

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 226 of 2021**

Thursday, this the 02nd day of November, 2023

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

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Recruitment No: 15793744N Gunner, Ramu Singh, S/o Shri Ram Shankar Singh, R/o Village: Bhikanpur, Post: Jasohen, Tehsil: Jaswtan Nagar, District: Etawah (U.P).

-----Applicant

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

Shri Rajesh Kumar Singh, Advocate
Shri Sanjay Kumar Singh, Advocate

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. The Commandant, Army Air Defence Centre, C/o 99 APO.
3. Major / Captain, Army Air Defence Records, C/o 56 APO,
PIN - 908803

..... Respondents

Ld. Counsel for the Respondents : **Ms. Deepti P Bajpai,**

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 issue an order or direction in the suitable nature quashing the impugned order dated 23.11.2011 passed by the Commandant, Army Air Defence, Centre C/o 99 APO i.e. respondent No. 2 (Annexure No. A-1 to this Original Application with Compilation No. 1).

(I- a) To issue an order or direction of suitable nature thereby setting aside the basic discharge order dated 02.01.2010, as contained as Annexure No. 1 (A) with present affidavit.

(I - b) To issue an order or direction to the respondents to reinstate the applicant on his original post and pay him full pay and allowances for the period of termination and reinstatement with all consequential benefits and counting of period of termination for all pensionary benefits.

(ii) to issue an order or direction in the suitable nature of mandamus directing the respondents to reinstate the applicant on his original post and also

pay him regular salary month to month with all consequential benefits.

(iii) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) To award the cost of the application to the applicant."

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 05.07.2008. During Military Training he was hospitalized on number of occasions. As per policy, if a recruit is absent from training for 180 days, he is liable to be discharged from service. Applicant was discharged from service on 05.01.2010. It is in this perspective that this O.A. has been filed by the applicant for re-instatement in the army.

3. Learned counsel for the applicant submitted that applicant was enrolled in Army on 05.07.2008. He successfully completed 37 weeks training but all of sudden severe pain was started in his leg and he was admitted in Military Hospital for 8 to 10 days and later on he was transferred to Command Hospital, Kolkata. The applicant was admitted in Hospital on 11.07.2009 and was under treatment upto 05.12.2009 with remark of medical category as fit and he reported to duty on 06.12.2009. All of sudden, he was removed from service on 05.01.2010. The applicant submitted application dated 18.01.2010 for reinstatement in service but of no avail. He submitted legal notice

dated 04.11.2011 asking the reason of his removal from service and requested that he may be permitted to resume his duty. Applicant was intimated that he was absent from training for a period of 190 days on medical ground during his training. As per Government order dated 28.02.1986 if a recruit who is absent from training for a period of 180 days or more on medical ground is required to be discharged from service and as such, he was discharged from service on 05.01.2010. Applicant filed O.A. No 993 of 2015 for reinstatement in service which was dismissed for want of prosecution. The order of discharge of the applicant does not sustain in the eye of law. Salary of the applicant was Rs. 12,500/- per month and the applicant worked/ completed his training about 18 months in the department and as such he is entitled to received total amount of salary Rs. 2,68,000/- but he was paid only Rs. 64,000/- through Demand Draft dated 10.09.2010. Rs. 2,20,000/- are due to the applicant. Learned counsel for the applicant pleaded that order of discharge passed by the respondents be quashed and the applicant be re-instated in service.

4. On the other hand, learned Counsel for the respondents submitted that applicant was enrolled in the Army on 05.07.2008. He was admitted in Military Hospital during military training on number of occasions. The details are as under:-

S.No	Details	Duration		No of days
1.	Admission in Section Hospital Gopalpur	20 Apr 09	20 Apr 09	01 day
2.	Transfer to Hospital INS Chilka	21 Apr 09	29 Apr 09	09 days
3.	Reported Sick at Medical Inspection Room	30 Apr 09	01 May 09	02 days
4.	Admission at Command Hospital (Eastern Command)	11.06.09	05 Dec 09	178 days
			Total	190 Days

5. On rejoining from hospital, the applicant was interviewed by Training Officer and his period of absence from training on medical grounds was calculated. Since he was absent from training for more than 180 days on account of admission in hospital, he was discharged from service. On careful scrutinization of absence period, it has been emerged that applicant was absent from duty for 160 days only and not 190 days as calculated earlier. The error has occurred due to wrong entry made in Hospitalisation Record being maintained at Medical Inspection Room, Army Air Defence Centre. The actual period of absence is as under:-

S. No	Details	Duration		No of days
1.	Admission in Section Hospital Gopalpur	20 Apr 09	20 Apr 09	01 day
2.	Transfer to Hospital INS Chilka	21 Apr 09	29 Apr 09	09 days
3.	Reported Sick at Medical Inspection Room	30 Apr 09	01 May 09	02 days
5.	Admission at Command Hospital (Eastern Command)	11 July 09	05 Dec 09	148 days
			Total	160 Days

6. Applicant was liable for discharge from service being unlikely to become efficient soldier, under the authority of Table IV Annexed to Army Rule 13 (3) and Integrated Headquarters of Min of Def (Army) (MT-3) letter No A/20314/MT-3 dated 28.02.1986. item IV and procedure given in Integrated Headquarters of Min of Def dated 28.12.1988. Approval of competent authority for discharge of the applicant was obtained vide order dated 23.12.2009 and applicant was discharged from service on 05.01.2010 (AN). Applicant filed petition before this Tribunal for quashing his discharge order and re-instatement in service which was dismissed for want of prosecution vide order dated 29.05.2014. Learned counsel for the respondents pleaded that present O.A. has no substance, hence liable to be dismissed.

7. We have heard learned counsel of both sides and perused the documents available on record.

8. The moot question before us to decide is 'whether the applicant who has been dismissed from service due to Hospitalization for 160 days only is entitled for reinstatement in service?'

9. There is no dispute that the applicant was enrolled in the Army on 05.07.2008. He was admitted in Military Hospital for total 160 days due to pain in his leg. He was discharged from service on 05.01.2010 under the provisions of Government of India, Min of Def letter dated 28.02.1986. Applicant represented his case for re-instatement in service which was rejected.

10. In para 2 (a) of counter affidavit, respondents have stated that applicant was admitted in military Hospital for 190 days whereas respondents in para (b) of counter affidavit have accepted that applicant was admitted in Military Hospital for 160 days only. Govt of India, Min of Def letter dated 28.02.1986 stipulates that when a recruit is admitted in Military Hospital for more 180 days during military training, his service shall be terminated. In the instant case, applicant was hospitalized only for 160 days only and not for 180 days, hence his discharge order is wrong. Such type of negligence on part of the respondents is not acceptable at all.

11. Thus, keeping in view of the afore mentioned situation when we examine the facts and circumstances of the case, it is clear that order of discharge passed by the respondents is not sustainable in the eye of law. Period of the admission in hospital was calculated in very casual/ cursory manner with intention to throw out the applicant from service.

12. It is trite law that a thing should be done in the manner provided in the statute and not otherwise. When the statute provides for a particular procedure, the authority ought to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to that at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*", meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible. (Vide: **Taylor v. Taylor**, (1876 1 Ch D 426: 45 LJ Ch 393; **Nazir Ahmed v. King Emperor**, AIR 1936 PC 253; **Deep Chand v. State of Rajasthan**, AIR 1961 SC 1527, **Patna Improvement Trust v. Lakshmi Devi**, AIR 1963 SC 1077; **State of Uttar Pradesh v. Singhara Singh**, AIR 1964 SC 358, **Chettiam Veetil Ammad v. Taluk Land Board**, AIR 1979 SC 1573; **State of Bihar v. J.A.C.**,

Saldanna, AIR 1980 SC 326; **State of Mizoram v. Biakchhawna**, (1995) 1 SCC 156, **J.N.Ganatra v. Morvi Municipality Morvi**, AIR 1996 SC 2520; **Haresh Dayaram Thakur v. State of Maharashtra**, AIR 2000 SC 2281; **Dhananjaya Reddi v. State of Karnataka**, AIR 2001 SC 2512; **Commissioner of Income-tax v. Anjuman M.H. Ghaswala**, AIR 2001 SC 3868; **Prabha Shankar Dubey v. State of Madhya Pradesh**; AIR, AIR 2004 SC 486; **Ram Phal Kundu v. Kamal Sharma**, AIR 2004 SC 1657 and **Indian Bank's Association v. Devkala Consultancy Service**, AIR 2004 SC 2615.

13. In '**State of Uttar Pradesh v. Singhara Singh**', AIR 1964 SC 358, the Apex Court held as under:

“8. The rule adopted in Taylor v. Taylor, (1876) 1 Ch D 426: (1875) (1) Ch D 426): 45 LJ Ch 393 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

14. In the case of **S.N. Mukherjee Vs Union of India (1990) 4 SCC 549**, A constitution Bench of the Supreme Court inter alia examined the question of necessity of observing the

principles of natural justice and recording of reasons by the authority exercising the quasi-judicial functions and held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action.

15. Keeping in view the mental pain, agony and humiliation suffered by the applicant, it is a fit case where the applicant should be awarded compensatory cost and the relief may be moulded accordingly. The loss applicant has suffered cannot be compensated by means of money. Hon'ble Supreme Court in the case of **Ramrameshwari Devi and others V. Nirmala Devi and others**, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in **A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam** represented by its President and others, (2012) 6 SCC 430. Adhering to old junk system, gross injustice done to the applicant is a case of mind set. It requires hammering by administration of justice so as to obey and respect law and remain within the four corners of empire of law.

16. The question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and fair manner in accordance to law. The case of

Ramrameshwari Devi and others (supra) rules that it the party who is litigating, is to be compensated.

17. Apart from aforesaid judgments of Hon'ble Supreme Court, under Section 18 of the Armed Forces Tribunal Act, 2007, Tribunal has been conferred statutory power to impose cost while deciding application under Section 14 and an appeal under Section 15 of the Armed Forces Tribunal Act, 2007 as it may deem just, to quote:-

*18. **Cost.**- While disposing of the application under section 14 or an appeal under section 15, the Tribunal shall have power to make such order as to cost as it may deem just."*

18. The purpose of statutory provision seems to compensate Armed Forces person who is representing his grievance keeping in view facts of case depending upon the gravity of injustice caused to him. Applicant is fighting for reinstatement in service since the date of his discharge. Date of birth of the applicant is 04.08.1988 and he was enrolled in the Army on 05.07.2008. He was dismissed from service on 05.01.2010 due to negligence of the respondents without adopting proper procedure. Now he has completed more than 35 years of age. At this belated stage, after elapse of 13 years period from the date of discharge , he cannot be reinstated in service.

19. In view of what has been discussed above, action of the respondents dismissing the applicant from service needs sympathetic consideration. The respondents are directed to pay cost of Rs.

5,00,000/- (Rupees Five lacs only) which shall be deposited in Registry of this Tribunal expeditiously, say within a period of three months from today and the same shall be released in favour of the applicant through cheque.

20. With the aforesaid directions, O.A. is **disposed off** finally.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated: 02 November, 2023

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