



**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 574 of 2021**

Wednesday, this the 06<sup>th</sup> day of April, 2022

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

Anand Kumar Singh Yadav, S/o Ram Adhar Singh Yadav,  
R/o Mailauta, Mai, Barahaj, Deoria.

.....Applicant

Learned counsel : **Shri Prashant Pandey**, Advocate  
for the applicant **Shri Virendra Prakash Pandey**, Advocate  
**Dr. Amit Asthana**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. The Officer Incharge, Records Signals, PIN-900499, C/o 56 APO.
4. Training Battalion Commander, the Maratha LIRC.

.....Respondents

Learned counsel for the Respondents. : **Shri Jai Narayan Mishra**, Advocate  
Central Govt Counsel

**ORDER (Oral)**

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

- (a) *To set-aside the impugned order dated 10.05.2021 passed by the opposite party No 4, contained in Annexure No 1 to this original application.*
- (b) *To direct the respondents to give another chance to the applicant for appearing in examination/mid-term test in technical trade training for the post of Clerk (SD) or provide another trade to applicant as per his eligibility/qualification, in the interest of justice.*
- (c) *Allow this original application in favour of the applicant with cost.*

2. The applicant's version is that he was recruited from ARO, Varanasi on 30.03.2019 through direct recruitment. He reported to Maratha Light Infantry Regimental Centre and his basic training commenced w.e.f. 10.04.2019. After successful completion of his basic military training he was despatched to Infantry Clerks Training Wing, Inf School, Mhow on 14.08.2020 and his technical training commenced on 31.08.2020. During the course of his technical training he was declared disqualified in mid-term test. He was returned to Maratha Light Infantry Regimental Centre on 03.04.2021. A Show Cause Notice dated 10.04.2021 was issued to him reply of which was given by the applicant on 14.04.2021. While submitting reply, the applicant had requested in his explanation that he may be given further chance to appear in the mid-term test or allow him to change the trade. On 10.05.2021 he was discharged from service declaring him as an 'inefficient and unfit soldier' in terms of Rule 13 (3) (IV) of Army Rules, 1954. His further

version is that he belongs to a poor family and he had done very hard work to prepare himself physically and mentally, as a result of which he was selected. His further version is that discharging the applicant at the last stage of training, despite the fact that he has already qualified at all the stages of training, is not justified for the reason that the applicant was not informed about the marks obtained in the test in which he was declared disqualified. His other version is that the applicant was not informed about the reason of his discharge which is illegal and arbitrary and liable to be set aside.

3. The respondents' version is that the applicant was enrolled from ARO, Varanasi on 30.03.2019 and after completion of his basic military training, on 11.08.2019 he was despatched to Infantry Clerks Training Wing, Mhow to undergo 32 weeks technical training commencing from 14.08.2020. On 30.04.2021 the applicant was returned to the Maratha Light Infantry Regimental Centre after his performance in the mid-term test remained 'unsatisfactory' despite availing three chances on 13.01.2021, 19.02.2021 and 27.03.2021. Respondents also stated that the applicant could obtain only 10% marks in the mid-term test even after relegation and after availing all three chances. He was issued Show Cause Notice dated 10.04.2021 and

reply to Show Cause Notice was received on 14.04.2021 in which he requested for grant of one more chance or alternatively he be allowed change of trade. Respondents claim is that applicant's case was examined for change of trade and it was found that he was not meeting requisite physical standard. The applicant was examined if he could be re-mustered to other trade, but since his height was 165 cms, he could not be re-mustered for another trade, as the height required was 169 cms for candidates from the states of Uttar Pradesh. Hence, he was not found eligible for re-mustering in lower trade also. He was discharged from service w.e.f. 10.05.2021 under Rule 13 (3) Item (IV) of the Army Rules, 1954 and IHQ of MoD (Army) policy letter dated 30.07.2004 being unfit to be a soldier. The applicant was considered as unlikely to become an efficient soldier and hence, he was discharged, in accordance with Rules by the order of the competent authority. The Original Application is devoid of merit and deserves to be dismissed.

4. The applicant has filed the Rejoinder Affidavit and has stated that the applicant's case for re-mustering was not considered properly, in accordance with policy letters on the subject. He submitted that the applicant's case for remustering could have been considered for the post of SKT/Hav (Edn) in which height criteria is 162 cms. He has

also cited policy letter dated 31.01.2000 with regard to change of trade. He submitted that neither the opportunity of hearing was provided to the applicant nor due consideration was given to his request for change of trade, before passing of the impugned discharge order.

5. The Counter Affidavit and the Rejoinder Affidavit have been exchanged between the parties.

6. Heard learned counsel for the parties and perused the record.

7. Learned Counsel for the applicant has submitted that the applicant had neither requested to be discharged nor was he unlikely to become an efficient soldier and thus, the impugned discharge order was passed against the grounds for discharge, as mentioned in the relevant Rules; that the impugned order of discharge is not a speaking and reasoned order and that the re-mustering of the applicant in other trade was not considered in accordance with Army Headquarters letter dated 31.01.2000. Contra to the above submissions, learned counsel for the respondents has submitted that as per existing policy, the applicant was bound to pass technical trade test during his basic military training, but, in spite of three opportunities provided to him to pass the aptitude test, he failed and on account of this, he was discharged from service, in accordance with Rules,

by the competent authority. The applicant was considered for re-mustering in other trade, but, he was not found eligible. The applicant is well aware as to why he has been discharged during basic military training and no prejudice has been caused to him and there had been no violation of principles of natural justice as alleged by the applicant. He further submitted that the impugned discharge order is perfectly valid and it calls for no interference.

8. From the perusal of record, it transpires that during the basic military training, the applicant was required to pass an aptitude test. It appears that the aptitude test of the applicant was conducted on 13.01.2021, 19.02.2021 and 27.03.2021 and he failed in the aforesaid tests (Annexure CA-1). It shows that in spite of three chances provided to the applicant, he could not pass the aptitude test, which was mandatory before completion of basic military training. Consequently, the Commanding Officer has remarked that the applicant was found unsuitable for trade Clerk (SD) even after being given three chances to improve his knowledge and to qualify in the aptitude test. Besides, he also did not meet the height criteria for tradesman category and he was discharged from service as

“unfit to be a soldier” under Item IV of table annexed to Rule 13 (3) of the Army Rules, 1954.

9. Applicant’s contention is that Army HQ policy letter dated 16.03.2021 is not applicable to the applicant as he was enrolled in the year 2019. In this regard we find that this is a general policy letter which is issued to every training center before start of training. Learned Counsel for the applicant has submitted that the discharge order dated 10.05.2021 is not a speaking and reasoned order and it deserves to be quashed on this very ground. The discharge order has been passed after receipt of reply to Show Cause Notice dated 14.04.2021 keeping in view the fact that the applicant obtained only approx 10% marks in the mid-term examinations as under:-

Ser No	Subject	Total Marks	Marks Obtained
(a)	Tech	100	05
(b)	Academic	100	09
(c)	IT Theory	50	03
(d)	IT Prac	50	22
(e)	Typing	100	0
Total		400	39 (approx 10%)

10. There is no dispute about the fact that the applicant had not requested to be discharged before fulfilling the conditions of his enrolment. The recruit, who has been enrolled under the Army Act, but, has not been attested, may also be discharged, if he is considered “unlikely to

become efficient soldier". In the instant case, the applicant has failed thrice in aptitude test conducted during the basic military training and as per existing policy, he was not found fit for further retention in service and hence, he was withdrawn from his course. It is mandatory for every recruit to clear the basic military training, in accordance with Rules and in case of failure, he is considered "unlikely to become an efficient soldier". The Rule 13 (3) Item (IV) of the Army Rules, 1954 relates to all classes of discharge in respect of persons enrolled under the Act, but, not attested. Under these circumstances, the discharge in question will also be covered under the said provision. The applicant is well aware of the reason for his discharge. In the discharge order, the reason for discharge has been mentioned as "unfit to be a soldier" under Item IV of Table annexed to Rule 13(3) of the Army Rules, 1954. Since the applicant had not cleared basic military training, he was considered "unlikely to become an efficient soldier" and that was the only reason for discharge from service. We do not agree with the contention of the learned counsel for the applicant that the applicant has been discharged arbitrarily and illegally.

11. Respondents version, that the applicant did not meet the required physical standard for lower trade as his height

was only 165 Cms as against the minimum height requirement of 169 Cms for other trades for candidates from the State of Uttar Pradesh, is correct. On account of this, the applicant was not found eligible for re-mustering to lower trade and was discharged from service in accordance with Rules. Re-mustering of the applicant to lower trade was not possible, as, he did not meet the required physical standard for the concerned lower trade.

12. The instant case relates to an individual, who has been enrolled under the Army Act, 1950, but, has not been attested and unless he is attested, he cannot get the status of a soldier. The applicant has failed to clear the basic military training and was never attested and hence, he could not acquire the status of a soldier. In Rule 13 of the Army Rules, 1954, there is no provision for giving Show Cause Notice separately to the concerned person, before passing of the order of discharge from service, even though the applicant was issued Show Cause Notice. The applicant was given three chances to clear the mandatory aptitude test before completion of the basic military training, but, he failed miserably. Thus, it is not a case in which no reasonable opportunity was provided to the concerned person to improve his performance. If the applicant failed thrice in mandatory aptitude test, the competent authority

was fully competent to discharge him from service, in accordance with Rules. We do not agree with the contention of the learned counsel for the applicant that the principles of natural justice have not been followed in the instant case.

13. In view of the aforesaid discussions, we are of the considered view that the applicant has been rightly discharged from service by the competent authority, in accordance with Rules and there is no illegality in the discharge order and hence, no interference is warranted. The instant Original Application lacks merit and it is **dismissed**, accordingly.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 06.04.2022  
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