

**Court No.3****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION NO 255 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)**Ex-Rect/MT Shailendra Kumar (Army No 14858179F) Son of  
Shri Rajendra Prasad, Permanent resident of Vilage :  
Rampurbabuwan (Pure Janki Dubey) PO : Tirhunt Tehsil :  
Sadar, Distt : Sultanpur (UP)-PIN : 227806

...Applicant

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

Versus

1. The Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, DHQ PO New Delhi-110011.
3. Director General of Supply & Transport, Quarter Master General's Branch, Integrated HQ of Ministry of Defence (Army), Sena Bhawan, DHQ PO, New Delhi-110011.
4. Officer-in-Charge Records, Army Service Corps (South) PIN-900493, C/O 56 APO.
5. The Commandant No 3 Training Battalion, PIN : 900493, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Shyam Singh, Central**  
Respondents. **Govt Counsel assisted by Lt Col**  
**Subodh Verma, OIC Legal Cell.**

**ORDER (ORAL)**

1. This application under section 14 of the Armed Forces Act, 2007 has been preferred by the applicant against the order of rejection of statutory representation dated 05.11.2012 and order of discharge from the army while he was under training period.

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

3. Admittedly the applicant was enrolled in the army on 13.03.2012. He undergone basic military training and completed 19 weeks' training from March 2012 to 22.09.2012. However, the applicant could not succeed in certain training tests hence a show cause notice dated 22.09.2012 was issued. In response, the applicant submitted reply dated 28.09.2012 to the show cause notice and thereafter he was discharged from service. Submission of the Ld. Counsel for the applicant is that the applicant was issued movement order and even the discharge certificate is provisional which is bad in the eyes of law. However, fact remains that the applicant was discharged from service on account of being failed in various tests from time to time during training period as enumerated in the counter affidavit which is not disputed. Once, the failure in training is not disputed, no procedural error pointed out shall not affect the outcome of the controversy in question resulting in discharge

from service during training. Of course, if applicant would have passed the training it was not illegal/arbitrariness that could make out the case for discharge in the training. It is admitted that applicant failed during course of training, the error in compliance of natural justice was not made out. Since it was only factual exercise of power, being failed in different subjects which is obvious from the counter affidavit and the documents annexed with it and not contended by the Ld. Counsel for the applicant, there is no reason if a recruit who has been failed during course of training, can not be discharged. It is for the army or the authority concerned that only qualified persons are inducted in training. Once a recruit is found unsuitable for the army then it is not a matter within the jurisdiction of Tribunal for adjudication and review. No emphasize has been given by Ld. counsel for the applicant that why the competent authority shall not take any decision to declare the applicant unsuitable on unfounded ground. According to para-8 of the Counter Affidavit, the applicant while undergoing basic Military Training, could not pass the mandatory test even after giving 6 weeks extended training period. The applicant could not be clubbed with others even after granting 6 weeks' extended training period. All efforts were made by the Respondents to help the applicant to complete training successfully but he failed.

4. In view of the above we do not find any ground to interfere in the matter. The concept of article 14 and ordinarily jurisdiction of the court should not exercise the power to restore

back a person on the ground even if he is incompetent or unsuitable in accordance with the rules.

O.A. lacks merit and accordingly rejected.

No order as to Cost.

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

anb

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