

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 213 of 2012**

Thursday, this the 28th day of January 2016

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

No. 4082638P Rect (Clk) Triloki Nath Sharma
aged about 30 years, Son of Sri Chandrika Sharma,
Resident of Village : Chhapari, Post: Sikhaj,
District: Ghazipur.

...Applicant

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

Versus

1. Chief of the Army Staff DHQ PO, New Delhi-110011.
2. Commandant cum Chief Records Officer, GRRC,
Lansdown.
3. Union of India Through Secretary, Ministry of Defence,
DHQ PO, New Delhi.

.....Respondents

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

ORDER (ORAL)

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of discharge from army on account of three times failure in Proficiency Aptitude Test (PAT).
2. We have heard Ld. Counsel for the parties and perused the record.
3. The applicant was enrolled in the Indian Army on 16.08.2000 as Soldier Clerk and reported to Garhwal Rifles Regimental Training Centre on 18.08.2000. He successfully completed Basic Military Training of 19 weeks on 20.01.2001 i.e. cleared PPT tests and was scheduled to attend Advance Military Training (Technical) of 32 weeks. While undergoing training, the policy regarding PAT for recruit clerk was revised by Infantry Directorate Army Headquarters and a fresh policy letter dated 13.07.2001 was issued superseding the policy letter dated 28.02.2001. The new policy letter introduced Proficiency and Aptitude Test (PAT) for Recruit Clerk Course. The applicant appeared in the PAT for recruit clerk's course alongwith other recruits on 17.08.2001, but failed In this examination. On 29.08.2001, the applicant was given warning to improve his competence failing which he may be ineligible for

Technical Training in Clerk Training Wing. Applicant again failed in PAT test held on 03.09.2001. Based on the result of these tests, applicant's services were to be dispensed with on the ground that the applicant did not meet the revised criteria for the job of Clerk, upon which the applicant sought for re-mustering/adjustment in some other category/trade except Washer-man and Sweeper.

4. Having failed in PAT., required number of times as per policy he was given show cause notice dated 07.10.2001 to show cause as to why his services may not be terminated. Applicant submitted his reply to the show cause notice and prayed that his trade may be changed except washer-man and Sweeper. His case was taken up with Infantry Directorate with regard to re-mustering and a decision was taken to discharge all 6 such candidates vide letter dated 29.11.2001. The applicant was discharged from service on 01.01.2002 under Rule 13 (3) (iv) of the Army Rule 1954 along with others. Feeling aggrieved, he preferred a representation to the competent authority to reconsider his case with regard to re-mustering. Since the representation remained pending with the competent authority, the applicant preferred Writ Petition bearing No. 2831 of 2003 in the High Court of Judicature at Allahabad wherein order was passed for disposal of statutory complaint. After rejection of the statutory complaint, the present O.A. has been filed.

5. Ld. Counsel for the applicant submitted that fresh policy letter was not applicable to the applicant. The applicant had completed basic military training and as per policy he was eligible for re-mustering in lower trade. A query was made by the Tribunal about the ground on which re-mustering was not considered by Infantry Directorate with regard to applicant's case, but no satisfactory response was provided. No reason has been brought on record while filing Counter Affidavit as to under what circumstances and for what reason, the applicant's case for re-mustering could not have been considered. Mechanical decision without application of mind should not have been taken by Infantry Directorate. Once the provision has been made for re-mustering or change of trade for soldiers under training, then that should be given effect to by competent authority with due application of mind keeping in view the policy dealing with the subject matter. Needless to say that retention in service and the change of trade or re-mustering are meant to provide source of livelihood to the members of Armed Forces. Right to dignity and livelihood are fundamental rights guaranteed by Article 21 of the Constitution of India. While dealing with re-mustering or change of trade in pursuance to policy decision it is not open for the authorities of the army to take a mechanical decision or pass cryptic or unreasoned order. The denial of change of trade must be based on due

application of mind and decision should be taken by a reasoned order.

6. In the present case, it is not borne out under what ground the applicant's case for re-mustering was rejected. It shall be appropriate for the competent authority to give a fresh look in accordance with policy decision for re-mustering or change of trade.

7. In view of the above, we are of the view that O.A. deserves to be allowed hence allowed.

8. We remit the matter back to respondents for considering the applicant's case for re-mustering or change of trade in accordance with policy decision. It shall be open to the applicant to move a fresh representation to competent authority along with a certified copy of present order. In case he submits a fresh representation within one month from today along with copy of this order, the competent authority shall look into the matter and dispose of his representation expeditiously, say, within four months by passing a reasoned and speaking order and communicate the decision to the applicant. Applicant's restoration in service shall be subject to out come of the decision of the respondents. O.A. is disposed of accordingly.

No order as to cost.

(Lt Gen Gyan Bhushan)
Member (A)

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