

e-Court

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 329 of 2022

Wednesday, this the 02nd day of February, 2022

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

No. 15249336A Rect Sol (GD) Shani Singh Patel, S/o Sri Satya Narayan, R/o Village-Chitwan, Post-Tikri, Tehsil-Bikapur, District-Faizabad, U.P.-224001.

.... Applicant

Ld. Counsel for the: **Shri Prabhat Kumar Tripathi**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief Records Officer, Artillery Records, Nashik Road Camp, PIN-422102, PIN (Army)-908800.
3. Officiating Battery Commander, 5/2 Training Regiment, Artillery Centre, NRC, PIN-908800.

... Respondents

Ld. Counsel for the: **Shri Yogesh Kesarwani**, Advocate.
Respondents.

ORDER (Oral)

1. By means of this Original Application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

- (i) Issue an order, direction certiorari quashing the order dated 06.04.2017, contained in Annexure No 1, passed by the respondent No 3, with all consequential benefits.*
- (ii) Issue an order, direction and command to the respondents to reinstate the applicant in service without reference to the order, contained in Annexure No-1, impugned in the application, with all consequential benefits.*
- (iii) Issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- (iv) Allow the original application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the application.*

2. Brief facts necessary for adjudication of the present controversy are that the applicant was recruited in the Indian Army (Regiment of Artillery) as Mess Keeper on 24.09.2016 through Army Recruiting Office (ARO), Amethi. His Basic Military Training commenced w.e.f. 31.10.2016 and within three days of training he absented for the period 03.11.2016 to 10.11.2016. He voluntarily rejoined training on 10.11.2016 at 1700 hrs after absent without leave (AWL) of 07 days. Again, the individual was AWL w.e.f. 24.11.2016 to 23.02.2017 for a period of 92 days. He was declared a deserter w.e.f. 24.11.2016. The applicant voluntarily rejoined on 23.02.2017.

On rejoining from desertion, the applicant was tried for offence under Army Act Section 39 (a) on 27.02.2017 and disciplinary proceedings were held as per existing norms on the subject. On 29.03.2017 his discharge order was sanctioned and he was discharged from service under Rule 13 (3) IV of Army Rules, 1954 w.e.f. 07.04.2017 as an unlikely to become an efficient soldier. Applicant has filed this O.A. to quash the discharge order dated 06.04.2017 and allow applicant to join the military training.

3. The learned counsel for the applicant submitted that the applicant while undergoing basic military training was told by the PT Instructor for his selection in boxing team which on refusal he was tortured and beaten mercilessly. He was also intimidated to leave training and on Instructor's coercion the applicant escaped and rejoined voluntarily on 10.11.2016 after an absence of 07 days. He further submitted that the applicant was again threatened by the PT Instructor to leave the Army and on his threatening he proceeded to his home town on 24.11.2016 and rejoined the training centre on 23.02.2017 after a gap of 92 days. He submitted that after rejoining training centre the applicant was denied to undergo further military training and disciplinary proceedings started against him. On 07.04.2017 the applicant was discharged from service without hearing his plea that he deserted from training on

account of threatening by the PT Instructor. The learned counsel pleaded that discharge order dated 06.04.2017 be cancelled and applicant be allowed to undergo remaining basic military training.

4. Per contra, learned counsel for the respondents submitted that the applicant while undergoing basic military training deserted on two occasions and there was a total absence period of 99 days during training. He further submitted that since the applicant was absent for more than 30 days during basic military training without any valid reason, he was discharged from service. The learned counsel for the respondents has heavily relied upon policy dated 28.02.1986 in which it is postulated that in case a recruit absents himself without leave for a period of 30 consecutive days during basic military training period, he will not be allowed to rejoin his training again. The policy further postulates that such recruits will be discharged after necessary disciplinary action. The absentees for less than 30 consecutive days may be considered for relegation if, otherwise, found suitable for retention. The learned counsel pleaded for dismissal of O.A. on the ground that since the applicant absented for 99 days during basic military training, his discharge is valid in terms of aforesaid policy letter.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is undisputed fact that the applicant absented during basic military training on two occasions. He absented for 07 days from 03.11.2016 to 10.11.2016 and thereafter, from 24.11.2016 to 23.02.2017 totaling a period of 99 days. The applicant's version that he was threatened and tortured by his PT Instructor is on unfounded grounds as Hon'y Capt Hira Singh and Nk Ravindra Kumar have given written statements that he was not harassed (Annexure CA-3 and CA-4).

7. The Directorate of Military Training, Army Headquarters has issued policy letter dated 28.02.1986 in respect of recruits undergoing military training which being relevant is quoted below for ready reference:-

"Relegation for absent without leave

4. A recruit 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. Such recls will be discharged after necessary discp action. 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 recruit has commenced, the discretion to discharge the recruit for such absence will be left to the Comdt of the Centre, who may retain or discharge him considering the case on its merit."

8. The aforesaid policy letter postulates that a trainee may be discharged from service if he absents for 30 days consecutively. In the instant case, the applicant absented himself on two occasions during basic military training. On the first occasion, he absented for 07 days and on the second occasion he absented for 92 days.

9. In the instant case, the order of discharge is reasoned and speaking order whereby the applicant was examined in all its pros and cons and after due consideration, the applicant was held to be unlikely to become efficient soldier. Being relevant, the order of discharge is quoted for ready reference.

"1. You are discharged from service on being "unlikely to become an efficient soldier" under the authority of sanction of Offg Comdt, Arty Centre, Nasik Road Camp dt 29.03.2017.

2. Your discharge certificate and credit balance if any will be sent to you after settlement of final account by Artillery Records, Nasik Road Camp.

3. It is intimated that total service of above named individual is 05 months and 14 days from 12 Dec 2016 to 29 Mar 2017."

10. The discipline is the backbone in the Army and has a direct impact on the efficiency of a soldier as well as efficacy of a unit. To cap it all, the applicant being a mere recruit, was still not an attested soldier. In our view, looking to the significance of discipline in the Army, any soft approach in such cases would

have an adverse impact on other soldiers of the Army under training.

11. In the circumstances, there was no alternative left except to pass order for discharge of the applicant as undesirable and unlikely to become an efficient soldier.

12. Thus in the facts and circumstances of the case we are of the view that the O.A cannot be sustained and is liable to be dismissed.

13. The O.A is accordingly **dismissed**.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 02nd February, 2022

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