

RESERVED
Court No.1

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

Original Application No. 04 of 2020

Thursday, this the 2nd day of September 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Tapas Kumar Adak, S/o Sankar Chandra Adak, Resident of Dharmapora Kolla, Police Station – Chandra Kona, Paschim Medinipur, West Bengal – 721201.

..... Applicant

Ld. Counsel for the: **Shri Abhinav Bhattacharya and**
Applicant **Shri Abhijeet Mukherjee, Advocate**

Versus

1. Union of India through the Principal Secretary, Ministry of Defence, New Delhi.
2. Commanding Officer, Dogra Regiment Kendra, The Dogra Regiment Centre.
3. The Brigadier Gyanodaya, Centre Commandant, Dogra Regiment Kendra.
4. Brigadier, Officer in Charge Records, The Dogra Regiment.

..... Respondents

Ld. Counsel for the : **Shri Amit Jaiswal,**
Respondents **Central Govt Counsel.**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application was filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *To issue an order or direction to the Respondents, thereby setting aside the impugned undated discharge, roll of 12.10.2018 (Annexure No. 1 of this Original Application) issued by the respondents;*
- (b) *To issue an order or direction, thereby setting aside the impugned speaking order, dated 08.08.2019 contained in Annexure No. 2 to this original application;*
- (c) *To issue suitable order or orders or direction(s) to the Respondents to reinstate the petitioner/applicant in the position of cadet in the Dogra Regiment, Dogra Regimental Kendra, Dogra Regimental Centre (Trg Bn Office), Faizabad with effect from 07.04.2018, along with all the consequential benefits and back wages, which might have accrued in his favour during the aforesaid period.*
- (d) *To issue any such other or orders and further suitable orders or directions which this Hon’ble Tribunal may deem fit and appropriate in the facts and circumstances on the present case.*
- (e) *To allow this original application with exemplary costs.*

2. Brief facts of the case are that the applicant was enrolled in the Army (in Dogra Regiment) on 11.03.2018 as Hair Dresser and was discharged from service on 07.04.2018 (AN) under Rule 13 (3) of Army Rules 1954. It is alleged that the applicant was discharged from service on his own request. Later on the applicant submitted an application for re-instatement in service but his request was rejected. Being aggrieved, the applicant filed petition in Hon’ble

High Court at Calcutta which was disposed of with the direction to respondents to treat the petition as representation of the applicant and to take a reasoned decision thereon in accordance with rules within four weeks. In compliance of order of Hon'ble High Court at Calcutta, a reasoned order was passed by the respondents vide letter dated 08.08.2019 and his request to in-instatement was rejected. Being aggrieved, the applicant has now filed the present O.A. with the prayer to re-instate him in service with all consequential benefits.

3. Ld. Counsel for the applicant submitted that while undergoing basic military training, on 22.03.2018 his superiors ordered him to take leave and report again after the expiry of the leave. Applicant was also coerced to sign some blank papers and on being enquired as to why he was being made to sign blank papers, the superior officers refused to answer and instead asked him to follow the instructions. The applicant was from a different linguistic origin, he was not aware of Hindi and as such he affixed his signatures on blank papers and the application was drafted by someone other on the instructions of the superior officers and applicant was sent on leave to his village with instructions that he shall be called back after few days. The applicant returned back to Dogra Regimental Centre at Faizabad after a week but he was not allowed to enter the premises. After few days he received a phone call from the training centre on 11.05.2018, informing to report the training

centre for an interview scheduled on 18.06.2018. On reaching at training centre, applicant was asked to sign some blank papers and a detailed medical check up of the applicant was done. Applicant was informed that he had been discharged from service and he could not be allowed to resume his training again. Learned counsel for the applicant submitted that discharge roll served to the applicant has no date nor bears the signature of any competent authority. Apart from that, impugned discharge roll was issued under Item IV of the table annexed to the Rule 13 (3) of the Rules whereby the applicant was discharged from service on the ground of medical invalidation whereas no medical board was constituted. A demand draft worth Rs 10,687/- was sent at the address of the applicant towards dues. The applicant has till date not encased the said demand draft and he wants to service the nation. Applicant was also given some blank document with instructions to sign and return them back. In these documents, applicant was referred as ex cadet. Applicant wrote various letters to respondents to re-instate him in service but of no use. He preferred Writ Petition before Hon'ble High Court at Calcutta which was disposed of with the directions to respondents to decide his representation within four weeks. Respondents rejected his prayer vide letter dated 08.08.2019 by a speaking and reasoned order. Ld. Counsel for the applicant further submitted that the applicant was discharged from service on the forged application under Rule 13 (3) (iv) which stipulates discharge on own request and contended that the

applicant had never submitted the alleged premature application for discharge. He prayed that since the applicant was wrongly discharged hence he should be re-instated in service.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant while undergoing basic military training, in first week of training approached the competent authority for premature discharge on compassionate grounds before completion of his terms of engagement vide application dated 22.03.2018. The applicant was given repeated counselling and advice to change his mindset of leaving the army, but he did not change his mind. Applicant was well aware of the fact that his discharge was purely on his own request and mindset of leaving the army training despite repeated counselling and advices rendered to the applicant and he was also aware that once discharged is sanctioned before completion of basic military training, he cannot be re-instated in service. Thereafter his case for discharge from service on compassionate grounds was recommended and approved. As the applicant was from a non-Hindi speaking state, his knowledge of Hindi language was inadequate and hence application on his behalf was drafted in front of Company Commander and then read out to him and his signature obtained. His Release Medical Board was held at Military Hospital, Faizabad on 05.04.2018 and he was recommended to release in medical category SHAPE-1, as the petitioner was in

good health. Accordingly, applicant was discharged from service on his own request after rendering 28 days of service and was handed over to his brother Mr. Asim Kumar Adak on same day. Learned counsel for the respondents submitted that in Para 11 of discharge roll due to clerical error 'medically unfit' has been mentioned instead of 'discharged at his own request'. After being discharged from service the applicant was paid Rs. 10,687/- on account of his final settlement of accounts. His Army Group Insurance maturity claim of Rs. 4,106/- is pending due to non receipt of joint bank account details from the applicant till date. Learned counsel for the respondents vehemently submitted that till completion of basic military training recruits are not entitled for any leave. He claimed that the applicant was discharged because he himself applied for premature discharge. He further submitted that many trainees opt for premature discharge to improve their re-employment opportunities in the outside world. Learned counsel for the respondents submitted that contention of applicant that he has not signed affidavit is wrong as there is no different in signature on application for discharge as well as in affidavit. He also submitted in army that there is provision of English or Hindi language only and the applicant understands English language, hence, his discharge certificate was prepared in English language. In army there are candidates of all states, all religions, all casts and all languages but they are treated same and there is no any discrimination on state/ language basis. He concluded by stating

that all efforts were made to retain the applicant in service but applicant was not willing to serve in the army. He submitted that as per existing rules applicant cannot be reinstated in service. Hence instant O.A. is liable to be dismissed.

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

6. On perusal of document it transpires that the applicant was recruited in the army on 11.03.2018 as Hair Dresser. As per respondents, applicant gave an application dated 22.03.2018 along with an affidavit for premature discharge from service. Learned counsel for the applicant has drawn our attention on the application dated 22.03.2018 alleged to be given by the applicant for discharge from service which is annexed as Appendix 'C' to Original Application. Perusal of this application shows that this application was submitted by the applicant on 22.03.2018 and on the same day this was recommended by Officer Commanding, Chander Training Coy as well as by Training Battalion Commander, Dogra Regimental Centre and surprisingly on the same day it was approved by Centre Commandant. However date of approval later on changed from 22.03.2018 to 04 April 2018. Respondents have also stated that despite applicant being counselled and motivated times and again by the Officers, JCOs and NCOs, he was not willing to continue is incorrect as his so called request for discharge was already accepted on the same day i.e. 22.03.2018. If once,

discharge has been sanctioned then what is use of motivation and counselling. Thus it appears that forged application for discharge of the applicant was prepared by the respondents himself without consent of the applicant and they have completed formalities in hurry that is why reason of discharge has been mentioned 'medical ground' instead of 'discharge on own request'.

7. Further again on Para 11 of discharge roll cause of discharge has been shown as 'Medically Unfit' and not 'Discharge at his Own Request' whereas in Release Medical Board, applicant has been shown as SHAPE-1. In these circumstances, explanation offered for showing incorrect reason due to clerical mistake is not acceptable.

8. In the army affidavit along with application for discharge is not mandatory. A recruit is not supposed to leave the training centre and to go to Court to prepare affidavit. Thus, it again appears that there is manipulation otherwise there is no logic for giving affidavit by a recruit for discharge.

9. Respondents have stated that applicant left training and gone home being unwilling to continue is not accepted. If the applicant had gone home as unwilling, he would not have returned back within few days and requested to allow him to join.

10. For a young recruited boy, atmosphere and environment of the army is new, hence some boys are unable to adjust them in

such tough atmosphere. If the applicant being a recruit was unwilling to continue, it was duty of the Officers, JCOs and PBORs to counsel and motivate the applicant properly to continue his training.

11. In the Original Application, applicant has repeatedly stated that he was forced to sign blank papers whereas he was willing to serve in the army. It also transpires that since his discharge, applicant has tried his best for re-instatement him in service. He gave many applications and requested the respondents to re-instate him in service but of no use. When his prayer for re-instatement was rejected, he approached High Court, Calcutta who ordered the respondents to consider the matter but his prayer was against rejected. At last, he has approached this Tribunal for re-instate him in service.

12. In view of the facts and circumstances stated above, it creates a doubt that applicant has himself given application for premature discharge. It appears that applicant was forced to sign blank papers and later on his application for premature discharge was prepared and documentary formalities were completed on the same day.

13. In the army there should not be lack of trust between soldiers and the officers. The officers of the army must deal with subordinates or soldiers in a just and fair manner to strengthen

their trust into them so that during time of war, the officers may be their hero to fight with enemies.

14. The plea of the respondents regarding re-instatement saying that there is no provision to re-instate in service is not tenable. The impugned orders rejecting the applicant prayer for re-instatement in service are liable to be quashed, hence quashed.

15. Consequently, Original Application is **allowed**. The respondents are directed to re-instate the applicant back in service in the same capacity in which he was discharged and intimate the date of joining. The applicant will deposit the amount paid to him and respondents shall take action as per rule. The applicant shall not be entitled for any back wages or other benefits for the period, he was out of service. The respondents are further directed to comply with the order within four months from the date of production of a certified copy of this order.

16. No order as to costs.

17. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 02 September, 2021

Ukt/-