

**Court No. 1**  
**Reserved Judgment**

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

**Original Application No 218 of 2017**

Tuesday, this the 18<sup>th</sup> day of December 2018

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

No. 19007365-H Sepoy Prashant Singh, Son of Sri Jawaharlal,  
Resident of Village- Bardhaniya, Post- Aurandh,  
Tehsil – Bhogaon, District – Mainpuri (U.P.)

**.....Applicant**

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

Verses

1. Union of India through Secretary,  
Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of  
Defence (Army), South Block, New Delhi.
3. General Officer, Commanding Corps, C/o 56 APO.
4. Commanding Officer, 5 Trg, Co., Sikh Regiment Centre,  
C/o 56 APO.

**.....Respondents**

Ld. Counsel for the : **Shri AN Tripathi,**  
Respondents **Central Govt. Counsel**

**ORDER**

**“Per Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, he has claimed the reliefs as under:-

*“8.1 Issue an order or direction quashing the impugned order dated 16/03/2017 followed by discharge recruit dated 15/03/2017 discharging the applicant from service while he was performing in rank Sep C/k (SD) in 5 Training Coy, Sikh Regiment Centre with immediate effect.*

*8.2 Issue an order or direction to the respondents to restore the services of the applicant in the rank he was having on the date of discharge order dated 16/03/2017 followed by discharge recruit dated 15/03/2017 alongwith all the consequential benefits.*

*8.3 Any other suitable order or direction which is deemed fit and proper may also be passed against the respondents and in favour of the applicant and*

*8.4 Award exemplary cost of the application to the applicant.”*

2. The factual matrix of the case is that the applicant was enrolled in the Army on 24.12.2014. He completed his basic training and as a recruit was detailed to undergo Technical Training for Soldier Clerk (SD). He could not qualify Trade Test in spite of granting extra chances. He was given opportunity to change his trade from soldier Clerk (SD) to Soldier Tradesmen but he was not meeting height criteria and dispensation in height is not permissible for tradesmen hence he was discharged from service as an inefficient soldier under

Army Rule 13 (3) III (v). Being aggrieved, the applicant preferred the present O.A.

3. Learned counsel for the applicant pleaded that the applicant was enrolled in the Army on 24.12.2014. After passing mid terms test, the applicant was attested on 03.10.2015. He completed his basic training successfully but could not clear Technical Training for Soldier Clerk (SD). It is pleaded that the applicant was discharged from service suddenly without giving opportunity of hearing. He argued that provisions of Section 20 of the Army Act read with Rules 17, Army Rules, 1954, were not followed and the applicant was not given any show cause notice contrary to rules and regulations and the applicant was illegally discharged from service without assigning any reason.

4. **Per contra**, learned counsel for the respondents refuting the submissions of the learned counsel for the applicant vehemently pleaded that the applicant could not clear recruit Clerks Course Serial No 39 from 29.06.2015 to 20.02.2016. Detailed schedule and result of Technical Training and Advance Technical Training are as under:-

<b>S.No.</b>	<b>Week</b>	<b>Duration</b>	<b>Event</b>	<b>Result</b>	<b>Remarks</b>
<b>a. BASIC TECHNICAL TRAINING</b>					
<i>I</i>	<i>I</i>	<i>29.06.2015 04.07.2015</i>	<i>Entrance test held on 03.07.2015</i>	<i>Fail</i>	<i>Counselling was administered to the applicant vide letter no. 2015/Clk/T dated 13.07.2015</i>
<i>II</i>	<i>2-5</i>	<i>06.07.2015 01.08.2015</i>	<i>Proficiency test were conducted</i>	<i>Fail</i>	<i>Counselling was administered to the</i>

			from 27.07.2015 to 28.07.2015		applicant vide letter no. 2015/Clk/T dated 14.08.2015
III	6-9	03.08.2015 23.08.2015	Progress test were conducted from 21.08.2015	Fail	Counselling was administered to the applicant vide letter No. 2015/Clk/T dated 28.08.2015
IV	10-13	31.08.2015 26.09.2015	Mid term test were conducted from 28.09.2015 to 30.09.2015	Pass	Applicant attested for Class-IV on 03.10.2015 as Soldier Clerk under the provisions of Para 4 and 5 of General instructions of HQ Army Training Command Pamphlet 'Training of Infantry Recruit Clerk'.
<b>a. ADVANCE TECHNICAL TRAINING</b>					
I	14-22	12.10.2015 12.12.2015	Progress test were conducted from 10.12.2015	Fail	Counselling was administered to the applicant vide letter No. 2015/Clk/T dated 22.12.2015
II	23-30	14.12.2015 06.02.2016	Final test were conducted from 04.02.2016 to 06.02.2016	Fail	Counselling was administered to the applicant vide letter No. 2015/Clk/T dated 26.02.2016

5. During Advance Technical training as a recruit, the performance of the applicant was very poor and he did not qualify final tests as required under the provisions of Para 15 of General Instructions of Headquarters Army Training Command Pamphlet

'Training of Infantry Recruit Clerk 2011'. Extra training classes were organized for the applicants by military instructor and civil hired instructors for the period of three months from 15.02.2016 to 14.05.2016. He was given adequate chances and timely counseling to help him to pass the mandatory tests of Class III Standard applicable for Clerk Trade. The details of final test of the applicant are as under:-

<b><i>Occurrence</i></b>	<b><i>Duration</i></b>	<b><i>Event</i></b>	<b><i>Result</i></b>	<b><i>Remarks</i></b>
<i>Relegation</i>	<i>15.12.2016 14.05.2016</i>	<i>Final Re-tests were conducted from 16.05.2016 to 18.05.2016</i>	<i>Fail</i>	

6. Learned counsel for the respondents pleaded that the applicant as a recruit could not pass designate trade test of Clerk (SD) inspite of granting extra opportunities. He was given written counseling from time to time vide The Sikh Regimental Centre the last counseling letters dated 13.07.2015, 14.08.2015, 28.08.2015, 22.12.2015 and dated 26.02.2016 specifically cautioned him stating that in case, inspite of giving extra coaching, he fails to qualify the Advance Technical Training, his services shall be terminated in terms of Army Headquarters letter dated 19.06.2015. Thereafter, the applicant was also considered for change of trade from Clerk (SD) to soldier Tradesmen in terms of Para 6 of Integrated Headquarters of Ministry of Defence (Army) letter dated 19.06.2015. As per rule, mandatory required height of a Tradesman belonging to Recruiting Region

Western Uttar Pradesh is 170 cms whereas the height of the applicant is 168 cms. Moreover the applicant was recruited as Clerk (SD) in SIKH Regiment. SIKH Regiment is a specified class/community and for re-mustering as tradesman the candidate must be from SIKH community. No dispensation in height and age for change of trade is permissible in terms of Integrated Headquarters of Min of Def (Army) letter dated 29.12.2016. No option was left for retaining the applicant in service, hence the case of the applicant for re-mustering could not be materialized and the applicant was discharged from service on the ground of inefficient soldier under Army Rule 13 (3) III (v). As per procedure, discharge of the applicant was approved by competent authority i.e. Commandant, Sikh Regimental Centre. Before issuing discharge order, the applicant was served a Show cause notice on 08.03.2017 by Centre Commandant.

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

8. In the instant case, there is no dispute that the applicant was enrolled in the army as Clerk (SD). He completed his basic training successfully. He could not pass mandatory Advance Technical Training as a recruit for the Clerk (SD). He was granted extra coaching of three months, even then he could not pass the Advance Technical Training. As this point, we have scrutinized the record and found that he was given required performance counseling from time to time stating that in case he fails to pass the Advance Technical Training, he shall be discharged/removed from service, even then he

could not improve his performance. Since the applicant could not pass the Advance Technical Training Clerk (SD), he was considered for re-mustering in other trade before discharge but he was not fulfilling the laid down criteria. Mandatory required height of a Tradesman belonging to Recruiting Region Western Uttar Pradesh is 170 cms whereas the height of the applicant is 168 cms hence was discharged from service as an inefficient soldier. Additionally a recruit is akin to a probationer and hence the respondents prima facie have every right to discharge a recruit who is not able to come up upto the required training standards.

9. Thus to sum up the applicant's prayer that he should be re-instated in service has no substance and is devoid of any legal basis and support.

10. A conceptous of our observations made hereinabove is that the applicant has failed to make out a case in his favour and the O.A. deserves to be dismissed. Hence we don't find anything wrong or illegal in discharging the applicant as inefficient soldier.

11. Accordingly, Original Application is **dismissed**.

No order as to costs.

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

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: December, 2018  
ukt/-