

**RESERVED**  
**COURT NO.1**

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

**ORIGINAL APPLICATION No. 323 of 2016**

Thursday, this the 04<sup>th</sup> day of January, 2018

**“Hon’ble Mr. Justice D.P. Singh, Member (J)**  
**Hon’ble Air Marshal BBP, Sinha, Member (A)”**

No 14859814 N (Ex Rect/Painter) Rahul Kumar, Son of Shri Chhote

Singh Village : Bahadurpura Post : Murong District : Etawah 206061

State : Uttar Pradesh

..... **Applicant**

Ld. Counsel for the : **Shri R. Chandra, Advocate**  
Applicant

**Versus**

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters Ministry of Defence, (Army) DHQ Post Office, New Delhi-110011.
3. The Director General of Military Training, General Staff Branch Army Headquarters, DHQ W Post Office, New Delhi-110011
4. The Officer-In-Charge, Army Service Corps Records, Bangalore- 560007.
5. The Commanding Officer No 2 Training Battalion (Supply) ASC Centre (South) - Bangalore -560007.

**...Respondents**

Ld. Counsel for the: **Shri Asheesh Agnihotri, Advocate,**  
Respondents. Addl. Central Government Standing Counsel

**Assisted by** : **Maj Salen Xaxa, OIC Legal Cell.**

**ORDER****“Per Hon’ble Air Marshal BBP SINHA, Member (A)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of setting aside the impugned order of discharge dated 28.08.2016 attended with the relief of reinstating him in service with all consequential benefits followed by relief of allowing him to complete the training .
2. The thumbnail sketch of the facts is that the Applicant was enrolled in the Indian Army on 04.09.2012 as a Painter and was made to undergo training at ASC Centre (South), Bangalore w.e.f 01.10.2012. He absented himself unaccountably and without leave w.e.f 25.11.2012 but resumed training on 03.12.2012 after efflux of nine days. Consequently, he was put to trial under Army Act 39 (a) read in conjunction with section 80 of the Army Act and in ultimate analysis, was inflicted punishment of seven days R.I in military custody on 12.12.2012 by the Commanding officer No 2 Training Battalion (Supply) ASC Centre (South) Bangalore. After serving out the sentence, the Applicant was issued a show cause notice why action be not taken for his discharge

from service. In reply, the Applicant explained his absence submitting that since his mother had died, out of his love for his mother, he escaped and absented without leave. Being satisfied with the reply, the Applicant was taken back in service and was made to undergo further basic military training. On second time, the Applicant again absented himself unaccountably and without leave w.e.f 25.01.2013 and reported voluntarily on 16.02.2013 after efflux of 23 days. He was again put to trial under section 39 (a) read with section 80 of the Army Act and was awarded 14 days of R.I. in military custody by the Commanding officer. After serving out the aforesaid sentence, the Applicant was served with a show cause notice dated 06.03.2013. In reply to the said show cause notice, the Applicant submitted a reply (Annexure CR-4) in which he expressed that he was unwilling to undergo military training and wished to be discharged from the Army. In ultimate result, the Applicant was discharged as undesirable and inefficient soldier by the Commanding officer under Army Rule 13 (3) IV after obtaining sanction of the competent Authority on 15.03.2013.

3. The learned counsel for the Applicant canvassed that only two days time was given to reply the show cause notice and further that action for discharge should have been taken in

terms of AHQ Letter dated 28.12.1988 attended with further submission that a plain reading of the policy 28.02.1986 postulates absence as a ground for discharge of 30 consecutive days. It is also canvassed that the Applicant could only be discharged after holding of court of inquiry which has not been done in the instant case.

4. Per contra, it is contended that the Applicant was harnessed for basic training with effect from 1.10.2012. He initially absented during training with effect from 25.11.2012 and resumed voluntarily on 03.12.2012 after absence of nine days and he again absented unaccountably during training w.e.f 25.01.2013 and reported voluntarily on 16.02.2013 after efflux of 23 days. It is further contended that in the instant case, the Applicant after serving out the sentence for 14 days was again served show cause notice and in reply he wished to be discharged. The reply of the Applicant is annexed as Annexure CA 4. He also contended that he was rightly discharged as undesirable and not likely to become an efficient soldier as he had absented during basic training initially for 9 days and thereafter for 23 days.

5. The learned counsel for the Applicant has heavily relied upon policy dated 28.02.1986 in which it is postulated that in

case a recruit absents himself without leave for a period of 30 consecutive days during basic military training period, he will not be allowed to rejoin his training again. The policy further postulates that such recruits will be discharged after necessary disciplinary action. The absentees for less than 30 consecutive days may be considered for relegation if, otherwise, found suitable for retention. The policy further postulates that once the technical training of a recruit has commenced, the discretion to discharge the recruit for such absence will be left to the commandant of the Centre, who may retain or discharge him considering the case on its merit. The policy of 1986 (supra) being relevant is quoted below for ready reference.

*"Relegation for absent without leave*

*4. A recruit who has been absent without leave for a period of 30 consecutive days during basic mil trg period, will not be allowed to rejoin his trg again. Such rectx will be discharged after necessary discp action. The absentees for less than 30 consecutive days may be considered for relegation, if otherwise, found suitable for retention. However, once the tech trg of a recruit has commenced, the discretion to discharge the recruit for such absence will be left to the Comdt of the Centre, who may retain or discharge him considering the case on its merit."*

6. The learned counsel also relied upon a decision of this Bench in O.A No 221 of 2013 delivered on 19.01.2016. We have gone through the said decision. It was the petition which was filed by the Applicant immediately after discharge. While deciding the said O.A, the discharge order was set aside and the matter was remitted to the authorities to decide the matter by passing a reasoned and speaking order. In compliance of the order of the Tribunal in the aforesaid O.A, reasoned and speaking order was passed which is under challenge in this O.A.

7. In the instant case, after serving out the sentence for his absence on second occasion during basic training, the Applicant was issued a show cause notice to which the Applicant replied that he was not willing to continue and wished to be discharged attended with the request to return all his documents. The submission of the learned counsel for the Applicant that the Applicant was forced to write down the Application on dotted line requesting for his discharge does not appeal to us inasmuch as nothing has been brought on record to show that the Applicant was forced to write down the application on dotted lines. It is nowhere mentioned in the O.A that either the Commanding officer or any junior officers in the Centre were in any way biased or prejudiced to the Applicant.

It is for the first time that the plea of forcing the Applicant to write down the Application on dotted line was introduced. In the circumstances, it does not commend to us for acceptance that the Applicant was forced to write down Application on dotted line. From the contents of the Application, it appears to us that the Application was written by the Applicant voluntarily and without being coerced into writing it.

8. Coming to policy 1986 (supra), it postulates 30 days consecutive absence from training. The policy in our view, does not give free hand or carte blanche to the Applicant or any individual to absent himself in bits off and on and to take shelter behind the plea that he had not absented himself for 30 consecutive days. In the instant case, the Applicant absented himself at regular intervals on two occasions during basic training. On the first occasion, the plea taken for escaping and for absenting was the sudden death of his mother but there is no plausible excuse for escaping and absenting unaccountably on second occasion during basic training. Besides, the second part of the policy invests the Commanding officer with discretion who may retain or discharge him considering the case on its merit.

9. In the instant case, the order of discharge is reasoned and speaking order whereby the applicant was examined in all

its pros and cons and after due consideration, the applicant was held to be unlikely to become efficient soldier. Being relevant, the order of discharge is being quoted for ready reference.

*"1. WHEREAS. No 14859814 Ex Rect Rahul Kumar filed Original Application No 221/2013 before the Hon'ble Armed Forces Tribunal, Regional Bench Lucknow for setting aside the discharge order dated 15 Mar 2013 and for reinstatement into service. The Hon'ble Tribunal quashed the discharge order of the applicant and directed the respondents to decide the case a fresh by passing a reasoned and speaking order keeping in mind the controversy in question and grounds pleaded by the applicant after taking into account the policy as well as contents of the application.*

*2. WHEREAS, the applicant was enrolled in the Army on 04.Sep 2012. During the course of basic training he had absented himself without leave from 25 Nov 2012 to 03 Dec 2012. The cause of absenting without leave as given in averments of the Applicant is due to demise of his mother. Had it been so, he could have requested for leave as there is a privilege in the Army that a recruit while undergoing training can apply for leave. However, the Applicant instead of applying for leave, left the unit line as his own committing the offence of absenting without leave. In consequence thereto, he was awarded seven days Rigorous Imprisonment (RI) in military custody.*

*3.WHEREAS, In the next month, he once again absented himself without leave from 1000h on 25 Jan to 1800h on 16 Feb 2013. The averment he made in justification is that he was given verbal permission to leave the ASC centre, which is incorrect, baseless and an afterthought. While the Civil Police*



*authorities were trying to locate the deserted recruit of the Indian Army based on the apprehension roll issued by No2 Training Battalion, ASC Centre (South) Bangalore, the applicant voluntarily rejoined at 1800h on 16 Feb 2013 to avoid anticipated arrest by the civil police. Having committed the offence of absence without leave, he was once again punished with fourteen days Rigorous Imprisonment (RI).*

*4. Whereas, the applicant was given full opportunity to undergo basic military training and he had displayed acts contrary to good order and military discipline which portrayed a bad example to other recruits, who were undergoing Basic Military Training. On releasing from military custody, the Applicant was served with a show cause notice as to why necessary action should not be taken to discharge him from service. In reply to the show cause notice, the applicant showed reason for being absent without leave as his mother's demise. However, he failed to show any reason for leave or not reporting the matter to any of the authorities. Further, he rendered an application mentioning his unwillingness to undergo Basic Military Training and requested for discharge from service.*

*5. WHEREAS, Keeping in view the fact that the applicant had lost interest in completing the Basic Military Training which is mandatory to become a soldier and that he had committed the offence of absence without leave in two occasions within a short span of two months that too as a recruit, and it was decided by the Competent Authority to discharge him being '**Unlikely to Become an Efficient Soldier**' and he was discharged with effect from 15 Mar 2013 under the provisions of item IV of Army Rules 13 (3).*

*6. AND WHEREAS, after considering the case de-novo, decision of the competent authority is as under:-*

(a) *The fact that the applicant had committed the offence of absence without leave twice within a short span of five months of his service, that too as a recruit, is not disputed.*

(b) *There has been no infirmity in the two trials carried out subsequent to committing of offence of absence without leave wherein the Applicant was punished with rigorous imprisonment.*

(c) *Under the provision of Item IV of Army Rule 13 (3), sanction of the competent authority was accorded for discharge of the Applicant having been found **'Unlikely to become an Efficient Soldier'**.*

(d) *It is also an undisputed fact that discipline is the backbone of the Army, and has a direct impact on the efficiency of a soldier as well as efficacy of a unit. The Applicant being an unattested recruit repeatedly committed the offence of absence without leave even after undergoing punishment for the same offence few days back, violating the statutory provision and standing orders. He did not even consider to make a request to the authorities for grant of leave and instead resorted to leave the unit lines without any permission on two occasion. He did all these knowing the consequences. Since recruits are on discipline leave etc frequently and specifically in all the sanik Sammellan. Moreover, the Applicant had also made a request to grant him discharge as he was unwilling to do the training. From the above, it is evident that the applicant was unlikely to become an efficient soldier.*

(e) *His discharge under the provision of item IV of Army Rules 13(3) was lawfully sanctioned by the competent authority and there exist a provision to re-instate a recruit*

*who was discharged from service neither he is suitable/deserving for any such special consideration by the Government.*

*(f) Moreover, the Applicant being an unattested recruit is of the statue of probationer whose services could be terminated without holding an inquiry as upheld by the Hon'ble Supreme Court.*

*7. In view of the above, with the issue of this Reasoned Speaking Order the directions of the Hon'ble Armed Forces Tribunal (Regional Bench). Lucknow order dated 19 January 2016 passed in O.A. No. 221/2013 filed by No 14859814N EX Rect Rahul Kumar stands complied.*

*8. Signed at Bangalore on Eighth day of August 2015".*

10. The discipline is the backbone in the Army and has a direct impact on the efficiency of a soldier as well as efficacy of a unit. To cap it all, the applicant being a mere recruit, was still not an attested soldier. In our view, looking to the significance of discipline in the Army, any soft approach in such cases would have an adverse impact on other soldiers of the Army under training.

11. The allied contention that the Applicant ought to have been discharged after disciplinary inquiry. In our view, looking to the request of the Applicant in which he clearly wished to be discharged and also considering all aspects of his case and recurrence of absence on two occasions without obtaining prior permission or leave that too during basic training, the

applicant was rightly appraised to be unlikely to become an efficient soldier. This fact is re-enforced by the expression of desire in writing by applicant that he wished to be discharged. In the circumstances, there was no alternative left except to pass order for discharge of the Applicant as undesirable and unlikely to become efficient soldier.

12. Thus in the facts and circumstances of the case we are of the view that the O.A cannot be sustained and is liable to be dismissed.

13. The O.A is accordingly **dismissed**.

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

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

**Dated: January, 2018**

MH/-