

**RESERVED**  
**Court No. 1**

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

**O.A. No. 647 of 2017**

Tuesday, this the 11<sup>th</sup> day of September, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

No 15246747N Ex Recruit Sushant Kumar, Son of Shri Ram Babu Singh, R/o Village & Post Khojipur, Tehsil Chhibramau, District Kannauj (UP).

.... Applicant

Ld. Counsel for the: Shri Bachchan Singh, Advocate.  
Applicant

Versus

1. Union of India through Secretary to the Govt of India, Ministry of Defence, New Delhi.
2. GOC-IN-C HQ Southern Command- Pune-1
3. Commandant, Artillery Centre, Nasik Road Camp, Pin - 908800
4. Commanding Officer, 6/2 Training Regiment Artillery Centre Pin- 908800, C/o 56 APO
5. Chief Record Officer, Artillery Records Pin 908800, C/o 56 APO.

....Respondents

Ld. Counsel for the: Mohd Zafar Khan, Advocate.

Respondents.

**ORDER****“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”**

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“8.1 This Hon’ble Tribunal may graciously be pleased to quash the order of the respondent No 2 to 5 rejecting the appeal of the applicant Annexure No A-1 and Annexure No A-2 and also the sanction for discharge by the respondent no 3, Annexure No A-3.

8.2 This Hon’ble Tribunal may also be pleased to order and direct the respondents to reinstate the applicant in service with back wages. It is further prayed that in case he does not with stand a physical test then he be brought before medical board assessing his disability due to the disease started during recruit training.

8.3. This Hon’ble Tribunal may further be pleased to pass such other order as deem fit, proper and necessary in the circumstances of this case.

8.4 Award costs to the applicant.”

2. In brief the facts as pleaded by the applicant in his O.A. and rejoinder affidavit are that the applicant was enrolled at Artillery Centre on 16.02.2016 as a cook on the basis of relation certificate. The claim of the applicant is that he was illegally discharged from service on 13.02.2017 i.e. less than a period of one year from the date of enrolment. He was discharged under Rule 13(3) Item IV. During training period respondent no.4 as Commanding Officer always demanded special food from the applicant, on expressing inability to do so, P.T.I. NK Shivanand was annoyed and manhandled the applicant in which he got

fractured his leg and could not pass the PT test. The PT Instructor informed the fact to the Trg J.C.O. who also victimized and harassed the applicant. The applicant could not complete his basic training and was illegally employed in the cook house that is why he could not get proper training in basic military training as well as technical training. It is also pleaded that there was no fault of applicant in his being failed in five physical tests as he got injured by the inhuman behaviour of the training staff while under the Rules training staff is supposed to behave humanely. The applicant was admitted on 24.01.2017 in the military hospital and he was recommended four weeks sick leave but instead of sanctioning the sick leave as recommended by the medical officer the applicant was discharged from service w.e.f. 13.02.2017. It has been pleaded in the rejoinder affidavit that the pain in his left leg and other parts of body was caused due to merciless beating by the P.T. Instructor L/Nk Shivanand.

3. In the counter affidavit it has been pleaded by the respondents that the applicant has been basically discharged as a recruit for failing to qualify in physical proficiency test. They further added that the applicant was given adequate chances to improve himself wherein he was relegated twice on medical grounds and thrice on training grounds. The applicant was afforded seven extra weeks in terms with Directorate General of Military Training, General Staff Branch, Army HQ letter No. A/20314/MT-3 dated 28.02.1986 to improve and complete his training and ultimately he

was discharged from Army w.e.f. 13.02.2017 under the provisions of aforementioned Army HQ letter dated 28.02.1986 under item IV of Rule 13 of Army Rules, for failing to qualify physical proficiency test fifth time and after three relegations. Discharge of the individual has been carried out due to repeated training relegations in spite of which he failed to qualify in physical proficiency tests. The learned counsel for the respondents vehemently denied manhandling by the training Instructor and said that Army has time tested checks and balances against manhandling of recruits. He submitted that the applicant was given several opportunities to pass the training test in which he failed due to weak physical and mental condition.

4. It is admitted fact that the applicant could not pass the physical training test. The only ground of the applicant is that he was manhandled and mercilessly beaten by training Instructor Shivanand and that was the reason due to which he could not complete military training as he received fracture in his leg.

5. On behalf of the respondents it has been argued that the story of merciless beating by training Instructor Shivanand is absolutely false and there is absolutely no document or evidence in support of this assertion of the applicant. The last hospital admission of the applicant was for 'LUMBAGO' i.e. pain in lower back and that the sick leave was recommended by the medical officer in relation to LUMBAGO, however, the Commanding Officer keeping in view his performance during military training

has ordered his discharge as the applicant was not likely to become an efficient soldier. The discharge of the applicant has taken place as a recruit trainee and before his attestation.

6. During the course of arguments, learned counsel for the applicant has drawn our attention towards Annexure A-5, which is a telegraphic message given by Dr Rishiv Salathia, which reads as under :-

“MEDICAL RETENTION OF RECTS (.) NO 15246747M RECT SUSHANT KUMAR OF THIS TRAINING REGIMENT HAS BEEN GTD FOUR WEEKS SICK LEAVE VIDE YOUR DISCH SLIP 513/01/18 DT 06 FEB 2017 ( ) INDL HAS BEEN RELEGATED FOR MORE THAN ACCEPTABLE LIMITS DUE TO REPEATED FAILURE IN BPET AND DISCH DOCU IN TERMS OF MT DTE COMMA IHQ OF MOD (ARMY) LETTER NO 201314/MT3 OF FEB 28 (28) YR 1986 IS UNDER PROCESS (.) THE RETENTION OF INDL IN SERVICE IS GRIEVOUSLY CAUSING FINANCIAL LOSS TO THE EX-CHEQUER ACCORDING TO POLICY IN VOGUE (.) RECOM THAT THE INDL BE ALLOWED TO UNDERGO DISCH INSTEAD OF GRANT OF SICK LEAVE (.) INDL IS BEING RETAINED AT THIS TRG REGT TILL RECEIPT OF FURTHER DIRNS FROM MH DEVLALI (.) HQ ARTY CENTRE (TRG BR) ONLY(.) REQUEST APCH MH DEVLALI FOR CANCELLATION OF SICK LEAVE GTD TO INDL TO ENABLE SPEEDY DOCU FOR HIS DISCH.”

7. We have also examined the medical report of the applicant filed as Annexure A-4, which does not indicate any injury or even any abrasion on the body of the applicant, what to say of fracture of the leg. The diagnosis was of acute lumbago (pain of Lumbar region) in the back. This hospital discharge slip shows that the applicant was admitted on 24.01.2017 at 12.05 PM and was

discharged on 04.02.2017 at 18.00 hours. In the brief case summary it was mentioned as under:-

“22 yrs old Rect. A case of Acute Lumbago. Managed conservatively. Requires a period of convalescence. Fit for discharge.”

There is absolutely no other document filed on behalf of the applicant wherein there is any whisper that the applicant has sustained any external injury on his body, during the period he was in service. There is absolutely no evidence that the applicant sustained a fracture in his leg. Therefore the allegation of the applicant that he was manhandled and mercilessly beaten by the training Instructor to the extent of causing fracture in his leg does not stand substantiated by any documentary evidence. The training Instructor was providing training in the discharge of his official duties. Law is settled on the point that the official functions are presumed to have been done in the prescribed manner, until and unless is otherwise established. In this case for want of any evidence indicating that the applicant was manhandled and injuries were caused to him during training, we do not find any ground to hold that the applicant was manhandled or mercilessly beaten during training by the training Instructor. The applicant in his O.A. has admitted that he could not pass the training, however the reason pleaded by the applicant is of his merciless beating by the Instructor. Therefore, it is an admitted fact that the applicant could not complete his basic training and failed to pass the training tests. The only ground which has been raised on behalf of

the applicant as to why he could not pass the military training test has absolutely no substance.

8. Respondents have specifically pleaded that he was given several extra weeks of training to compensate for his frequent hospital admissions and absence from training. He was given several opportunities to pass the physical training tests, in which he utterly failed and therefore it was held that he was not likely to become an efficient soldier and accordingly he was discharged from service.

9. No other ground was pressed into service on behalf of the applicant.

10. In view of the discussions made above, we are of the considered view that there is no illegality in the discharge of the applicant. The O.A. being devoid of merit deserves to be dismissed.

11. Accordingly, the O.A. is hereby **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: September 11, 2018

JPT

**(Justice SVS Rathore)**  
**Member (J)**