

COURT No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 14 of 2018**

Thursday, this the 31st day of March, 2022

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

No. 14556737A Cfn Shiv Ram Dohre S/o Shri Eswari Prasad, resident of Village Sainipur, Post-Kasular, District-Kanpur (UP), now residing at Quarter No 7/2, Ex Maharaja Lines, MES Colony, Near Nehru Park, Umed Bhawan Palace Road, Kota (Raj).

..... Petitioner

Learned counsel for the : **Shri Rajneesh Kumar Verma**, Advocate.
Petitioner

Versus

1. The Union of India, through the Secretary Ministry of Defence, South Block, government of India, New Delhi-110011.
2. The PCDA (P), Allahabad (UP).
3. The OIC Records, The EME Records, Pin-900453, C/o 56 APO.

.....Respondents

Learned counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

1. Being aggrieved with illegal discharge from service the petitioner had filed O.A. No. 03 of 2012 in AFT, Regional Bench, Jaipur which was transferred to this Tribunal and re-numbered as T.A. No. 14 of 2018. The petitioner has made the following prayer:-

- (i) *That the discharge of petitioner be set aside and quashed and petitioner be reinstated into service or be treated in service till his pensionable service and be sanctioned service pension on completion of 15 years service.*
- (ii) *That alternatively the petitioner be treated having been sent on reserve and reservist pension be sanctioned to him by the non-petitioners.*
- (iii) *That arrears of pension be paid with 12% interest per annum.*
- (iv) *That orders for any other relief which the Hon'ble Tribunal deems appropriate in the circumstances of the matter may please be passed in favour of the petitioner.*

2. Brief facts of the case giving rise to this petition are that the petitioner was enrolled in the Army on 27.07.1983 as Vehicle Mechanic (Motor Vehicle) in short VM (MV) trade. Normally, an individual on enrolment into the Army has to clear his basic military training and technical training i.e. Class III and IV of the trade allotted to him within five years of his enrolment, from the training centre itself, before posting him to any unit as a trained soldier. However, in terms of para 2 (b) of policy letter dated 9/13.01.1969 though the petitioner, who could not qualify in Class IV, was

still posted as a young soldier to 242 Fd Wksp Coy against authorized vacancies of the lowest class and was attested on 25.06.1987. Upon posting to 242 Fd Wksp Coy, the Records EME wrote to the unit on 15.06.1987 (Annexure R-1) to encourage the petitioner by giving sufficient chances so that he could pass Class IV test. However, he could not pass Technical Trade Test Class IV even after affording sufficient opportunities. As such, he was discharged from service under Rule 13 (3) III (v) of Army Rules, 1954 w.e.f. 25.07.1988 (AN) as an 'inefficient soldier (young soldier)' before completion of 5 years as per para 2 of policy letter dated 06.01.1970 (Annexure R-2). After lapse of 23 years petitioner preferred legal notice dated 08.11.2011 which was replied vide letter dated 29.11.2011. The petitioner has filed this petition to set aside discharge order dated 25.07.1988 and re-instate him into service to enable him to earn service pension.

3. Submission of learned counsel for the petitioner is that the petitioner was attested on 25.06.1987 after he cleared basic and trade training in terms of Regulation 140 of Regulations for the Army, 1987. Even then he was discharged from service w.e.f. 25.07.1988 (AN) without giving any Show Cause Notice and without holding any inquiry prior to discharge. His further submission is that the

petitioner has also passed Map Reading-III test but he was arbitrarily discharged from service one day prior to completion of five years of service. His other submission is that the petitioner has represented to the authorities a number of times but when nothing was heard, he submitted a legal notice dated 08.11.2011, the reply of which being found unacceptable, the petitioner filed this petition in the AFT, Regional Bench, Jaipur for setting aside impugned order dated 26.07.1988 and re-instate him into service with all consequential benefits.

4. On the other hand, learned counsel for the respondents submitted that though the petitioner could not qualify mandatory class IV test yet he was posted to 242 Fd Wksp Coy against authorized vacancy of lowest class and on posting to his new unit, EME Records approached the unit concerned vide letter dated 15.06.1987 (Annexure R-1) to encourage the petitioner and to give him sufficient chances so that he could pass the mandatory Class IV test, before completion of five years of service. He further submitted that the petitioner failed to qualify his lowest trade test i.e. Class IV VM (MV) even after affording him enough opportunities for clearing the same, and therefore on this count he was discharged from service w.e.f. 25.07.1988 (AN) as an 'inefficient soldier (young soldier)' before

completion of 5 years of his service as per para 2 of Army HQ policy letter dated 06.01.1970 read with policy letter dated 9/13.01.1969 (Annexure R-2) wherein it is clearly mentioned that 'young soldiers who fail to qualify for the lowest class of their category in spite of having been given sufficient chances are to be discharged from service before completion of 5 years. He further submitted that the petitioner was also punished three times on account of overstaying leave/away without leave as under:-

S No	Nature of offence	Army Section	Act	Punishment awarded with date	Unit
(a)	OSL	39 (b)		07 days RI on 18.10.1984	2 Trg Bn
(b)	OSL	39 (b)		14 days RI on 25.05.1985	812 Fd Wksp Coy
(c)	AWL and violation of good order and military discipline	39 (a) and 63		20 days RI on 27.11.1987	242 Fd Wksp Coy

The learned counsel pleaded for dismissal of the petition on the ground of non clearance of mandatory technical trade test within the stipulated time as also being habitual offender.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is undisputed fact of the parties that the petitioner was enrolled in the Army on 27.07.1983. He was discharged from service before completion of five years of service in

terms of policy letter dated 9/13.01.1969 as the petitioner could not pass mandatory Class IV test even after affording sufficient opportunities.

7. We have perused para 3 of policy letter dated 9/13.01.1969, which for convenience sake is reproduced as under:-

"2. Young soldiers who are retained in service under para 2 above will be given sufficient chances to qualify for the lowest class of his category. Those who do not qualify in spite of having been given sufficient chances will be discharged from service under Army Rule 13. They will, in any case, be discharged before completion of five years service."

Thus, from the aforesaid it is clear that the petitioner, who could not qualify Class IV test within five years of service, was rightly discharged from service and no prejudice has been done to him as alleged by the petitioner.

8. In view of the above, O.A. lacks merit and is hereby **dismissed**.

9. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 31.03.2022

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