

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

**(Court No. 1 (List A))**

**Original Application No. 157 of 2015**

Monday, this the 09<sup>th</sup> day of January, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)  
Hon’ble Air Marshal Anil Chopra, Member (A)”**

Himanshu Goswami (No. 14866127A Rect/MT), son of Vinod  
Giri, permanent resident of village Rangpur, post office  
Rangpur, District Bulandshahar (Uttar Pradesh).

.....Applicant

**By Shri Yash Pal Singh, Counsel for the Applicant.**

Versus

1. Union of India, through Secretary, Ministry of Defence,  
Central Secretariat, New Delhi-110001.
2. Chief of Army Staff, Army Headquarters, Sena Bhawan,  
South Block, New Delhi.
3. Officer-in-Charge, ASC Records (MT), Bangalore.
4. Commanding Officer, No 2 Training Battalion (Supply),  
ASC Centre (South), Bangalore.

.....Respondents.

**By Shri Sunil Sharma, Counsel for the respondents  
assisted by Col Kamal Singh, OIC Legal Cell.**

**ORDER**

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved by impugned order of discharge dated 07.04.2014 from Army service during recruit training. .

2. We have heard Shri Yash Pal Singh, Ld. Counsel for the applicant and Shri Amit Sharma, Ld. Counsel for the respondents assisted by Col Kamal Singh, OIC Legal Cell and perused the records.

3. Admittedly the applicant was enrolled in the Indian Army as ASC Driver (MT) on 19.03.2013 and undergone basic military training at No 2 Training Battalion (Supply) ASC Centre (South), Bangalore. According to Ld. Counsel for the applicant on 29.04.2014 during basic military training the applicant fell ill and was admitted in the Command Hospital, Air Force, Bangalore for treatment of '*RIGHT PLEURAL EFFUSION OF TUBERCULAR ETIOLOGY*'. After treatment the applicant was discharged from the hospital on 13.05.2013. The Medical Board placed the applicant in medical category S1H1A1P1E1 and recommended him fit for further training. The applicant was permitted to join the basic military training with effect from 28.10.2013 and continued the training till 12.01.2014. The applicant was again examined by Command Hospital, Air Force Bangalore on 20.01.2014 and

declared him medically fit. Before rejoining the training the applicant was granted six days leave from 24.02.2014 to 02.03.2014. However on reporting after availing six days leave the applicant came to know that he was discharged from service on the basis of appraisal report. Discharge certificate was issued by Commanding Officer No. 2 Training Battalion on 07.04.2014 and the applicant was discharged in pursuance of power conferred by Rule 13 (3) (III) (IV) of the Army Rules, 1954.

4. It has been submitted by Ld. Counsel for the applicant that before recommending discharge of an individual the respondents ought to have complied Army Headquarter letter dated 28.12.1988 which provides procedure for discharge of undesirable and inefficient Army personnel, the applicant should have been provided further opportunity to complete his training. However Ld. Counsel for the applicant fairly did not dispute the summary of performance filed alongwith supplementary counter affidavit as Exhibit 'A' which for convenience sake is reproduced as under :-

*"SUMMARY OF PERFORMANCE ON TEST"*

<i>S No</i>	<i>Date</i>	<i>Event</i>	<i>Result/Remarks</i>
1.	20 Dec 2013	Swimming Test	Fail
2.	21 Dec 2013	Physical Proficiency Test (PPT)	Fail
3.	27 Dec 2013	Swimming Test	Not attended due to excuse Physical

			<i>Training Parade and Game (PPG)</i>
4.	27 Dec 2013	<i>Physical Proficiency Test</i>	<i>Not attended due to excuse Physical Training, Parade and Game (PPG)</i>
5.	30 Dec 2013	<i>Individual Physical Efficiency Test (IPET)</i>	<i>Fail</i>
6.	03 Jan 2014	<i>Swimming Test</i>	<i>Not attended due to excuse Physical Training, Parade and Game (PPG)</i>
7.	03 Jan 2014	<i>Physical Proficiency Test (PPT)</i>	<i>Fail</i>
8.	06-10 Jan 2014	<i>Basic Foundation Course Test (PFC)</i>	<i>Out of five papers, indl attended only one paper</i>
9.	06 Jan 2014	<i>Individual Physical Efficiency Test (IPET)</i>	<i>Fail</i>
10.	10 Jan 2014	<i>Swimming test</i>	<i>Absent without valid reason</i>
11.	10 Jan 2014	<i>Physical Proficiency Test (PPT)</i>	<i>Absent without valid reason</i>
12.	10 Jan 2014	<i>Individual Physical Efficiency Test (IPET)</i>	<i>Fail</i>
13.	20 Jan 2014	<i>Individual Physical Efficiency Test (IPET)</i>	<i>Absent without valid reason</i>
14.	20 Jan 2014	<i>Individual Physical Efficiency Test (IPET)</i>	<i>Absent without valid reason</i>
15.	03 Feb 2014	<i>Individual Physical Efficiency Test (IPET)</i>	<i>Absent without valid reason”</i>

5. A plain reading of aforesaid summary of performance brought on record shows that the applicant failed in six tests and apart from that he was absent without valid reason on 10.01.2014, 20.01.2014, 24.01.2014 and 03.02.2014. During Individual Physical Efficiency Tests (IPET), on three occasions it appears that the applicant avoided to participate in the Individual Physical Efficiency Test.

6. Since summary of performance on test has not been disputed by Ld. Counsel for the applicant and the applicant seems to have absented himself on five occasions in the Individual Physical Efficiency Test, it appears that the applicant could not muster courage to appear in the Individual Physical Efficiency Test. This shows lack of stamina and courage in the applicant to appear in the tests during course of training. How such a person shall serve the Army while discharging arduous duties in High Altitude and border areas where hardship is much more than he was to face during the training. The consequence drawn by the respondents on the basis of appraisal of performance seems to be well thought and the applicant seems to be not fit for serving in Armed Forces and rightly discharged.

7. It is apposite to note that during training Armed Forces personnel are given strenuous physical fitness training to increase their ability to face all odds while serving the country in High Altitude Areas, Counter Insurgency Area and Border

Areas. A person who did not appear in the Physical Proficiency Test seems to have been rightly discharged from service.

8. According to para 5 of the counter affidavit the applicant was repeatedly counseled and motivated by the Command Officer to complete his training but it appears that the applicant lacked enthusiasm and courage to face harsh conditions and adversities of tough military training.

9. Apart from above, the applicant himself has filed an affidavit of unwillingness to continue in the basic military training. The affidavit filed by the applicant in this respect has been annexed as Exhibit-B to the supplementary affidavit filed by the respondents. Relevant portion of the affidavit filed by the applicant is reproduced as under:-

*“3. I state that due to my health physical problem I am unable to do further training and hence I would like to get discharged from the service. There is no objection from the Defence Authorities for my discharge. This decision has been taken by me out of my own free will and wish without anybody’s force or coercion and I request the Army Authorities to discharge from the services on account of my Health Grounds. Hence this affidavit for doing the needful”.*

Even if for argument sake submission of Ld. Counsel for the applicant is accepted that the applicant was compelled

to sign the unwillingness certificate, it would not come to the rescue of the applicant in view of the Summary of Performance on Tests of the applicant (supra).

10. Arguments advanced by Ld. Counsel for the respondents while defending the impugned order of discharge are tenable and we do not find it to be a fit case where the Tribunal may interfere with the appraisal of applicant's performance report and consequential order of discharge passed by the competent authority. We are in full agreement with the arguments advanced by Ld. Counsel and find no good ground to interfere with the impugned order of discharge.

10. Ld. Counsel for the respondents has relied upon the judgments reported in ***Union of India & Ors v. Dipak Kumar Santra***, AIR (2009) 7 SCC 370, ***Ram Sunder Ram v. Union of India & Ors***, AIR (2007) 13 SCC 255 and ***Union of India & Ors v. Manoj Deshwal & Ors*** in Civil Appeal No 5015 of 2008, and contended that the applicant has rightly been discharged from service after failing in various Individual Physical Proficiency Tests.

11. In view of the above, the O.A. is devoid of merit and is accordingly **dismissed**.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**