

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

(Court No. 1 (List A))

Original Application No. 89 of 2015

Monday, this the 09th day of January, 2017

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

Ashok Kumar Kushwaha, Rect/ASH Army No 6502870K, S/O
Shri Ram Vilash Kushwaha, R/O Village & Post-Jangale
Rasoolpur No 2, Tehsil-Chauri Chaura, District-Gorakhpur,
U.P.

.....Applicant

By Shri Yash Pal Singh, Counsel for the Applicant.

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. Chief or the Army Staff, Indian Army, Army Headquarters, New Delhi.
3. Officer-in-Charge Records, Records of ASC Centre, (North), Bangalore-560007.
4. Commanding Officer No. 1 Trg Bn (AT), ASC Centre (North), Bangalore-560007.
5. Lt Col Kapil Sharma, Offg CO No. 1 Trg Bn (AT), ASC Centre (North) Bangalore-560007.

.....Respondents.

**By Shri Kaushik Chatterji, 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 28.04.2014.

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

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 17.12.2013. During course of training with effect from 29.01.2014 applicant absented himself without leave. Apprehension roll was issued. He rejoined voluntarily after 38 days. He was sentenced to undergo 28 days rigorous imprisonment in quarter guard. After completion of 28 days of rigorous imprisonment he was discharged from Army vide impugned order dated 28.04.2014 on the grounds "unlikely to become an efficient soldier" under Army Rule 13 (3) (iv).

4. A question cropped up in case the applicant was already punished with 28 days of rigorous imprisonment which he had undergone, what would have been the reason to discharge him on the ground of likely to be an inefficient and undesirable soldier. Respondents could not bring on record any pleading nor could argue as to what were the facts

and circumstances under which the applicant has been discharged when he was inflicted punishment of 28 days rigorous imprisonment for the same reason.

5. Of course absence without leave is a serious misconduct and once the applicant was apprehended, he could have been discharged outright after serving a notice since he was undergoing training but since the applicant has been punished on account of absence during course of training, which as per arguments of Ld. Counsel for the applicant was due to alleged illness, then some lenient view should have been taken by the respondents while discharging the applicant from service. It is always open to the Army to discharge or dismiss an employee who has absented himself without leave in view of provision contained in Section 39 of the Army Act, 1950 but once a punishment has been awarded, then later on for the same misconduct discharge from service seems to be too harsh.

6. It has been submitted by Ld. Counsel for the respondents that the applicant has been discharged in pursuance of Army Headquarters letter dated 28.02.1986 which permits the Army authorities to discharge a recruit under training for absence of more than 30 days. There is no room of doubt that Army Headquarter letter permits the authorities to discharge a recruit under training for absence of 30 days on the ground of likely to be an inefficient and

undesirable soldier but in the present case the Army Headquarter letter (supra) has not been followed in its letter and spirit for the reason that instead of discharging the applicant immediately, he was sentenced to 28 days rigorous imprisonment. In such circumstances we feel that some lenient view should have been taken.

7. Subject to aforesaid observations, we permit the applicant to submit a representation within three weeks from today before the appropriate authority which shall be considered by the authority concerned within two months from the date of filing such a representation by a speaking and reasoned order with due communication to the applicant.

8. We hope and trust that in case the applicant was suffering from some illness or for some compelling reason he absented without leave for 38 days, the appropriate authority shall consider his case sympathetically keeping in view the fact that the applicant should have been discharged straightaway instead of being punished with 28 days rigorous imprisonment which was also undergone by him.

9. Subject to above the O.A. is **disposed of** finally.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

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