

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 548 of 2018**Tuesday, this the 21st day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 5759133P Ex Recruit Ram Bharat Singh
S/o Shri Ramesh Singh
Permanent Resident of Village – Bilheni, PO – Vijhamai,
District – Agra – 283111 (UP)**.... Applicant**Ld. Counsel for the Applicant : **Col Y.R. Sharma (Retd)**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), South Block, DHQ PO, New Delhi – 110011.
3. Director General of Infantry/Inf-6, General Staff Branch, IHQ of MOD (Army), Sena Bhawan, New Delhi – 110011.
4. Commandant and Officer in Charge Records 58 Gorkha Rifles, PIN-900332, C/o 99 APO.

... RespondentsLd. Counsel for the Respondents : **Shri Namit Sharma,**
Central Govt Counsel**ORDER**

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

- “(a) Issue/pass an order or direction to set aside the rejection order dated 30 April 2016, handed over to the Counsel of the applicant on 23 May 2018 (Impugned Order) on the

orders of the Honourable Tribunal dated 23 May 2018, filed with the Original Application as Annexure A-9.

- (b) Issue/pass an order or direction of appropriate nature to the respondents to re-instate the applicant in the service forthwith with all consequential benefits.
- (c) Issue/pass an order or direction as the Honourable Tribunal may deem fit and proper in the circumstances of the case.
- (d) Allow this Original Application with cost.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 16.03.2009. On completion of ten weeks of Basic Military Training (BMT), a Proficiency Aptitude Test (PAT) was conducted by a Board of Officers in accordance with IHQ of MoD (Army) policy letter dated 17.03.2003. In the said mandatory test, the applicant failed to qualify. Hence, he was discharged under Rule 13 (3) IV of Army Rules, 1954 being “**unlikely to become an efficient soldier**” w.e.f. 05.08.2009. Consequent to discharge from service the applicant initiated a statutory complaint for re-instatement in service vide letter dated 13.08.2010. The said statutory complaint of the applicant was rejected by IHQ of MoD (Army), Infantry-6 (Pers) vide letter dated 05.04.2011 stating that his discharge from service was as per rules and no injustice was done to the applicant. Thereafter applicant filed two Original Applications before this Tribunal which were disposed of with direction to the respondents to decide statutory complaint of the applicant by a reasoned and speaking order and accordingly, statutory complaint of the applicant was rejected by the Chief of the Army Staff being devoid of merits. The applicant being

not satisfied with his discharge, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 16.03.2009 and the term of engagement was 20 years as laid down in para 134 (a) (ii) of Regulations for the Army. The applicant completed about 19 weeks of Basic Military Training (BMT) successfully alongwith other recruits on 29.07.2009. All the recruits of his batch were sent on leave w.e.f. 03.08.2009 but surprisingly the applicant was discriminated by issuing a single journey railway warrant to his home town without any reason and discharge certificate. As per Section 23 of Army Act, 1950, a discharge certificate was to be issued to the applicant which has not been done and therefore, his discharge from service was illegally carried out. The applicant preferred a Statutory Appeal under Section 26 of Army Act 1950 on 20.08.2009 and having not received any reply, the applicant filed Original Application No. 135 of 2011 before this Tribunal on 15.03.2011. The OA was disposed of by this Tribunal vide order dated 16.09.2011 with directions to the Chief of the Army Staff to decide the statutory complaint of the applicant within one month. The statutory complaint of the applicant being not decided in time, the applicant filed an Execution Application No. 50 of 2012 before this Tribunal which was disposed of by this Tribunal since statutory appeal of the applicant was rejected by the respondents on 22.04.2011 and a rejection order was filed alongwith counter affidavit.

4. Learned counsel for the applicant further submitted that applicant being aggrieved with rejection order dated 20.04.2011, filed another O.A. No. 65 of 2013 before this Tribunal which was allowed vide order dated 08.12.2015 and respondents were directed to decide original statutory complaint of the applicant afresh within four months. After waiting for considerable period and not having received any communication from the respondents, the applicant filed an Execution Application on 07.04.2017 which was disposed of on 23.05.2018 on the reply of respondents that statutory complaint of the applicant has already been rejected by the competent authority vide order dated 30.04.2016. The copy of rejection order was handed over to the counsel of the applicant on 23.05.2018. Since the impugned order dated 30.04.2018 received on 23.05.2018 which is non reasoned and non speaking order and observations made in the statutory appeal have not been taken into consideration, the applicant filed the present Original Application.

5. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in ***Veerendra Kumar Dubey vs. Chief of the Army Staff***, Civil Appeal No. 32135 of 2013, decided on 16.10.2015 and pleaded that discharge order of the applicant has been issued in an illegal and arbitrary manner without following rules and therefore, his discharge order to be quashed and applicant should be reinstated into service.

6. Learned counsel for the respondents submitted that on completion of ten weeks of Basic Military Training, a Proficiency Aptitude Test (PAT) was conducted by a Board of Officers in accordance with IHQ of MoD (Army) policy letter dated 17.03.2003. In the said mandatory test, the applicant failed to qualify. Hence, he was discharged under Rule 13 (3) IV of Army Rules, 1954 being **“unlikely to become an efficient soldier”** w.e.f. 05.08.2009. Consequent to discharge from service the applicant initiated a statutory complaint for re-instatement in service vide letter dated 13.08.2010. The said statutory complaint of the applicant was rejected by IHQ of MoD (Army), Infantry-6 (Pers) vide letter dated 05.04.2011 stating that his discharge from service was as per rules and no injustice was done to the applicant and accordingly, copy of order dated 05.04.2011 was forwarded to the applicant. Thereafter, applicant filed OA No. 135 of 2011 before this Tribunal which was disposed of on 16.09.2011 with direction to the respondents to decide statutory complaint dated 20.08.2009 of the applicant by a speaking and reasoned order within a period of three months. Thereafter, applicant filed an Execution Application dated 21.08.2012 which was also disposed off finally. The applicant again filed OA No. 65 of 2013 before this Tribunal which was disposed of on 23.05.2018 by this Tribunal as statutory complaint of the applicant submitted to COAS was already rejected being devoid of merits and rejection order was produced before the Court.

7. Learned counsel for the respondents further submitted that Show Cause Notice is issued only in case of discharge under Army Rule 13 (3) (I) (iii), 13 (3) (II) (iii) and 13 (3) III (v), therefore, no Show Cause Notice was served to the applicant. Hence, procedure adopted to discharge the applicant is within the rules and regulations. As per IHQ of MoD (Army) policy letter dated 17.03.2003, during 10th week of BMT, a recruit clerk has to qualify a PAT conducted by a Board of Officers in which applicant failed to qualify, hence, he was discharged from service under Rule 13 (3) IV of Army Rules, 1954 being "Unlikely to become an efficient soldier". The applicant was discharged from service as per rules without any bias or prejudice. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the respondents and perused the material placed on record.

9. From perusal of records, we observe that applicant was discharged from service under the provisions of IHQ of MoD (Army) policy letter dated 17.03.2003 by which a recruit clerk has to qualify a Proficiency Aptitude Test (PAT) conducted by a Board of Officers during his 10th week of Basic Military Training in which applicant failed to qualify. Hence, applicant was discharged from service under Rule 13 (3) IV of Army Rules, 1954 being "Unlikely to become an efficient soldier".

