

**e-COURT**

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

**ORIGINAL APPLICATION No. 65 of 2018**

Wednesday, this the 16<sup>th</sup> day of February, 2022

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

No 4589149 Ex-Rect Rahat Ali Khan, S/o Md Salim Khan,  
Village-Pipari, PO-Ukhali, Tehsil-Tilhar, PS-Katra, Distt-  
Shahjahanpur, State-UP.

.....Applicant

Ld. Counsel for the : **Shri Rohit Kumar, Advocate**  
Applicant **Shri Vishwesh Kumar, Advocate**  
**Mohd Zafar Khan, Advocate**

**Versus**

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, DHQ PO-New Delhi-110011.
3. The Commandant, MD CO 93 Corps 180 Platoon (Saugor).
4. Officer-in-Charge Records, The Mahar Regiment Centre, PIN-900127, C/o 56 APO.

.....Respondents

Ld. Counsel for the: **Shri DK Pandey, Advocate**  
Respondents. Government Standing Counsel

## **ORDER**

### **“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the relief of setting aside the impugned order of discharge dated 21.07.2016 attended with the relief of reinstating him in service with all consequential benefits followed by relief of allowing him to complete the training .

2. The thumbnail sketch of the facts is that the applicant was enrolled in the Indian Army on 23.06.2015 through unit HQ quota and was made to undergo training in Mahar Regiment at Saugor (M.P.). While undergoing basic military training he was hospitalised in Military Hospital, Saugor for the period 10.10.2015 to 15.10.2015 for ‘Stress Fracture Lower 1/3<sup>rd</sup> Rt Tibia’. He absented himself unaccountably and without leave w.e.f. 06.11.2015 but resumed training on 27.11.2015 after efflux of 21 days. On 14.12.2015 he was admitted to Military Hospital, Saugor from where he was referred to Military Hospital, Babina on 15.12.2015. The applicant was transferred back to Military Hospital, Saugor on 17.12.2015 and while enroute he escaped and reported to Military Hospital, Saugor on 12.02.2016 (after 56 days). After discharge from Military Hospital, Saugor, he reported sick and went to MI Room on 13.02.2016 from where he escaped and reported to Mahar Regimental Centre on 04.03.2016 (after 20 days). Consequently, he was put to trial under Army Act 39 (a) read in conjunction with section 80 of the Army Act

and in ultimate analysis, was inflicted punishment of 28 days R.I. in military custody by the Commanding Officer on 02.04.2016. After serving out the sentence, the applicant was issued a Show Cause Notice dated 05.05.2016 why action be not taken for his discharge from service. The reply of Show Cause Notice was asked by 12.05.2016 but the applicant got himself admitted in Military Hospital, Saugor on 12.05.2016 from where he was granted 03 weeks sick leave for the period 26.05.2016 to 15.06.2016. On expiry of aforesaid leave he remained absent till he voluntarily rejoined at the Training Centre on 30.06.2016 (Total days of absence 15 days). He was granted 14 days RI and 14 days pay fine. Thereafter, he absented without leave from 01.07.2016 to 05.07.2016 (Total days of absence 05 days). In ultimate result, the applicant was discharged as undesirable and inefficient soldier by the Commanding Officer under Army Rule 13 (3) IV after obtaining sanction of the competent Authority.

3. The learned counsel for the applicant submitted that on getting to know that applicant's father met with an accident, he enquired from the CHM as to how he could proceed on short leave which was allowed but while returning he sustained severe injury enroute causing fracture. On reporting to the centre he was hospitalized for the period 10.10.2015 to 15.10.2015. He further submitted that since he was not feeling well, he escaped from the centre on 06.12.2015 in a confused state of mind. On rejoining he was awarded 14 days RI. His further submission is

that though policy dated 28.02.1986 postulates absence of 30 days as a ground for discharge but it is also canvassed that the applicant could only be discharged after holding of a Court of Inquiry which has not been done in the instant case. His other submission is that on transfer from Military Hospital, Babina, he felt unwell and left the centre without leave and could rejoin the training only on 04.03.2016. On rejoining he was awarded 14 days RI. After award of punishment he was thrown out of training centre gate. He further submitted that on 20.10.2016 applicant submitted a representation to the Commandant, Mahar Regimental Centre, but after waiting for a considerable period when nothing was heard he filed this O.A. He pleaded that applicant be permitted to join the training by setting aside the discharge order dated 21.07.2016.

4. Per contra, it is contended that the applicant was harnessed for basic military training with effect from 08.08.2015 at the Mahar Regimental Training Centre in Course Serial No 93. During the course of his basic military training his absence period was as under:-

(i) Admitted to Military Hospital, Saugor	<u>10.10.2015</u> 15.10.2015	-06 days
(ii) Absent without leave	<u>06.11.2015</u> 27.11.2015	-21 days
(iii) Admitted to Military Hospital, Saugor and Transferred to MH, Babina but applicant escaped and absented without leave	<u>14.12.2015</u> 12.02.2016	-56 days

(iv) Absence without leave	<u>13.02.2016</u> 04.03.2016	-20 days
(v) Admitted in MH, Saugor on 12.05.2016 (granted 03 weeks sick leave) but not reported back.	<u>-16.06.2016</u> 30.06.2016	-15 days
(vi) Absent without leave	<u>-01.07.2016</u> 05.07.2016	-05 days

5. Thus, he submitted that the applicant was absent without leave for a duration of 92 days excluding the sick leave which was granted by the hospital. He further submitted that he was rightly awarded two punishments i.e. 28 days RI and 14 days RI with 14 days pay fine for the lapses on his part. His further submission is that the applicant was served a show cause notice dated 05.05.2016 for absenting himself for more than 30 consecutive days in basic military training and pursuant to that he was discharged from service on 21.07.2016 as per policy letter dated 28.02.1986 under Rule 13 (3) (iv) of Army Rules, 1954 being 'unlikely to become an efficient soldier'.

6. The learned counsel for the applicant also relied upon the Hon'ble Apex Court judgment in Civil Appeal D. No. 32135/2015, **Veerendra Kumar Dubey vs Chief of the Army Staff & Ors** and Civil Appeal No 12179-80/2016, **Vijay Shanker Mishra vs Union of India & Ors.**

7. Heard learned counsel for the parties and perused the material placed on record.

8. In the instant case, after serving out the sentence for his absence on last occasion during basic military training, the applicant got himself admitted in Military Hospital and did not bother to reply of Show Cause Notice dated 05.05.2016. He again deserted while being transferred from Military Hospital, Babina to Military Hospital, Saugor on 17.12.2015 and voluntarily rejoined Military Hospital, Saugor on 12.02.2016 after a total absence of 56 days and thereafter, he absented for nearly 40 days on various occasions. The submission of the learned counsel for the applicant that the applicant was forced to sign some blank papers does not appeal to us inasmuch as nothing has been brought on record to show that the applicant was forced to sign on blank papers. It is nowhere mentioned in the O.A that either the Commanding Officer or any junior officers in the Centre were in any way biased or prejudiced to the applicant. In the circumstances, it does not commend to us for acceptance that the applicant was forced to sign on blank papers which were later utilized by the respondents at the time of his discharge from service.

9. Coming to policy 1986 (supra), it postulates 30 days consecutive absence from training. The policy in our view, does not give free hand or carte blanche to the applicant or any individual to absent himself in bits, off and on, and to take shelter behind the plea that he had not absented himself for 30 consecutive days. In the instant case, the applicant absented

himself at regular intervals on various occasions during basic military training. The applicant was admitted in Military Hospital, Saugor on 14.12.2015 and he was referred to Military Hospital, Babina on 15.12.2015 from where he was transferred to Military Hospital, Saugor on 17.12.2015 but while enroute he escaped for a considerable period of 56 days and reported to Military Hospital, Saugor on 12.02.2016.

10. In the instant case, the order of discharge is reasoned in terms of policy 1986 (supra) as the applicant consecutively absented for a period of more than 30 days. He was discharged from service as unlikely to become efficient soldier. Being relevant, the order of discharge dated 21.07.2016 is quoted for ready reference.

*"No 4589149P Rect Rahat Ali Khan of the Mahar Regt Centre is being discharged from service on 21 Jul 2016 being 'UNLIKELY TO BECOME AN EFFICIENT SOLDIER" before fulfilling the terms of engagement under Army Rule 13 (3) IV after having served for 10 months and 22 days."*

11. 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.

12. The allied contention of learned counsel for the applicant is that the applicant ought to have been discharged after disciplinary inquiry. In our view, looking to the frequent desertion/absent without leave on the part of applicant and in view of his extended absence of 56 days from 17.12.2015 to 12.02.2016 and also considering all aspects of his case in the light of policy of 1986 (supra) and recurrence of frequent absence on various occasions without obtaining prior permission or leave that too during basic military training, the applicant was rightly discharged from service as unlikely to become an efficient soldier.

13. 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.

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

15. No order as to costs.

16. Miscellaneous application(s), pending if any, stand disposed of.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated: 16.02.2022  
rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**