

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 303 of 2019**Friday this the 3rd day of December, 2021

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

Beeresh Kumar (No.15519511N Recruit), S/o Jaswant Singh,
R/o Village –Pathakpur, Post Office –Mehua Hasanganj,
Tehsil- Gunnaur, District- Sambhal (Uttar Pradesh)-202523.

..... Applicant

Ld. Counsel for the: **Shri Yashpal Singh, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence,
New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters,
Ministry of Defence (Army) DHQ PO, New Delhi-
110011.
3. Commanding Officer, Basic Training Regiment, Pin -
900476 C/o 56
4. Officer –in-Charge, Armourd Corps Records,
Ahmednagar.

.....Respondents

Ld. Counsel for the:
Respondents.

Shri Rajiv Pandey,
Central Govt. Counsel

ORDER

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

- (a). Issuing / passing of an order setting aside discharge of the applicant from service with effect from 01.12.2018 on disciplinary ground as contained in the discharge certificate (Annexure No.1 to the original application), after summoning the original records, and grant all consequential service benefits including reinstatement and continuity of service.
- (b). Issuing / passing of any other order or direction as this Hon'ble Tribunal may deem fit under the circumstances of the case.
- (c). Allowing this Original Application with cost.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in Indian Army on 14.12.2017. During course of training he faced problem in his right eye. It is alleged that Drill Instructor slapped hard on face of the applicant and applicant sustained injury in his eye. The applicant was treated in Military Hospital as a case of 'Viral Endothelitis Rt Eye' and after recovery, he was sent for training. In training he again developed eye problem. It is alleged that he was granted leave and he consulted eye

specialists at Aligarh. The eye specialists advised the applicant for three months continuous treatment. In the meantime respondents issued apprehension roll for absent without leave since 09.07.2018. After receiving the letter of apprehension on 16.08.2018, applicant reported at training centre on 13.09.2018. A Charge Sheet was prepared and applicant was summarily tried and punishment of 7 days rigorous imprisonment was awarded to him. Applicant was discharge from service on 04.12.2018 on disciplinary grounds. The applicant has filed instant Original Application with the prayer to allow him to join his duty and to reinstate him in service.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army on 14.12.2017. While he was undergoing training, in February 2018, Drill Instructor slapped hard on the face of the applicant which caused serious injury in the right eye and developed into cloudiness of vision and Corneal Ulcer. He was treated in Military Hospitals and after some relief, he was sent for basic training. After six weeks of training there was recurrence of eye problem but this time, instead of providing treatment respondents started physical and mental harassment of the applicant. He was not allowed to go

to Military Hospital for eye treatment stating that if he will miss the training he will be removed from service. Applicant was forced to leave training centre to take medicine from civil hospital near his home. He was assured that after treatment, he may rejoin the training. On 11.07.2018, applicant arrived his home town at Aligarh and consulted Eye Specialist who started treatment of the applicant and advised the applicant for three months continuous treatment. He was also treated in All India Institute of Medical Sciences (AIIMS). Next appointment for treatment of his eye was on 13.09.2018. In the meantime he was issued apprehension roll for absents without leave since 09.07.2018. After receiving the letter of apprehension on 16.08.2018, the applicant joined training centre on 13.09.2018. A show cause notice dated 17.10.2018 was issued for absence without leave from unit line and on the same day the applicant was forced to reply as per dictates of respondents to the effect that 'he wants to serve in the army as financial condition of his family is not sound, and he will not do any mistake in future'. The applicant was not permitted to reply the actual facts. Applicant was discharged from service on 04.12.2018 on 'disciplinary grounds' but on the same day a clearance

certificate was issued in which the reason for discharge was mentioned as 'on own request'.

4. Learned counsel for the applicant further submitted that the applicant has been victimized with the malafide intention of respondents. As per provisions contained in Sections 14, 15 and 15-A of Army Rules, 1954, if any unsuitable incident caused by the candidate in the department, first that should be informed to the candidate and if that is not possible, the information should be given to the family of the candidate, but in this case proper procedure was not followed. Prior to discharge from service, opportunity of hearing was not provided to the applicant, hence impugned discharge order having been passed in utter disregard of the Rules on the subject. Learned counsel for the applicant prayed that impugned order of discharge of the applicant from service wef 04.12.2018 be quashed and the applicant be allowed to reinstate and continue in service with all consequential benefits.

5. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the army on 14.12.2017. His basic training started on 09.01.2018. On 03.03.2018 the applicant complained of problem in his Right Eye. He was hospitalised in Military Hospital, Ahmednagar on

05.03.2018 for the diagnosis “Viral Endothelitis Right Eye”. Medical condition of the applicant has no clinical correlation to injury claimed by the recruit. After 82 days of hospitalisation, the applicant was sent for further training. He was relegated on medical grounds and his further training commenced on 26.05.2018. He was weak and failed in Physical Proficiency Tests conducted on 22 Jun and 03 July 2018.

6. Learned counsel for the respondent further submitted that the individual absented himself without leave from unit lines. Apprehension roll was issued and applicant was declared deserter. Applicant reported back to training centre on 13.09.2018 and was awarded seven days rigorous imprisonment on 20.09.2019 as disciplinary action to regularised absent without leave in terms of Army Headquarters letter dated 28.02.1986. A show cause notice was issued and applicant was discharged from service on 04.12.2018. An inquiry was held to investigate how the applicant suffered injury in his right eye. It was revealed that a Drill Instructor had slapped the applicant on cheek, while adjusting Ex Recruit Beeresh Kumar’s Right hand for a proper salute, in the spirit of the corrective measure without intention to hurt. The applicant was admitted in Military Hospital for a total period of 82 days

from 07 March to 16 May 2018. Now the applicant has filed instant Original Application with prayer to allow him to join duty and complete his training and reinstate him in service.

7. Learned counsel for the respondents submitted that as per Govt of India, Min of Defence, policy letter dated 28.02.1986, a recruit who is absent for more than 30 days during training, will not be allowed to rejoin his training. Learned counsel for the respondents prayed that instant O.A. be dismissed being devoid of merit.

8. We have heard learned counsel for the parties and perused the record.

9. The question before us to decide is whether the applicant can be reinstated in service or not?

10. At this juncture, we would like to quote policy No. A/20314/MT-3 dated 28th February 1986 which deals with the relegation of recruit. The relevant part of the said policy reads as under :-

“Relegation for Absence without Leave

4. A rect 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. 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 rect

has commenced, the discretion to discharge a rect for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case on its merits.”

11. In the instant case applicant was slapped by the Drill Instructor and sustained injury in his eye. This fact has been accepted by the respondents in counter affidavit. Due to severe injury in his eye, he was always feeling pain in right eye and was not in a position to concentrate in training. Though he was treated in Military Hospital, but condition of his eye was not stable. Moreover recruits are not permitted to go to hospital repeatedly for a long time. When the applicant found that he is not getting proper treatment, he went to his home town for treatment of his eye. The applicant absented himself from duty due to malafide behaviour of respondents. In the mean time apprehension roll was issued and applicant reported back to training Centre. It appears that he was willing to serve in the army. On joining duty, he was punished and dismissed from service. On one place respondents have shown that applicant was removed from service on disciplinary ground and on the other place they have shown that applicant has himself requested for discharge which creates doubt that applicant was wrongly discharged from service. If the applicant had gone home as unwilling to serve, he would not have returned back

within few days and approached the Tribunal with the prayer to allow him to join duty. Further contention of respondents that applicant was absent for more than 30 days is also not accepted. He was willing to serve in the army but he absented from duty for proper treatment of his eye. This is established fact that applicant sustained injury in his eye due to slap by Drill Instructor and applicant absented himself for treatment of his eye. The applicant is willing to service in the army, hence he approached this Tribunal for re-instatement in service. It is pertinent to mention that an average recruit has higher physical ability because he has been selected on merit after various tests that comprises of running, physical and mental tests in addition to written tests. Full opportunity should be granted to a recruit so that he can become a Sepoy and serve the country.

12. In the army there should not be lack of trust between soldiers and the officers. The officers of the army must deal with subordinates or soldiers in a just and fair manner to strengthen their trust into them so that during time of war, the officers may be their hero to fight with enemies.

13. The plea of the respondents regarding re-instatement saying that there is no provision to re-instate in service is not

tenable. The impugned order passed by the respondents declaring him deserter is liable to be quashed.

14. A conceptus of our observations made above is that the O.A. deserves to be allowed, hence partly **allowed**. The impugned order passed by the respondents declaring him deserter is quashed. The respondents are directed to reinstate the applicant in service and allow him to join his duty and complete his training as per rules and intimate the date of joining. The applicant shall not be entitled for any back wages or other benefits for the period, he was out of service. The respondents are further directed to comply with the order within one month from the date of production of a certified copy of this order.

15. No order as to costs.

16. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

17. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated: 03 December, 2021

Ukt/-