

ORAL

Court No. 1

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

Original Application No. 54 of 2019

Thursday, this the 24th day of January, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Abhishek (No. 7786150L), son of Late Mushi Lal, resident of Village Kharuti, Post Office Kamalpur, Tehsil Sadar, District Kanpur Nagar (U.P.)

.... Applicant

Ld. Counsel for the: **Shri Om Prakash Kushwaha**, Advocate.
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence (Army), West Block-2, R.K. Puram, New Delhi.
2. Chief of the Army Staff, Army Head Quarters, South Block, New Delhi.
3. Commandant, CMP Centre and School Bangalore, PIN-900493, C/o 56 APO.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate.
Respondents.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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

- (i) set aside the impugned order dated 13.11.2018 passed by Chief of the Army Staff, Army Head Quarter, South Block, New Delhi, contained as Annexure no. 1 to this original application.*
- (ii) set aside the impugned order dated 20.03.2015 passed by Commandant, CMP Centre and School Bangalore, Pin-900493, C/O 56 APO, contained as Annexure no.2 to this original application.*
- (iii) issue appropriate order or direction to the respondents to reinstate the applicant in service with consequential benefits.*
- (iv) Allow the instant O.A. with cost.*

2. At the time of hearing on the point of admission, on behalf of the respondents it has been argued that the applicant has no actionable claim as he has absented himself from training from CMP Centre and School, Bangalore and in view of Policy covering the field he could not have been permitted to join. There is no question involved in this Original Application which needs to be adjudicated by this Tribunal.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army out of U.H. Quota and reported on 24.10.2013. His brother was also in the Army and on the basis of

relationship certificate he was recruited in the Army and was undergoing training in C.M.P. Centre and School, Bangalore. During the aforesaid training period his father became seriously ill and expired on 11.06.2014. His father was aged about 55 years. The applicant applied for sanction of leave, but, only seven days leave was sanctioned with effect from 13.06.2014. The applicant proceeded on leave on 13.06.2014 to go to his home. Because of the death of the father, the applicant's mental and physical condition deteriorated after he reached his home and he took lot of time to become normal. Thereafter, the applicant reported on 25.10.2014 at C.M.P. Centre and School, Bangalore. The applicant was awarded four days rigorous imprisonment without providing any opportunity of hearing to the applicant. Thereafter, disciplinary proceeding was initiated against the applicant but no charge sheet was issued to the applicant and without providing opportunity of hearing to the applicant the impugned order was passed on 20.03.2015 and the applicant was discharged from service. Feeling aggrieved by the impugned order dated 30.03.2015 the applicant filed this Original Application.

4. Thus the admitted facts position is that the applicant during his basic military training was granted leave for seven days with effect from 13.04.2014 which culminated on 20.04.2017. At that point of time the applicant was under training and he continued to remain absent till 25.10.2014 (i.e. for more than 120 days).

5. At this juncture, we would like to quote policy No.A/20314/MT-3 dated 28th February 1986 which deals with the

relegation of recruit. The relevant part of the said policy reads as under :-

“Relegation for Absence without Leave

4. A rect 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. 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 rect has commenced, the discretion to discharge a rect for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case on its merits.”

6. Thus a recruit who has been absent more than 30 consecutive days from training shall not be permitted to rejoin his training. Apart from it the claim of the applicant that the applicant was not given any show cause notice and he was discharged from service has absolutely no ground, because, the applicant was not even attested and he was only a recruit so before attestation the applicant's status was only of a probationer. In the case of **Union of India and Others Versus Manoj Deswal and Others**, reported in (2016) 15 Supreme Court Cases 511, the Hon'ble Apex Court has considered the issue involved in this case and has held in Para 15 as under :-

“15. It is an admitted fact that Respondent 1 had not been attested. Certain formalities are required to be done for being attested as per the provisions of Section 17 of the Act and admittedly the said formalities had not been

done. The status of Respondent 1 was just like a probationer, whose service could be terminated without holding any enquiry. In spite of the fact that service of Respondent 1 could have been terminated without holding any enquiry, an enquiry had been held on 29-7-2005 and it was found that Respondent 1 had remained absent for 108 days without any sanctioned leave. The said act is an act of gross indiscipline. Absence of Respondent 1, being a finding of fact, we would not like to interfere with the same especially when after holding the said enquiry Respondent 1 had also been declared deserter.”

7. The Ld. Counsel for the applicant could not bring any Policy/Rules/Regulations in the notice of the Tribunal which confers a right on the applicant that the respondents were under any obligation to provide opportunity of hearing and were bound to continue his training. In view of absence of any such Policy in favour of the applicant, applicant has no actionable claim. While the respondents have policy which shows that in case a recruit who has been absent without leave for a period of 30 consecutive days during basis military training, will not be allowed rejoin his training again, we are of the considered opinion that the applicant cannot be reinstated in service.

8. The facts of the case in hand are absolutely identical with the case of before the Hon'ble Apex Court in the case of **Union of India and Others Vs. Manoj Deswal and Others** (Supra), therefore, the Original Application has no merit. The applicant has

not completed his basic training and absented himself without prior sanction of the leave. Therefore, in compliance of the Policy covering the field, the applicant was discharged from service for his unauthorized absence of 120 days. Thus, we do not find any illegality, irregularity or impropriety in the order passed by the respondents. Further, we do not find any question which needs to be adjudicated in this Original Application.

9. In view of above observation, the Original Application deserves to be dismissed in limine and is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 24th January, 2019

AKD/-