

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Transferred Application No. 119 of 2012**Tuesday, this the 2nd day of February, 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

No. 1547739A, Ex Recruit Ram Singh, son of Shri Asha Ram Chauhan, resident of Village Bhadokhara, P.O. Kuchera, Tehsil Milkipur, district Faizabad, U.P.

.....Petitioner

Ld. Counsel for the : **Shri N. K. Mishra, Advocate**
Petitioner

Versus

1. Union of India through the Secretary Ministry of Defence, DHQ, PO. New Delhi – 110011.
2. The Chief of Army Staff, through Additional Director General, Personnel Services (PS-4) Adjutant Generals Branch, Integrated HQ of Ministry of Defence (Army) DHQ., PO. New Delhi 110011.
3. Director General, Medical Services (Army) North Block, Integrated HQ of Ministry of Defence (Army) DHQ PO New Delhi – 110011.
4. The Officer Incharge Records, Armoured Corps Records, Ahmednagar-414003.

...Respondents

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

ORDER (Oral)

1. Being aggrieved with order of discharge from Army during the course of training, the petitioner approached the Principal Bench of the Armed Forces Tribunal at New Delhi by filing O.A. No. 274 of 2011. The Principal Bench vide order dated 27.11.2012 has transferred the application which has renumbered as T.A. No. 119 of 2012.

2. Heard learned counsel for the parties and perused the record.

3. The petitioner was enrolled in the Indian Army on 02.07.1999 in Armoured Corps and was sent to Armoured Corps Centre and School, Ahmednagar for Basic Foundation Training (BFT). At the time of recruitment, he was found physically fit. According to Ld. Counsel for the applicant during course of training the petitioner suffered from 'Myalgia Right Leg' and admitted in Military Hospital, Ahmednagar on 17.08.1999. On 02.12.1999 while undergoing BFT, the petitioner while participating in Physical Proficiency Test (PPT) suffered injury in left thigh. He was sent to Medical Inspection Room of the Armoured Corps Centre where he was administered medicines and was advised fomentation with saline hot water and subsequently was granted to "Attend CEE" for four days. After required treatment the petitioner resumed

duty for 4 days. On 16.12.1999 the petitioner while participating in the training, suddenly found him in a position where he could not stand on his own legs. He was brought to Military Hospital, Ahmednagar where he was given medicines and X-Ray was conducted. It was then found that the petitioner had suffered femur fracture of left thigh. He was shifted to Military Hospital, Kirkee where the petitioner underwent surgery and a steel rod was implanted inside his left thigh.

4. Submission of Ld. Counsel for the petitioner is that on 02.12.1999 when the petitioner suffered the injury, proper medical examination was not done otherwise situation would not have become worst. From April 2000 to June 2000 the petitioner was hospitalised in Military Hospital, Kirki and was given treatment and also was granted 6 weeks' sick leave from 08.04.2000 to 20.05.2000. He reported back for training on 20.05.2000.

5. Ld. Counsel for the respondents submitted that on account of hospitalisation and being on leave, which comes to around 312 days, the petitioner was discharged from Army by the impugned order in view of Army Head Quarter letter dated 28.02.1986. In para-2 of the counter affidavit, details of the hospitalization period have been narrated. For convenience sake, the same is reproduced as under:

	Date of Admission/ Transferred/ Discharged	Nature of Casualty	Name of Hospital	Total days of admission	Diagnosis
a)	17.08.1999 07.10.1999	Admission Discharge	MH Ahmednagar	52 dys	Myalgia RT Leg
b)	16.12.1999 20.12.1999 20.12.1999 08.04.2000 09.04.2000 to 20.05.200	Admission Transfer Admission Discharge Sick Leave	MH Ahmednagar Transferred to MH Kirkee MH.Kirkee MH Kirkee	114 days	Fracture Shaft of Fumer Lt
c)	20.05.2000 10.06.200	Admission Discharge	MH Kirkee MH Kirkee	22 days	-do-
d)	28.06.2000 03.07.2000	Admission Discharge	MH Ahmednagar	06 days	Fracture Shaft of Fumer LT
e)	04.07.2000 17.07.2000	Admission Discharge	MH Kirkee	14 days	-do-
f)	18.07.2000 20.07.2000	Admission Discharge	MH Ahmadnagar	03 days	-do-
g)	03.08.2000 07.08.2000	Admission Discharge	MH Ahmadnagar	05 days	-do-
h)	07.09.2000 19.10.2000	Admission Discharge	MH Ahmanadgar	43 days	-do-
(j)	23.10.2000 02.11.2000	Admission Discharge	MH Ahmadnagar	11 days	-do-
			Total	312 days	

6. Ld. Counsel for the petitioner advanced two fold arguments; firstly, the petitioner was on medical leave and his absence was broadly because of injury suffered during course of training followed by implantation of steel rod in the left thigh and thus discharge of the petitioner from Army suffers from vice of arbitrariness. The petitioner was not on leave for consecutive 312 days on account of which he has been discharged from Army, and secondly, the petitioner has been discharged in AYE SHAPE-1, which is apparently wrong since on account of injury caused to him and implantation of steel rod in his left femur shaft, he was not fit for being retained in

service. It is submitted that it was incumbent upon the respondents to pay disability pension to the petitioner.

7. On the other hand, Ld. Counsel for the respondents vehemently submitted that it is not necessary for consecutive absence of 210 days. In case the incumbent is absent, may be for fraction of 210 days, he shall be entitled to be discharged from service. It is also submitted that the petitioner was discharged in AYE SHAPE-1 Medical Category, thus he cannot claim disability pension and his statutory complaint has been rightly rejected.

8. In the policy letter dated 28.02.1986, ground for discharge has been given in paras 5 and 6. For convenience sake, the same are reproduced as under:

“Relegation of Medial Grounds.

5. The maximum period for which a recruit can be relegated on medical grounds will be six months. A recruit falling ill due to disease or injury during training, whether attributable to or aggravated by service, on discharge from hospital may be placed in a temporary medical category for not more than three months, provided there is a reasonable prospect in the opinion of medical specialist that the individual is likely to be fit for training and the total absence from training including hospitalization period is not likely to be more than six months. If on the other hand he is unlikely to be fit for training within six months of first absence from duty due to illness, the individual will not be discharged from hospital in temporary medical category but will be invalided out of service.

6. *However, if a recruit is being discharged for being absent from training for more than 180 days purely on medical grounds, the period of absence may be extended to 210 days provided the recruit forgoes his annual leave of 30 days which he is entitled during recruit training. This period of actual leave will be utilized for carrying out important aspects of training missed during his absence on medical grounds.*

These instructions will be incorporated in the CS Publication of Basic Military Training for Recruits which is under revision at the Headquarter.”

9. A plain reading of said policy letter shows that the maximum period for which the recruit can be relegated on medical grounds shall be six months, i.e. 180 days. However, in case he forgoes his annual leave for 30 days, said period of 30 days may be added to his absence. In para 6 (supra) it has been categorically stated that absence may be of 210 days provided the recruit forgoes his annual leave of 30 days. In the present case, the petitioner absented for 312 days.

10. The provision referred to herein above in Army Policy does not say absence for 210 consecutive days leave. Paras 5 and 6 of the aforesaid policy also provide for total absence of recruit during course of training. Total absence may be leave taken by such recruit from time to time for any reason whatsoever. It includes leave on account of medical ailment. The purpose behind the provision is to ensure that a person who remains under medical treatment for prolonged periods may not be fit to be retained in the Army. The policy decision

taken by the Army authorities seems to meet out medical fitness and it is not for the Tribunal to ordinarily question the same. The fact remains that the total absence given in the policy is 210 days and the petitioner remained on leave for 312 days, hence was discharged from Army.

11. Coming to the second limb of arguments, since the steel rod was implanted in the left femur of the petitioner, he seems to be entitled for disability pension. Payment of disability pension is ordinarily based on opinion of the Medical Board. In the present case, the petitioner was discharged in AYE SHAPE-1 medical category, which means he was fit for Army, but he was discharged from service because of absence of 312 days. However, the facts enumerated hereinabove shakes our conscience as to whether a person having been implanted steel rod in his leg will be fit to serve the Army as a soldier? Ld. Counsel for the respondents could not given satisfactory reply. It appears that the Medical Board has not been into account the implantment of steel rod in the left thigh while declaring the petitioner fit for Army services. Prima facie, we do not feel that a person having fractured leg with steel rod in the femur may not effectively serve the Army. However, it is subject to Medical opinion.

12. Since in the present case, this issue has not been considered by the Medical Board, we give liberty to the

petitioner to represent his case for Review Medical Board and after receipt of representation, it shall be appropriate for the respondents to send the petitioner for Review Medical Board and the Review Medical Board shall look into the factual matrix on record and give opinion whether a person having steel rod implanted in his femur will be efficient and physically fit in the Armoured Corps.

13. Subject to aforesaid liberty, we order accordingly, ofcourse, in case the Review Medical Board gives opinion not in favour of the petitioner, it shall be open for the petitioner to apply for payment of disability pension.

14. Subject to above, we are not inclined to interfere with the impugned order of discharge which has been passed in terms of the policy (supra), which prima facie seems to have binding effect.

15. While declining to interfere with the impugned order of discharge, we **dispose of** the T.A. with liberty as aforesaid.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

Ukt/-

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