

**Court No.3**

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

**ORIGINAL APPLICATION NO 221 of 2013**

Tuesday, this the 19<sup>th</sup> day of January 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

No 14859814N (Ex Rect/Painter) Rahul Kumar, S/o Shri Chhote Singh, Village-Bahadurpura, Post-Murong District-Etawah-206061 (UP)

...Applicant

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

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. The Director General of Military Training, General Staff Branch, Army Headquarters, DHQ Post Office, New Delhi.
4. The Officer-In-Charge, Army Service Corps Records, Bangalore-56007 (Karnataka).
5. The Commanding Officer No2 Training Battalion (Supply) ASC Centre (South) Bangalore-56007 (Karnataka).

.....Respondents

Ld. Counsel for the : **Mrs Deepti Prasad Bajpai, Central**  
Respondents. **Govt Counsel assisted by Lt Col**  
**Subodh Verma, OIC Legal Cell.**

**ORDER (ORAL)**

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act 2007 being aggrieved with the impugned order of discharge from service dated 29.05.2013.

2. Heard Ld. counsel for the parties and perused the records.

3. The applicant was enrolled in the Indian Army as recruit on 04.09.2012. He absented himself without leave for seven days during the course of basic training i.e. from 25.11.2012 to 03.12.2012. In consequence there to he was awarded seven days Rigorous Imprisonment (RI) in military custody. He again absented himself from 25.01.2013 to 16.02.2013. He awarded punished with fourteen days RI. Thereafter a show cause notice dated 06.03.2013 was issued and the applicant was discharged from service. Feeling aggrieved he preferred the present O.A.

3. It is submitted by the applicant's counsel that the applicant has not submitted any application for voluntary discharge from army. On the other hand Ld. counsel for the respondents submitted that the applicant was discharged from service on 15.03.2013 under Army Rule 13 (3) (iv) at his own request and the representation submitted by the applicant has been rejected as he was on unsanctioned leave.

4. Ld. counsel for the applicant has relied upon the policy dated 28.02.1986 where controversy with regard to relegation on account of absent without leave (AWL) has been considered. The relevant portion of policy letter dated 28.02.1986 is reproduced below :-

*“Relegation for absent without leave*

*4. A rect who has been absent without leave for a period of 30 consecutive days during basic mil trg period, will not be allowed to re-join his trg again. Such rects will be discharged after necessary discp action. The absentees for less than 30 consecutive days may be considered for relegation, if otherwise, found suitable for retention. However, once the tech trg of a rect has commenced, the discretion to discharge the rect for such absence will be left to the Comdt of the Centre, who may retain or discharge him considering the case on it's merit.”*

5. A plain reading of the policy shows that the absence as a ground for discharge should be of 30 consecutive days. While submitting representation the applicant has submitted that he has not submitted any application on his own with regard to voluntary discharge from service. In the present case the applicant was absent without leave once for seven days and again for 23 days. Therefore it is obvious that the applicant was not absent for 30 days consecutively. In these circumstances it was incumbent upon the respondents that while discharging the applicant from service, the rules of the

policy dated 28.02.1986 should have been applied in its totality. Needless to say that whenever a representation is submitted it is incumbent upon the competent authority to record specific finding keeping in view the grievances submitted by the army personnel.

6. Accordingly impugned order seems to be an act of non application of mind where the material ground raised by the applicant has not been considered without assigning any reasons.

7. Accordingly we set aside the impugned order of discharge and remit the matter back to competent authority to decide afresh by passing a reasoned and speaking order keeping in mind the controversy in question and grounds pleaded by the applicant after taking into account the policy as well as contents of the application. Respondents shall take fresh decision expeditiously, say, within three months from the date of presentation of a certified copy of this order and communicate the decision to the applicant.

With the aforesaid directions, O.A. is **allowed**.

No order as to cost.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**