

Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 121 of 2020

Friday, this the 11th day of August, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Recruit Sukhwant Singh (No. 19012507A) of the Sikh Regimental Centre, Son of Ex Hav (Hony Nb Sub) Jasvir Singh, Residence of Village: Kulluwala, Post: Kulluwala, Tehsil: Dhampur, District: Bijnor (U.P.). PIN - 246722.

..... Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh, Advocate**
Applicant

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence, South Block, New Delhi - 110011.
2. Director General Infantry, Integrated Headquarter of the Ministry of Defence (Army), Sena Bhawan, New Delhi - 110011.
3. General Officer Commanding - in - Chief, Headquarters, Eastern Command, Kolkatta (WB).
4. Commandant / Officer Incharge Records, The Sikh Regimental Centre Ramgarh Cantt (Jharkhand) PIN - 900409, C/o 56 APO

.....Respondents

Ld. Counsel for the

**:Shri Asheesh Agnihotri,
Central Government Counsel.**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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

“(a) Issue / pass an order or direction to quash the discharge order dated 24.07.2019 (Annexure No. A-1) being per se illegal, arbitrary and without application of mind.

(b) Issue / pass an order or direction to the respondents to allow the applicant to reinstate him in service with effect from 24.07.2019 with all consequences service and monetary benefits.

(c) Issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this Application with costs.”

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 30.03.2018. He successfully completed in Basic Military Training. During Advance Military Training he was hospitalized and missed training. He was given sufficient chances but he could not clear his Advance Military Training. Finally, a show cause notice was issued and the applicant was discharged from service under the authority of Army Rule 13 (3)

“Unlikely to become an efficient soldier”. It is in this perspective that this O.A. has been filed by the applicant for re-instatement in the army.

3. Learned counsel for the applicant submitted that applicant was enrolled in Army on 30.03.2018. He successfully completed his Basic Military Training. During Advance Military Training, applicant was harassed by platoon NCO Nk Satwant Singh. Nk Satwant Singh demanded money from the applicant in the garb of cutting. When such demand was ignored by the applicant, Nk Satwant Singh started harassing the applicant. During Basic Training, items of daily use and Rs. 5,500/- were stolen by breaking lock of the box from living barrack. The matter was reported but no action was taken by Nk Satwant Singh Platoon NCO. The applicant was relegated from Course 89 to Course 90 and thereafter to Course 91 without carrying out any test. The applicant passed entire physical test successfully in one attempt. Father of the applicant Ex Hav (Hony Nb Sub) Jasbir Singh came to Sikh Centre and met Training Sub Maj Jagraj Singh and apprised him of all the atrocities. The applicant was forcefully admitted in Military Hospital Ramgarh several times by declaring him unfit with the intention to push him out from service. The applicant submitted statutory complaint dated 30.09.2019 to Chief of Army Staff under Army Act Section 26 which has still not been decided. Learned counsel for the applicant submitted that as per the

provisions of the Army HQ Policy Letter dated 28.02.1986, the maximum period for which a recruit can be relegated on medical grounds will be six months. As such the applicant should have been relegated back and provided 6 months time and training with sufficient chances for passing PPT before removing him from service. Learned counsel for the applicant pleaded that order of discharge passed by the respondents be quashed and the applicant be re-instated in service.

4. On the other hand, learned Counsel for the respondents submitted that applicant was enrolled in the Army on 30.03.2018. He underwent Basic Military Training of 89 Course of 5 Training Company. He did not attend Physical Efficiency Test (PPT) (1st chance) and PPT Test (3rd chance) held on 05.07.2018 and 16.07.2018 respectively due to his admission in Military Hospital. Further he did not attend Drill Test (1st chance) and Drill Test (3rd Chance) held on 23.07.2018 and 14.08.2018 respectively due to his admission in Military Hospital. He failed in PPT Test (2nd Chance) held on 02.08.2018. He also failed in Drill Test (2nd Chance) and Drill Test (1st Extra Chance) held on 22.08.2018. He passed PPT Test in (1st extra Chance) on 28.08.2018 and Drill Test in (2nd Extra Chance) held on 04.09.2018. Applicant cleared his Basic Military Training on 04.09.2018. Performance of the applicant was below satisfactory level and he passed the tests in extra attempts.

5. Learned counsel for the respondents further submitted that during Advance Military Training, applicant could not attend Battle Physical Efficiency (BPET) Test, Drill Tests and other tests conducted as per training curriculum due to his hospitalization in Military Hospital Ramgarh Cantt and Danapur. The applicant missed his Advance Military Training for 42 days till 29.11.2018. He was relegated to next course in terms of Integrated Headquarters of Min of Def (Army) letter dated 28.03.2018. He again missed training for 48 days. He was again relegated to next course vide order dated 23.02.2019. He did not attend Drill (1st Chance test) held on 11.05.2019 due to medically unfit (Attend -C). He appeared in Drill 2nd chance, 3rd chance, 1st extra chance and 2nd extra chance test and BPET 1st chance and 2nd chance test but he failed in all tests. Subsequently, applicant was shifted to next course. He could not pass Commandant's Drill test even after availing maximum permissible chances. Even in failing in all chances, an additional chance was given by the Commandant vide order dated 09.07.2019 but still he could not clear the test. He was withdrawn from training after three relegations and was discharged from service on 24.07.2019 (AN) under the provisions of Army Rule 13 (3) item IV and procedure given in Integrated Headquarters of Min of Def dated 28.12.1988. Learned counsel for the respondents pleaded that present O.A. has no substance, hence liable to be dismissed.

6. We have heard learned counsel of both sides and perused the record. We found that moot question involved in this case is whether the applicant can be reinstated in service or not?

7. In the instant case, applicant cleared his basic military training on 04.09.2018. His performance in Basic Military Training was below satisfactory level and he managed to pass the tests in extra attempts. He was transferred from 5 Training Company to 1 Training Battalion. During Advance Military Training, he could not appear in Battle Physical Efficiency Test, Drill and other tests conducted as per training curriculum from 27.10.2018 to 27.11.2018 as he was admitted in Military Hospital Ramgarh Cantonment and Danapur for the period from 20.10.2018 to 29.11.2018. As per para 11 of Integrated Headquarters of Ministry of Defence (Army) letter dated 28.03.2018, any recruit missing training for a duration more than consecutive 21 days/30 days cumulative during Basic Military Training or Advance Military Training respectively will be relegated. The applicant missed his Advance Military Training for a total number of 42 days till 29.11.2018. For this reason, the applicant was relegated from 16 Platoon of 39 Course to 47 Platoon of 90 Course vide order dated 03.12.2018. On perusal of result sheet, it reveals that applicant missed his BPET and Drill tests on four chance from 27.10.2018 to 13.12.2018. The applicant further missed Advance Military Training of 90 Course for 48 days from

13.12.2018 to 29.01.2019 and missed Drill (5 chances) and BPET (2 chances) tests. The applicant was again relegated from 90 Course to 91 Course vide order dated 23.02.2019. The applicant could not pass Commandant's Drill Test of 91 Course after availing maximum permissible chances. Even after failing in all the chances, an additional chance was given by the Commandant vide order dated 09.07.2019. He was again relegated to next course vide order dated 09.07.2019. Para 9 of Integrated Headquarters of Min of Def (Army) letter dated 28.03.2018, stipulates that maximum three relegations for recruits belonging to GORKHA, NAGA, LADAKH SCOUTS and ASSAM Regimental Centre and two relegations for other Regimental Centre are permissible during the entire training period. As per para 10 of Integrated Headquarters of Min of Def (Army) letter dated 28.03.2018, despite having availed normal and special chances, the recruit will be withdrawn on training grounds. In such cases, provisions of Army Rule 13 (3) item IV will be invoked and procedure given in Integrated Headquarters of Min of Def (Army) letter dated 28.12.1998 will be followed. Applicant was given show cause notice dated 10.07.2019 prior to discharge from service. He submitted his reply to show cause notice vide letter dated 17.07.2019. His case was examined by Commandant in detail with the report of preliminary inquiry and recommendations of Training Battalion Commander. Allegations made by the applicant against the

instructors are baseless and incorrect. There was no personal vendetta between instructors and the applicant. A Court of Inquiry was held on 13.07.2019. The applicant was interviewed by the Commandant on 19.07.2019 and applicant was discharged from service wef 24.07.2019 (AN). It is an admitted fact that Army is a combatant force and requires the highest degree of fitness. It cannot afford to have recruits who cannot pass Military Training. The discharge order is in order and rules and regulations have been followed.

8. In this background and after perusing the details of policies as applicable, we are of the considered opinion that the respondents have been fair and have given numerous opportunities and chances to the applicant to improve himself at all stages of Advance Military Training. Therefore, we don't find any merit in the contention of the learned counsel for the applicant that the applicant's discharge should be set aside and applicant be re-instated in service. We also don't find any merit in the defence that the applicant could not pass BPPT due to lack of training. It is amply clear that the applicant has a long history of poor performance and failures during his Advance Military Training.

9. In this context, we would also like to clarify that the status of a trainee in army has parallels with that of a probationer and therefore if the individual fails to meet the organisational requirements during

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. Since the applicant had failed to clear Advance Military Training several times, therefore, he was not 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. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents.

11. In view of the above facts, O.A. has no merits, deserves to be dismissed and is accordingly **dismissed**.

12. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 11 August, 2023

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