

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No.583 of 2018****Wednesday this the 05th day of December, 2018****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

No.4589404W, Ex Rect. Nitesh Kumar Tiwari,
 S/o Shri Surendra Tiwari,
 R/o Kunti Vihar Colony, Sarang Talab,
 P.O. Topowamashra, PS Sarnath,
 District Varanasi, UP.

..... Applicant

Ld. Counsel for the Applicant : **Shri Ravi Shankar Pandey, Advocate**

Versus

1. Union of India, Through Secretary,
Ministry of Defence,
New Delhi – 110011.
2. The Chief of the Army Staff, Integrated
Headquarters of Ministry of Defence, South Block,
New Delhi – 110011.
3. Officer-in-Charge Records, The Mahar Regiment Centre,
PIN 900127 C/o 56 APO.
4. Training Battalion Commander, AV Coy Trg BN,
The Mahar Regiment Centre,
Sagar, MP, PIN 900124.

..... Respondents

Ld. Counsel for the Respondents : **Dr Shailendra Sharma Atal**
 Central Govt Counsel.

ORDER (Oral)**M.A.No.1428 of 2017**

Heard learned counsel for the parties on the application for
 condonation of delay.

By means of this O.A., the applicant has made the following prayers :

“(I) To set aside/quash the discharge order annexed as Annexure-3 dated 1 Oct 2016.

(II) To pass order or direction to the respondents to reinstate the applicant in service with notional benefit.

(III) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(IV) Cost of the appeal be awarded to the applicant.”

As per report of the office, there is delay of 04 months and 26 days in filing this O.A.

Keeping in view the grounds taken in the application, we hereby allow the application for condonation of delay and the delay in filing the O.A. is hereby condoned and it be registered as O.A.No.583 of 2018.

The case was heard on the point of admission.

O.A.No.583 of 2018

1. By means of this O.A., the applicant has challenged the order dated 01.10.2016 Annexure –A-3 to the O.A.
2. A perusal of the aforesaid Annexure shows that it is not a discharge order, but virtually it is a discharge book, provided to the applicant after his discharge. For better appreciation of this O.A., we will have to reproduce some facts pertaining to the case.
3. The applicant was enrolled in the Regiment of Artillery on 08.07.2015 and was discharged on 01.10.2016 only after 01 year, 02 months and 23 days of service. The applicant was only a recruit and he was not attested at that time. It transpires from perusal of the record that during training period, the applicant had failed in Physical Proficiency Test (PPT), which took place on 08th February 2016 and 23rd March 2016. After being relegated twice, he was given a special chance after two weeks’ training for the purpose to clear the Battle Physical Efficiency Test (BPET), but again the applicant failed to clear the said test. Since the applicant could not clear the Battle Physical Efficiency Test (BPET), therefore, he was discharged from service on the ground that he was not likely to become an efficient soldier.

4. Before passing the order of discharge, the applicant was given a show cause notice on 22nd September 2016 and was asked to furnish his reply by 30th September 2016. In reply to the said notice, the applicant represented to the respondent no.4 on 30.09.2016 requesting the respondent no.4 to give one more chance to clear the said test. The applicant preferred representation against the order of discharge on 21.11.2016 and the same was replied by the respondent on 17.01.2017, which has been annexed as Annexure A-4 to the O.A. The representation sent by the applicant was rejected vide order dated 17.01.2017. The said order is reproduced as under :

*“The Mahar Regiment Centre
PIN 900124
C/o 56 APO
17th Jan 2017*

4589404W/NT/Docu Cell/Trg Bn
No.4589404W Ex Rect
Nitesh Kumar Tiwari
Vill & PO- Chhotaki Nainijor
Teh-Dumraon
Distt-Buxar (Bihar)
Pin 800112.

REVIEW APPLICATION AGAINST THE ORDER OF DISCHARGE

1. Refer your personal application number nil dated 21 Nov 2016.
2. It is bring to your notice that you were discharged from service under the provisions of **Army Rule 13 (3) IV** for being **“UNLIKELY TO BECOME AN EFFICIENT SOLDIER”** on 01 Oct 2016.
3. While undergoing basic military training you had failed in both applicable chances in Physical Proficiency Test and relegated twice on training g rounds to advanced military training you were again given two chances in Battle Physical Proficiency Test and again you failed. However, third relegation is not applicable to a recruit as per Army Headquarters Policy Letter No.A/20314/MT-3 dated 28 February 1986 and you were liable for discharge from service. However. On humanitarian grounds a special chance was given to you to improve your physical standard. However, no improvement was shown and you again failed in the special chance in Battle Physical Proficiency Test. A show cause notice was also issued to you vide 1412/Assal Uttar Company dated 22 Sep 2015 which you relied to dated 30 Sep 2016 (copy att).
4. You were given adequate chances to improve your performance but despite that you could not pass the mandatory test.
5. As per policy issued vide IHQ of MoD (Army), Dte Gen of Military Training-3 letter No.A/20314/MT-3 dt 28 Feb 1986 you were discharged from service under the provisons of Army Rule 14(3) IV being **UNLIKELY TO BECOME AN EFFICIENT SOLDIER** on 01 Oct 2016.”

5. Thus, admittedly in this case, the applicant on two occasions, had failed to clear the Battle Physical Efficiency Test (BPET). He was again given an opportunity to clear the said test, but even thereafter he could not clear the same. It has also been argued on behalf of the respondents that third relegation is not applicable to a recruit as per Army Headquarters Policy Letter No.A/20314/MT-3 dated 28th February 1986.

6. Learned counsel for the applicant could not point out any illegality, irregularity or mistake in the order of discharge. His only submission is that one more chance for clearing battle physical proficiency test ought to have been given, but he could not bring to our notice any law, rule or regulation, whereby a recruit can be granted chances again and again to clear the said test. Therefore, the applicant has absolutely no case. A person who is unable to clear the Battle Physical Efficiency Test (BPET), would not serve any purpose to Army, hence his discharge could not be termed to be illegal, irregular by any stretch of imagination.

7. Accordingly, this O.A. has no merit, deserves to be dismissed *in limine* and is hereby **dismissed** *in limine*.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : 05th December, 2018
PKG