

Reserved**Court No. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 500 of 2019**Thursday, this the 16th day of February, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 18017373Y Ex Sep Baljinder Singh, S/o Late Shri Kesar Singh,
R/o Village & PO: Rure - ke-Khurd Tehsil: TAPA, District:
BARNALA (Punjab), PIN: 148108

..... Applicant

Ld. Counsel for the Applicant : **Shri Lalit Kumar, Advocate and
Shri Ashish Asthana, Advocate**

Versus

1. Union of India, Through Secretary Ministry of Defence
South Block, New Delhi.
2. Officer-in-Charge Records, Bengal Engineer Group & Centre
Roorkee (Uttarakhand)
3. Commanding Officer, No. 1 Training Battalion
Bengal Engineer Group & Centre, Roorkee (Uttarakhand)
4. Commandant, Military Hospital, Roorkee (Uttarakhand)

.....Respondents

Ld. Counsel for the Respondents. : **Shri Chet Narayan Singh,
Central Govt Counsel**

ORDER

“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *to quash the impugned discharge order dated 30th August 2018.*
- (ii) *to reinstate the applicant in service with all consequential benefits.*
- (iii) *to award the cost of this litigation, and*
- (iv) *to grant any other relief or reliefs which the Hon’ble Tribunal may deem fit, proper and just in the facts and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in Army on 13.06.2016. Applicant successfully completed basic military training. On 03.07.2017, while cutting tree, the applicant happened to receive a cut injury on his left thumb and he was treated in various military hospitals and placed in low medical category P-5 for the disease “**Immune Surveillance**”. Applicant was recommended to release from service being a recruit. Being aggrieved, the applicant has filed instant Original Application for quashing discharge order and to reinstate him in service.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army as Driver Special Vehicle (DSV) in medically and physically fit condition. He successfully completed his basic training. He was granted recruit leave for 28 days. After rejoining from leave, he attended and qualified Chief Instructor in Field Phase which was conducted from 27.11.2016 to 11.06.2017 for mine laying and laying of dry and wet bridges. On 03.07.2017, while cutting tree, the applicant happened to receive a cut injury on his left thumb and he was treated in various military hospitals and placed in low medical category P-5 for the disease "**Immune Surveillance**". Before attestation, applicant attended mandatory pre-attestation Refresher Course. For 7 days from 12.06.2017 to 17.06.2017. Applicant passed all the tests namely PPT, BPET, Swimming Test, Field Craft Test and Small Arms Firing Test. After passing in Refresher Course (RC), the applicant along with other recruits of his platoon was attested collectively on 17.06.2017. After attestation the applicant acquired the status of trained soldier. After attestation he was granted 14 days leave and he joined duty on 01.07.2017. While cutting a tree with a 'dah' as a part of working party, the applicant received cut injury on his left thumb and he was admitted in Military Hospital at Roorkee. The applicant was wrongly described as recruit, because the Part II Order of all the recruits who had been attested collectively on 17.06.2017 had not yet been published by respondent

No 3. His blood sample was taken and applicant was described to be suffering from “Immune Surveillance” and he was placed in low medical category. On 17.09.2017, he was discharged from hospital and he reported to No 1 Training Battalion and started attending technical classes of his trade. After 14 weeks of technical training, he appeared and passed Class – IV of his trade. While attending Class III Training of his trade applicant was admitted to Military Hospital for review of his medical category on 22.02.2018. Base Hospital recommended the applicant to be placed in Low Medical Category P-5 and recommended release from serving being a recruit. He was not brought before an Invaliding Medical Board (IMB) and that too by declaring him in permanent category A-5. On 7 September 2018, applicant was locally discharged from service as a recruit. Ld. Counsel for the applicant prayed that since applicant is not a recruit, hence impugned order of discharge dated 30.08.2018 be quashed and applicant be reinstated in service with all consequential benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant successfully completed basic military training on 29.10.2016. He was granted recruit leave for 28 days from 30.10.2016 to 26.11.2016. After rejoining from recruit leave applicant successfully completed CIF Training on 11.06.2017. After completion of CIF Phase training, applicant was nominated for one week

refresher cadre for attestation parade wef 12.06.2017 to 17.06.2017. The applicant failed in DSV test which is mandatory for attestation of a recruit, hence, he could not participate in attestation parade and his name was also not there in nominal roll of recruits dated 17.06.2017 undergoing attestation parade. He rejoined duty after availing leave. On 03.07.2017 he got injured while he was working in Battalion Area. He was admitted in Military Hospital and diagnosed a patient of "Immune Surveillance" His medical category was due on 23.02.2018. On 25.09.2017, applicant was nominated for trade training Class IV. He successfully completed DSV wef 25.09.2017 to 20.01.2018. He was granted 14 days casual leave wef 21.01.2018 to 03.02.2018. The applicant started his trade training DSV Class III wef 03.02.2019. On 21.02.2018, he reported for review medical category. He was placed in Low Medical Category A5 (Permanent). On 19.06.2018, he reported to No 1 Training Battalion for preparation of IMB documents. IMB of the applicant was received vide letter dated 09.08.2018. After carrying out all documentation procedure for discharge, the discharge certificate was furnished to the applicant on 30.08.2018. at 1 Trg Battalion from . Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. The question before us to decide is “whether the applicant was a recruit at the time of invaliding out from service or he was a Sepoy”?

7. On careful perusal of the documents, it has been observed that the applicant was enrolled on 13.06.2016 and he was placed in Low Medical Category P-5 for the disability “**Immune Surveillance**” and invalided out from service with effect from 30.08.2018. He failed in Driver Special Vehicle Test which is mandatory test for attestation of a recruit hence, he could not be attested and at the time of discharge, he was a recruit. He did not participate in attestation parade and therefore, his name was not there in nominal roll of recruits dated 17.06.2017 undergoing attestation parade. Attestation Part II Order was published in respect of those soldiers who were attested. Invaliding Medical Board of the applicant was received by Battalion on 16.08.2018. After completion of documentation procedure, the applicant was discharged from service on 30.08.2018. Since the applicant was recruit at the time of discharge, hence, he is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

8. In view of the above, we do not find any irregularity or illegality in discharging the applicant from service as a recruit in low medical category. The O.A. is devoid of merit and deserves to be dismissed.

It is accordingly **dismissed**.

9. No order as to costs.

10. Pending applications, if any, are disposed of accordingly.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 16 February, 2023

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