

Court No.1
List 'A'

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

Transferred Application No.47 of 2016

This the 27th day of March 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Surya Kant Tewari, son of Sri Shriman Narain Tewari, resident of village and post Sihari Madhogarh, District Jalaun

.....Petitioner

Ld. Counsel for : **Shri Rohit Kumar, Advocate**
the Petitioner

Versus

1. Union of India, Ministry of Defence, Army Headquarters. Sena Bhawan, New Delhi.
2. Sikh Light Infantry Regiment Kendra, The Sikh Light Infantry Regiment Centre, Fatehgarh (UP), through its Commandant.

...Respondents

Ld. Counsel for the : **Virendra Singh, Central**
Respondents **Govt Counsel assisted by**
Maj Soma John, OIC Legal Cell

ORDER(ORAL)

1. Being aggrieved with order of discharge, the petitioner approached the High Court of Judicature at Allahabad by preferring Writ Petition No. 12797 of 2003. On establishment of the Tribunal, the said petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as Transferred Application no. 47 of 2016.
2. We have heard learned counsel for the parties and perused the record.
3. The petitioner was enrolled in the Indian Army on 12.01.2002 in Sikh Light Infantry Regiment as soldier. While serving in the Army, on 23.10.2002 the petitioner was awarded 28 days rigorous imprisonment under Section 39 (a) of the Army Act, 1950 for absenting himself without leave. Needless to say that for an Army personnel being absent without leave amounts to serious misconduct. On 25.11.2002 the petitioner a show cause notice was sent to his permanent address in District Jalaun and later on, on 03.12.2002 the petitioner was discharged from service in pursuance to Rule 13 (3) of Army Rules, 1954. The reason for discharge of petitioner is that he would not be an efficient soldier.
4. Submission of learned counsel for the petitioner is that the petitioner has been discharged without complying the principles of natural justice after serving show cause notice and without holding regular inquiry.
5. On the other hand, learned counsel for the respondents relying on the Apex Court decision in the case of ***Union of India vs. Manoj***

Deswal & others (Civil Appeal No. 5015 of 2008 decided on 28.10.2015., submitted that their Lordship's of Hon'ble Apex Court have held that a trainee may be discharged without regular inquiry, being unattested. For convenience sake, paras 15, 16 and 17 of the case of **Majoj Deswal** (supra) are reproduced as under:-

"It is an admitted fact that Respondent no. 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 no. 1 was just like a probationer, whose service could be terminated without holding any enquiry. In spite of the fact that service of Respondent no. 1 could have been terminated without holding any enquiry, an enquiry had been held on 29th July, 2005 and it was found that Respondent no. 1 had remained absent for 108 days without any sanctioned leave. The said act is an act of gross indiscipline. Absence of Respondent no. 1 being a finding of fact, we would not like to interfere with the same especially when after holding the said enquiry Respondent no. 1 had also been declared deserter.

16. A person who remained absent unauthorisedly and who was declared deserter can never turn out to be a good soldier and as per the provisions of Rule 13 (3) of the Rules, it is very clear that the Commanding Officer can discharge non attested person enrolled under the Act. The Commanding Officer, as per the provisions of Rule 13(3) of the Rules, had satisfied himself about the fact that Respondent no. 1 had remained absent without sanctioned leave and had been declared deserter and therefore, he was unlikely to become an efficient soldier. In the circumstances, we do not find any fault with his decision about discharging Respondent no. 1 from service.

17 We have perused the judgments referred to by the learned counsel for the appellants and we are in respectful agreement with the view expressed by this Court to the effect that no special notice is required to be given before discharge of a person who is not attested, especially in view of the fact that a court of enquiry

had already been held on 29th July 2005 and Respondent no.1 had been declared deserter by an order dated 30th July, 2005.”

6. In view of said proposition of law, discharge of petitioner during course of Training, that too in the teeth of absence without sanctioned leave, seems not to suffer from any impropriety or illegality.

7. The petition is devoid of merits; hence **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated : 27.03.2017
anb