

**Court No.3**

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

**TRANSFERRED APPLICATION NO 1481 of 2010**

Tuesday, this the 01<sup>st</sup> day of December 2015

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Commandant, 114 Infantry Bn (TA), Fatehgarh.
3. Sub Area Commander, Head Quarter (MP) Sub Area Bhopal (MP).
4. Brigadier, Sub Area Commander, Defence Service Corps, Headquarter M.P.B & O Area (GS/DSC), Jabalpur Cantt. (MP.)

.....Petitioner

Ld. Counsel for the: **Shri Dileep Singh, Advocate**  
Petitioner

Versus

Rustam Singh son of Lala Ram, Resident of Village-Ratanpur,  
Pargana-Bhojpur, Post-Kanjhiyana, District-Farrukhabad.

...Respondents

Ld. Counsel for the : **Shri V.A. Singh, Central**  
Respondents. **Govt Counsel assisted by**  
**Capt Priti Tyagi, OIC, Legal Cell.**

**ORDER (ORAL)**

1. Heard Shri Dileep Singh, Ld. Counsel for respondent-petitioners assisted by Capt. Priti Tyagi, OIC., Legal Cell and Shri V.A. Singh, Ld. Counsel for the respondents.
2. Plaintiff-opposite party Rustam Singh was engaged in the Territorial Army for nine years from 1975 to 1984. He advanced his claim for permanent absorption in the Defence Service Corps (in short, DSC.) When the plaintiff- opposite party's case was not considered for enrollment in DSC., he preferred Suit No. 516 of 1986 in the Court of Additional Civil Judge-II (Senior Division) Farrukhabad which was decided by the impugned order dated 08.05.1987. The Civil Judge decreed the suit and directed the respondents to the suit to absorb the plaintiff-opposite party in the service of DSC. from the date of his enrollment with all financial and promotional benefits.
3. Feeling aggrieved, the Union of India preferred Civil Appeal No. 20 of 2004 in the Court of District Judge, Farrukhabad which has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No. 1481 of 2010.
4. While assailing the impugned order, Ld. Counsel for the respondent-petitioners submitted that under Para 139 of the Recruiting Regulation, it is mandatory for appointment in DSC to

serve two years embodied service in the Territorial Army. Submission of Ld. Counsel is that the plaintiff-opposite party has served only for 1 year 347 days, hence he is not eligible for enrollment in the DSC and the decree of the Civil Court is per se illegal and not sustainable.

5. On the other hand, Ld. Counsel for the plaintiff-opposite party invited attention to certificate dated 07.10.1984 according to which the plaintiff-opposite party had rendered embodied service of more than two years and was eligible for selection and appointment in DSC. On the basis of certificate issued by the Commanding Officer, the plaintiff-opposite party joined the DSC on 29.02.1984 and started serving in the DSC after date of joining and continued there till 07.10.1985. However, on 08.10.1985, plaintiff-opposite party's services were dispensed with on the ground that the plaintiff-opposite party had not rendered two years' embodied service in the Territorial Army. Inference has been drawn with regard to embodied service tenure on the basis of report received from the Territorial Army during course of verification of records. On the basis of information received during the court of verification of records, the respondent-plaintiff was discharged on 08.10.1985.

6. According to Ld. Counsel for the respondent-petitioners, the Commanding Officer issued incorrect certificate in view of report received during the course of verification of records.

However, it is not disputed that the Commanding Officer has not passed any order cancelling the certificate issued by him with regard to providing continuous embodied service of two years in the Territorial Army. Nothing has been brought on record before the trial Court that the Commanding Officer had accept his mistake to the effect that he had issued incorrect certificate. Decision seems to have been taken on the basis of information received from ministerial level.

7. During the course of proceedings before the Civil Court, the court of Additional Civil Judge, Farrukhabad had directed the respondent-petitioners to provide attendance register with regard to embodied service rendered by the plaintiff-opposite party during the period of nine years while serving the Territorial Army. In spite of order passed by the Court of Civil Judge, Farrukhabad, the respondent-petitioners failed to produce any document which may establish that the plaintiff-opposite party had provided embodied service of only 1 year 347 days. The Court had given ample opportunity to the respondent-petitioners to produce the relevant record to establish its case but it appears that it has not been done. The Court of Civil Judge disbelieved the document after its perusal with regard to authenticity and correctness. Application was also moved by the plaintiff- opposite party to summon certain service record, but in spite of order passed by the Court concerned, it could not be produced.

8. Admittedly, service in the DSC is regular service and Territorial Army personnel are given rigorous training to discharge their duties. Otherwise also it appears that plaintiff- opposite party has served in the Territorial Army from 1975 to 1984. Thus, after almost 1 ½ years of service, the respondent-petitioners awakened on the basis of certain reports and discharged the plaintiff-opposite party from DSC service, that too without seeking any report from the Commanding Officer who issued the certificate of embodied service of two years.

9. Burden of proof was on the respondent-petitioners of the suit who alleged that the plaintiff-opposite party was short of 18 days embodied service in the Territorial Army. Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Since the defence setup by the respondent-petitioners before the trial court was that the plaintiff-opposite party has served the Territorial Army only for 1 year and 347 days, the burden was on the respondent-petitioners to establish this fact. According to the impugned order of the trial court the respondent-petitioners has failed to discharge its statutory duty and could not establish that the plaintiff-opposite party's embodied service was short of 18 days. In such a situation, judgment of the trial court, seems to be based on correct appreciation of law and facts.

10. Otherwise also since the respondent-petitioners have failed to discharge its duty with regard to burden of proof, a presumption would lie under Section 114 of the Evidence Act in favour of the plaintiff-opposite party that he has completed 2 years embodied service in view of the certificate issued by the Commanding Officer dated 07.10.1984 which admittedly has not been cancelled. Though such presumption is rebuttable but since the respondent-petitioners could not establish by producing the relevant record as required by the trial court, the certificate issued by the Commanding Officer can not be doubted. Moreover, once on the basis of certificate issued by the Commanding Officer the plaintiff-opposite party was appointed and served about 1 ½ years then the validity of certificate issued by the Commanding Officer could have been looked into seeking reply from the authority concerned with regard to the genuineness of the certificate. The Commanding Officer might have been in possession of certain material on the basis of his own knowledge to establish that the plaintiff-opposite party had served for more than 2 years, hence he issued the certificate. A certificate issued by the competent authority ordinarily should not be questioned by the report of other ministerial authorities unless the same authority is asked to explain his conduct with regard to issuance of certificate which became foundation for the opposite party-plaintiff to join the DSC.

11. In view of the above, we are of the view that the judgment and decree of the trial court does not suffer from any illegality or

impropriety. We re-affirm the order passed by the trial court and set aside the impugned order of discharge dated 07.10.1985 with all consequential benefits. The plaintiff-opposite party shall be reinstated in service with 50% of the back wages and in case he has already attained the age of superannuation, then for the purpose of pensionary benefits, he shall be deemed to be in service up to the age of superannuation notionally with 50% back wages.

12. Before parting with, it may be noticed that in the present case the plaintiff-opposite party has suffered not because of his fault but on account of fault of respondent-petitioners who failed to adduce evidence as required by the trial court resulting into the impugned judgment whereby the order of discharge has been set aside. The mental pain and agony suffered by the plaintiff-opposite party for almost about 2 decades seems to be because of commission and omission on the part of the respondent-petitioners. The Hon'ble Supreme Court in the case reported in (2014) 5 SCC 417 **Om Prakash Chautala Vs. Kanwar Bhan** has observed as under :-

*“Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is nobility in itself for which conscientious men would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities”.*

13. Thus, we are of the opinion that it is a fit case where in view of law settled by Hon'ble Supreme Court, exemplary cost, which is quantified to Rs. 2,00,000/- (Rupees two lacs), should be awarded (Vide **AIR** 2005 SC 3353, **Salem Advocate Bar Association, Tamil Nadu vs. Union of India**, (2001) 8 SCC 249, **Ramrameshwari Devi & ors vs. Nirmala Devi and others**).

14. In the result, the present T.A. being devoid of merit is rejected.

Cost of Rs. 2,00,000/- (Rupees two lacs) shall be deposited by respondent-petitioners in this Tribunal within three months from today. Plaintiff-opposite party Rustam Singh shall be entitled to withdraw Rupees 1,75,000/- (Rupees one lac seventy five thousand) and balance of amount of Rupees 25,000/- (Rupees twenty five thousand) shall be remitted to Bar Association Library of Armed Forces Tribunal, Lucknow.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb/-

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