

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
(CIRCUIT BENCH NAINITAL)**

T.A. No. 54 of 2017

Tuesday, this the 3rd day of August, 2021

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

Harsh Vardhan, son of Shri Tula Ram, R/O Village-Hunna Patti
Kampirri, Post Office-Kalusen, Tehsil-Karan Prayag, District-Chamoli.

..... Petitioner

Ld. Counsel for the: **Shri Kishore Rai**, Advocate holding brief for
Applicant **Shri Lalit Kumar**, Advocate

Versus

1. Union of India through Chief of the Army Staffs, New Delhi.
2. The Adjutant General, Army Headquarters, DHQ, PO-New Delhi-110011
3. Commandant, Parachute Centre, Bangalore.
4. Record Officer, Parachute Regiment, Bangalore-560006

..... Respondents

Ld. Counsel for the : **Shri Rajesh Sharma, Advocate.**
Respondents Central Govt Counsel.

ORDER (Oral)

1. Being aggrieved with impugned order of discharge dated 19.07.1996, petitioner had preferred Civil Misc. Writ Petition bearing No. 37646 of 1998 in the Hon'ble High Court of Allahabad which has been transferred to this Tribunal in pursuance to powers conferred under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 54 of 2017. The petitioner has sought the following reliefs:-

“(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order of discharge from service dated 19.07.1996, passed by the respondent officer.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent officer to allow the petitioner to complete the Monkey Rope Test IIInd time.

(iii) Issue a writ, order or direction in the nature of mandamus respondents be directed not be given effect in pursuance of impugned order dated 19.07.1996, and be paid salary in accordance with law subject to the decision of the instant writ petition.

(iv) Issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(v) and award cost of the petition.

2. Brief facts of the case are that petitioner was enrolled in the Army on 31.12.1994 through Branch Recruiting Office, Lansdowne. During the course of basic military training in course No. 116, he could not pass mandatory tests. He was relegated to junior course Nos. 117, 119 and finally to 120 on compassionate grounds but he could again not clear the required test. Thereafter, he was

discharged from service in terms of Rule 13 (3) item IV of Army Rules, 1954 on the grounds of 'unlikely to become an efficient soldier'. Petitioner, after discharge from service, has submitted representations dated 08.08.1996, 12.08.1996 and 17.02.1997 but as per him no action has been taken. This application has been filed to quash discharge order dated 19.07.1996 (Annexure-I) and to allow petitioner to complete mandatory test.

3. The petitioner's version is that he was enrolled on 31.12.1994 and went through the strenuous training. While undergoing basic military training he was not given sufficient chance to pass mandatory monkey rope test and on this ground he was discharged from service on 19.07.1996 (Annexure No. I to petition), which shows that he has been discharged under Rule 13 (3) Item (IV) of the Army Rules, 1954. The impugned discharge order has been challenged on the ground (item No III of the petition) that the petitioner had never made any request for being discharged and the order of discharge does not show that he was considered unlikely to become an efficient soldier and thus the order of discharge is against the grounds provided in Rule 13 (3) Item (IV) of the Army Rules, 1954.

4. The respondents' version is that the petitioner, while undergoing basic military training, had failed in mandatory monkey rope test and he was given four opportunities to pass the test but the petitioner could not pass the mandatory test. The petitioner was given four chances to improve and pass the test. The Commandant of the training centre has exercised his power to discharge the

applicant as “Inefficient soldier” as per Rule 13(3) Item (IV) of the Army Rules, 1954, vide order dated 19.07.1996, the Photostat copy of the said order is enclosed as Annexure No. CA-I to the Counter Affidavit. His submission is that the petitioner was considered as unlikely to become an efficient soldier and hence, he was discharged, in accordance with Rules by the order of the competent authority. Further version of respondents is that as per existing policy, the petitioner was bound to pass mandatory tests during his basic military training, but, inspite of four opportunities provided to him he could not pass the mandatory test. The petitioner was well aware of 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. The Transferred Application is devoid of merit and deserves to be dismissed.

5. We have heard Shri Rajesh Sharma, learned counsel for the respondents and perused the records. No one being present from the side of applicant, his version could not be heard, however, considering facts of the case we are deciding the case on merit.

6. From the perusal of record, it transpires that during basic military training, the petitioner was required to pass mandatory monkey rope test. It appears that petitioner was provided enough opportunities to pass the said test but every time he failed. It shows that inspite of four chances provided to the petitioner, he could not pass the test, which was mandatory before completion of the basic military training. Consequently, the petitioner was found unsuitable to

become an efficient soldier and he was discharged from service under Rule 13 (3) Item IV of Army Rules, 1954.

7. 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.

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 numerous opportunities and chances to the petitioner to improve himself at all stages of training. Therefore, we do not find any merit in the contention of the learned counsel for the petitioner that the petitioner's discharge should be set aside and he should be given one more chance to improve himself. We also do not find any merit in the defence that the petitioner could not pass mandatory monkey rope on account of not being given sufficient chances. It is amply clear that the petitioner has a long history of poor performance and failures during his entire basic military training.

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.

10. Thus, in the light of the above mentioned facts, the submission of the learned counsel for the petitioner that he could not have been discharged from service without giving sufficient opportunities to pass the test, has no substance. Since the petitioner had failed to clear the mandatory monkey rope test four times, 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 passed by the respondents.

12. The T.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: 03 Aug, 2021
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