

**Court No.3**

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

**ORIGINAL APPLICATION NO 197 of 2014**

Friday, this the 29<sup>th</sup> day of January 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Vishvendra Singh (No.15510640-M) aged about 20 years, son of Sri Jogendra Singh, resident of Village Eishapur, Post Office Laxmi Nagar, Police Station Jamunapar, Tehsil Mahawan, District Mathura, U.P.

...Applicant

Ld. Counsel for the: **Shri A.K. Maurya, Advocate**  
Applicant

Versus

1. The Union of India through Secretary, Ministry of Defence, (Army), West Block-2, R.K. Puram, New Delhi.
2. Lt General, Headquarters/A.C. Centre & School, Pin-900476, C/o 56 APO.
3. Commanding Officer, Basic Training Regiment, A.C. Centre & School Ahamad Nagar 414001.
4. Senior Specialist Medical officer, Command Hospital (SC) Pune.

.....Respondents

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

**ORDER (ORAL)**

1. This is an application under Section 14 of the Armed Forces Act, 2007 filed by the applicant being aggrieved with the impugned order of discharge dated 14.07.2014.
2. Heard Ld. Counsel for the parties and perused the records.
3. A recruitment camp was organized in Agra from 11.07.2012 to 18.07.2012 and the applicant had cleared physical test on 14.07.2012. The applicant appeared before Medical Board on 15.07.2012 which declared him unfit because of 'DROPPING SHOULDER (RT)' and 'HAMMER TOES'.
4. However, later on it appears that the applicant was reviewed by Lt Col R Karthik (Classified Specialist Surgery) on 30.07.2012 and declared fit for both disabilities (supra). Thereafter the applicant appeared for written test on 26.08.2012 and passed for appointment as Soldier (General Duty). The applicant joined Basic Training at Ahmednagar on 16.03.2013.
5. It appears that one Mr. Pradeep Kumar submitted a complaint alleging that there was malpractice on the part of Training Centre by which the applicant was declared medically fit. After receipt of complaint, Armored Corps Centre and School wrote a letter to Central Medical Inspection Room (Senior Medical Officer) to carry out re-medical of the applicant.

In view of the above, re-medical of the applicant was done and he was found to be suffering from 'THORACO-LUMBAR SCOLIOSIS' and not medically fit for army service. He also referred the case to Senior Medical Advisory Surgeon. Thereafter the applicant was referred to Command Hospital (Southern Command), Pune on 06.06.2013 whereby he was declared unfit for military training. Keeping the aforesaid matrix on record the applicant was discharged from Army service.

6. It is vehemently argued by Ld. Counsel for the respondents that the applicant has committed fraud in collusion with local Army doctor whereby in spite of being unfit, he was granted certificate of medical fitness, hence the order of discharge from Army does not suffer from any illegality. It is not disputed by Ld. Counsel for the applicant that the applicant was again medically re-examined in response to the complaint (supra) and was declared medically unfit to serve the Army. However, Ld. Counsel for the applicant submitted that Section 43 of the Army Act, 1954 should have been complied with. The argument advanced by Ld. Counsel for the applicant seems to be misconceived. In the present dispute, the controversy relates back to the initial recruitment of the application where allegation is of commission of fraud. It is well settled proposition of law that fraud vitiates solemn act and once fraud is proved, or not disputed, no further procedural formality is required to be completed and such person may be discharged from service without any further action. Otherwise also, it is

well settled that the Tribunal shall not interfere with the order in case the respondents have right to discharge Army personnel on account of commission of fraud.

7. In the present case, subsequent two medical opinions reiterated the first medical opinion whereby the applicant was rejected for recruitment in the Army. It shows that the applicant was in hand-in-gloves with the Medical Officer who gave opinion declaring the applicant medically fit. OIC. Legal Cell submitted that respondents have proceeded against six soldiers and doctors for collusive act with regard to fitness.

8. We have perused the record whereby it is borne out that the applicant was initially declared unfit on 15.07.2012. While parting with the case we are of the opinion that Officer/Lt Col who has declared the applicant fit at subsequent stage ought to have been proceeded against in accordance with rules for the fraud committed by him

9. In view of the above, no case is made out for interference.

10. O.A. is dismissed accordingly,

No order as to cost.

**(Lt Gen Gyan Bhushan)**  
**Member (A)**

anb

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