-908801, C/O 99 APO.
7. The Training Officer In-charge, Basic Training Regiment, army Air Defence Centre, PIN-908801, C/o 99 APO.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Shyam Singh**, Advocate
Central Govt. Counsel

ORDER

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) The Hon’ble Tribunal may be pleased to set aside the discharge order dated 15.09.2016 (Annexure No. A-1) issued by respondent No. 6 and order dated 04.01.2016 under which appeal of the applicant has been rejected (Annexure No. A-2).
- (ii) To direct the respondents to reinstate the applicant with effect from 15.09.2016 with all consequential benefits and allow him to complete the training on his trade.
- (iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.
- (iv) To allow the original application with cost in favour of the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 06.10.2015 and was discharged from service on 15.09.2016 (AN) under the heading on own request whereas considering as “Unlikely to become an efficient soldier” under Rule 13 (3) Item IV

of the Army Rules, 1954. After completing 12 weeks training, the applicant got injured during a Football match and was admitted in Military Hospital, Gopalpur with effect from 17.02.2016 to 28.02.2016 and transferred to Command Hospital, Kolkata for further treatment diagnosed as "Stress Fracture Rt. Tibia" and his right leg was plastered. Thereafter, applicant was given 28 days sick leave w.e.f. 02 March to 29 March 2016. He reported back after sick leave to Command Hospital, Kolkata on 29.03.2016 and applicant was placed under Low Medical category A3T8, later in review the applicant was declared medically fit (SHAPE-I) after 8 weeks by the medical authority. Being under Low Medical Category the applicant could not join the basic training whereas the applicant was made to do the job of Sahayak at the residence of Commanding Officer, as such due to lack of proper rest and insufficient time training the applicant could not pass the Physical Proficiency Test in 19 weeks. The applicant was given warning letter by the respondent No. 3 and granted six weeks to pass Physical Proficiency Test but many restrictions were imposed by the respondent Nos. 5 and 6 as not to move anywhere and remained to sit in training cell thus extended six weeks exhausted leisurely

without any training for Physical Proficiency Test. The applicant was forcefully made to sign the discharge certificate/paper and on the behest of respondent Nos.5 and 6, three persons RHM Karan Singh, BHM Bhaiya Ram and Sub Anuj Baliyan made the applicant to leave the training centre in a very short time. The applicant made several requests and made oral mercy appeals but no opportunity or any show cause or merciful attention was given to the applicant by the respondents. The applicant preferred Appeal dated 14.10.2016 and reminders dated 21.11.2016 and 23.12.2016 to allow him to clear the test and complete the training but to no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was not provided opportunity or show cause or merciful attention as per provision of Army Headquarters Policy letter dated 28.02.1986 to pass the Physical Proficiency Test. There are two causes of discharge of the applicant, one is discharge on "applicant's own request" and another is after considering "Unlikely to become an Efficient Soldier" which are contradictory with each other. The Ld. Counsel for the applicant, on account of aforesaid,

pleaded that relief prayed for to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that in the 17th week of his training the applicant was admitted to Military Hospital, Gopalpur for pain in his right leg. This implied that he had already completed sixteen weeks of Basic Training and was expected to have achieved at least minimum standard of Physical Proficiency so as to clear requisite test by his 19th week of training. After Hospitalization, the applicant diagnosed with "Stress Fracture RT Tibia" and remained in Military Hospital, Gopalpur w.e.f. 17.02.2016 to 28.02.2016. He was subsequently transferred to Command Hospital, Kolkata on 29.02.2016 for further treatment. After that applicant was granted 28 days sick leave w.e.f. 02.03.2016 to 29.03.2016. Applicant reported back to Command Hospital, Kolkata on 29.03.2016. The applicant was put under low medical category for 56 days w.e.f. 31.03.2016 to 25.05.2016, during which he could not join the scheduled training due to his low medical category. Thus applicant's total absence from training had been 107 days. He rejoined in 17th week only and his training recommenced from 04.07.2016 i.e. at the level from

where he had left his training. Moreover, as the individual had already undergone 16 weeks of training before low medical category, he was only required to practice and brush up his Physical Proficiency skills in the three weeks of training before the conduct of his Physical Proficiency Test, after having been fully recovered and in SHAPE-I, But, he did not do the same and failed miserably in his Physical Proficiency Test in the 19th week. As such applicant was given enough chance to practice and train so as to achieve desired standard of physical training. The applicant had been unable to pass Battery Commander Physical Proficiency Test, despite having been granted maximum permissible six weeks (four weeks of first relegation by the Commanding Officer and two weeks of second relegation by Commandant) chance to practice and train so as to achieve desired standards of Military training. Warning letter in this regard was issued to the applicant after completion of 19th week and 19 + 4 weeks vide letter dated 23.07.2016 and 18.08.2016 respectively. The applicant was given maximum chances in terms of additional training but he could not pass Battery Commander Physical Proficiency Test. Therefore, a show cause notice was issued to the applicant vide letter dated

03.09.2016. Ld. Counsel for the respondents pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. With regard to submission of Ld. Counsel for the applicant that discharge order dated 15.09.2016 is contradictory as head note showing that "Discharge from Service : Own Request" whereas contents of letter speaks that "discharged from service due to failed in PPT", we are of the opinion that contents of letter reflect the reason, head note do not construe the reason for discharge and therefore even if on own request is denoted in the letter as in the head note it is not a valid ground for interference by this Tribunal.

7. Further, on careful perusal of the documents, it has been observed that the applicant was enrolled on 06.10.2015 and in 17th week he was hospitalised as he had already completed 16 weeks of Basic Military Training. The applicant rejoined training in 17th week and was provided opportunity to practice and brush up his physical proficiency skill in three weeks of training before the

conduct of his Physical Proficiency Test, but he failed to do so. The applicant was provided maximum permissible six weeks i.e. four week of first relegation by Commanding Officer and two weeks for second relegation by Commandant to practice and train so as to achieve desired standards of military letter. In view of above, we are of the opinion that it is incorrect that applicant was not provided sufficient time to pass the Physical Proficiency Test and was required to be given one more chance rather despite being given sufficient chances he failed and therefore does not deserve to remain in Army. Before discharge applicant was given show cause and provided additional time to pass the Physical Proficiency Test.

8. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the physical standard of military service and is not likely to become a good soldier. In the instant case after being afforded ample opportunities the applicant has failed to pass Physical Proficiency Test, even in extended time, the applicant is not entitled for any relief.

9. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 25 August, 2021

AKD/-