

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 316 of 2023

Tuesday, this the 7th day of May, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

Ex Rect Om Prakash
S/o Late Sri Laakhan Singh
R/o Village – Sarai Malookchand, Sevla JAT,
District Agra, Uttar Pradesh – 282001

.... Applicant

Ld. Counsel for the Applicant : **Shri Pradeep Kumar Srivastava & Ms. Jyotsana Srivastava, Advocates**

Versus

1. The Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Major, 114 Infantry Battalion (TA), JAT, Pin No. 934314 on behalf of 56 Army Post Office Fatehgarh, District Farrukhabad.
3. Colonel, 114 Infantry Battalion (TA), Pin No. 934314 on behalf of 56 Army Post Office Fatehgarh, District Farrukhabad.

... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Govt. Standing Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- a) To issue pass an order or directions to the respondents to consider the claim of the applicant to join in the service and also resume his service from immediate effect.
- b) To issue pass an order or directions to the respondent No. 2 & 3 to set aside the discharge certificate No. 2487 which

was issued on 22.05.2010 in consequence to the application dated 16.04.2010 passed by the Commanding Officer, 114 Inf Bn (TA) JAT.

- c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted alongwith cost of the OA."

2. Brief facts of the case are that the applicant was enrolled in Territorial Army on 25.12.2009 and reported for recruit training on 01.04.2010 at Fatehgarh. The applicant during the course of training fell ill and the matter was reported to the Commanding Officer. During the interview of the Commanding Officer, the applicant expressed his unwillingness to continue further training due to his domestic and physical problems and submitted a written application dated 16.04.2010 in his own handwriting to the Commanding Officer of the unit requesting discharge from Territorial Army service being not in a position to discharge his duties in these peculiar circumstances. Based on the application, the Commanding Officer being empowered to sanction discharge of the recruit applicant, sanctioned discharge of the applicant from service w.e.f. 17.04.2010 (AN) under Rule 16 read in conjunction with Rule 15 (1) of Territorial Army Rules, 1948. Later on, applicant submitted a complaint dated 24.11.2010 and a legal notice dated 23.01.2012 which were suitably replied by the respondents. Thereafter, applicant filed a Writ Petition No. 19923/2019 before the Hon'ble High Court, Allahabad raising his grievances which was transferred to this Tribunal and registered as TA No. 62/2022 and on the request of the applicant, T.A. was dismissed as withdrawn with liberty to file afresh vide order dated

03.02.2023. Thereafter, the present Original Application has been filed by the applicant to set aside his discharge order and to resume his services.

3. Learned counsel for the applicant submitted that applicant was appointed on the post of Infantry Soldier (GD) on 25.12.2009 and reported at 114 Infantry Battalion (Territorial Army) JAT vide order dated 23.02.2010. The applicant started his training with utmost ability, honesty and discipline. The applicant, during the training, fell ill and it was advised by the Commanding Officer of the unit to submit an application for relieving from the service due to illness and after recovering from the health, applicant will be resumed in training/service but when the applicant returned back, no attention was paid by the Commanding Officer of the unit. The applicant made an application on 16.04.2010 stating therein that due to physical and family problems, he is not in a position to discharge his duties and requested to be relieved from duty. The application submitted by the applicant has been treated as resignation letter by the concerned authorities in arbitrarily and illegal manner and he was discharged from service.

4. Learned counsel for the applicant further submitted that applicant in his application dated 03.11.2010 submitted to the Commanding Officer of the unit has made allegations against seven personnel of the unit (Havildar JP Sharma, Naib Subedar Dipak sahib, Subedar Rajesh Pal, Naik Ghanshyam Tyagi, Havildar Rakesh, Havildar Arvind and Subedar Major of the unit) that they all have

compelled to the applicant to write resignation application forcefully by threatening to dire consequences and putting Pistol in his temple (Kanpati), so applicant's application of resignation was against his will/desire and thus, he has been forcefully ousted from service on the basis of resignation application written unwillingly.

5. Learned counsel for the applicant further submitted that opposite parties without conducting medical examination of the applicant, discharged him from his duty which is against the rules. The discharge certificate of the applicant has been signed by the Commanding Officer, 114 Infantry Battalion (TA) JAT on 22.05.2010 whereas as per rules, it was to be handed over at the time of discharge of the applicant. Therefore, discharge certificate is not sustainable in the eyes of law and is liable to be rejected. The applicant has neither been released in accordance with law nor under any regulation. The provisions of Rules, 15-A, 16, 16-A and 16-B have not been followed by the authorities concerned for which Central Government or the authorities specified in sub rule 2 of Rule 16-A passed any order with regard to discharge of the applicant from service. It is categorically provided in rule 16-B that if any person who wants to be retired at his own request will move an application to the Central Government and the Central Government may grant retirement and if, person wants to withdraw his resignation/letter of intent to be released from the service, will be permitted by the authorities concerned of the Central Government and thus, in the present case, rule 16-B has been overlooked by the authorities

concerned which is violation of Article 16 of the Constitution of India and in such a position, the services of the applicant be resumed from the initial date of service. In this regard, applicant moved an application dated 03.11.2010 but no attention was paid by the Commanding Officer. Thereafter, applicant moved another application dated 24.11.2010 but no action was taken by the authorities concerned, hence, applicant sent a legal notice dated 23.01.2012 about his grievance but no heed was paid by the authorities. Thereafter, applicant filed a Writ Petition No. 19923/2019 before the Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal and registered as TA No. 62/2022 and was dismissed as withdrawn with liberty to file afresh. He pleaded to set aside discharge certificate issued to the applicant on 22.05.2010 and prayed for resuming the services of the applicant with immediate effect with continuation of initial date of service.

6. On the other hand, learned Counsel for the respondents submitted that applicant was enrolled on 25.12.2009 and reported for recruit training on 01.04.2010 at Fatehgarh as per unit call letter dated 23.02.2010. The applicant while undergoing training, absented without leave from unit area on 13.04.2010 which was reflected in the parade state register and thereafter, applicant was brought to the unit from his home by unit personnel on 16.04.2010. Disciplinary action was not initiated against the applicant because on rejoining the unit on 16.04.2010 applicant expressed his unwillingness to continue further training during the interview of the Commanding Officer. On

the same day, i.e. 16.04.2010, applicant submitted a written application in his own handwriting requesting discharge from Territorial Army service. Accordingly, applicant was interviewed by the Commanding officer of the unit where the applicant cited his inability to serve in Territorial Army due to his domestic and physical problems as mentioned in the resignation application. Based on the resignation application submitted by the applicant, the Commanding Officer being empowered to sanction discharge of the recruit applicant, granted discharge from service w.e.f. 17.04.2010 (AN) under Rule 16 read in conjunction with Rule 15 (1) of Territorial Army Regulations, 1948 (Re-print 1976). Clearance for proceeding on discharge was done by the applicant on 17.04.2010. Discharge documents of the applicant were forwarded to Records, The JAT Regiment vide unit letter dated 23.05.2010 duly signed by the applicant.

7. Learned counsel for the respondents further submitted that a complaint dated 24.11.2010 was received from the applicant against his discharge which was investigated and reply of the unit dated 08.02.2011 was sent to TA Group Headquarters, Central Command. Subsequently, TA Group HQ, Central Command after investigating the matter found that no one is to be blamed in this case and sent a reply to the applicant vide letter dated 02.02.2013. Thereafter, a legal notice dated 23.01.2012 was received and it was replied vide letter dated 10.02.2012. Thereafter, applicant filed a Writ Petition No. 19923/2019 before the Hon'ble High Court, Allahabad raising his grievances which was transferred to this Tribunal and registered as

TA No. 62/2022 and was dismissed as withdrawn with liberty to file afresh vide order dated 03.02.2023. Thereafter, the present Original Application has been filed by the applicant to set aside his discharge order and to resume his services. He further submitted that in this regard, it is pertinent to mention that applicant was unable to bear the physical hardships of training and he was discharged from service at his own request as per TA Rules. The allegations against his discharge made by the applicant in the present Original Application are baseless and falsely fabricated. The discharge of the applicant was sanctioned on his own request due to his domestic and physical problems mentioned in his personal application and therefore, his discharge from Territorial Army service is as per TA Rule 16 read in conjunction with Rule 15(1) of Territorial Army Regulations, 1948 and thus, no injustice has been done as alleged by the applicant. The applicant has been discharged from service at his own request without any influence by any personnel/appointment of the unit, hence, present Original Application is liable to be dismissed being devoid and bereft of merit.

8. We have heard learned counsel of both sides and perused the material placed on record.

9. Rule 14, 15 and 16 of the Territorial Army Rules, 1948 being relevant are quoted below :-

“14. Discharge. - (a) Every person enrolled shall, on becoming entitlea to receive his discharge under the Act or these rules, be so discharged with all convenient speed.

(b) Any such person may be discharged as hereinafter provided on any of the following grounds, namely :-

(i) that he has been convicted by a criminal court of an offence punishable with transportation or imprisonment.

(ii) That he has in filling up any form prescribed by these rules or otherwise for the purpose of obtaining his enrolment made any statement which was false and which he knew to be false or did not believe to be true.

(iii) That his service are no longer required.

(iv) That he is medically unfit for further service.

(c) Discharge, Dismissal, Removal, Retirement-Officers. - Rules for the discharge, dismissal, removal and retirement of the officers of the Territorial Army shall be the same as for the Regular Army provided that the retiring age for the officers of the Territorial Army shall be as specified in the table below :-

Table

Rank	Retiring age
Above Lieut.-Colonel	Such age as may from time to time be specified for the Regular Army.
Lieut.-Colonel	52 years. 57 years in the case of A.M.C.
Majors and below	50 years. 52 years in the case of A.M.C.
Subedar - Major/Risaldar-Major	52 years or on completion of 32 years of service or for a period of service specified in the Regulations for the Army in India for his appointment, whichever event may occur first.
Subedar/Risaldar/Jamadar Head Clerk	52 years or on completion of 28 years of service, whichever event occurs first.
Jamadar	52 years or on completion of 24 years of service, whichever event occurs first.

15. (1) The authority competent to authorise the discharge of an enrolled person under the provisions specified in column 1 of the annexed table shall, subject to the provisions of sub-rule (2), be the authority specified in the corresponding entry in column 2 thereof.

Table

Provision under which discharge authorised	Authority competent to authorise discharge of enrolled person
1	2
Sub-rule (a) of rule 14	The Commanding Officer.
Clause (i) of sub-rule (b) of rule 14	Sub-Area Commander.
Clause (ii) of sub-rule (b) of rule 14	Ditto.
Clause (iii) of sub-rule (b) of rule 14	At any time during the enrolled person's first two years of training if he is unlikely to become an efficient soldier, or is untraceable, or does not report for training for a period of one year or in the case of an unattested recruit at his own request, the Commanding Officer; in all other cases, the Sub-Area Commander.
Clause (iv) of sub-rule (b) or rule 14	The Commanding Officer.

(1A) Where a discharge is authorised under the provisions of clauses (ii) and (iii) of sub-rule (b) of rule 14, the competent authority before authorizing the discharge shall, if the circumstances of the case permit, give the enrolled person an opportunity to show cause against the discharge, unless such discharge is at the request of the enrolled person.

(2) In a case in which the authority competent to authorise discharge under sub-rule (1) is the Commanding Officer, the discharge may also be authorised by the Officer Commanding the Sub-Area, the Area General Officer Commanding-in-Chief a Command, the Chief of the Army Staff or the Central Government; and in a case in which the authority competent to authorize discharge thereunder is the Officer commanding the Sub-Area, the discharge may also be authorised by the Officer Commanding the Area, the General Officer Commanding-in-Chief the Command, the Chief of the Army Staff or the Central Government.

(3) Any enrolled person discharged under Sub-rule (1) or sub-rule (2) shall have a right of appeal against the decision of the authority which authorised his discharge to the next higher authority provided that there shall be no appeal where the order of discharge is made by the Central Government.

(4) A discharge duly authorised under this rule shall be carried out by the Commanding Officer with all convenient speed.

16. Discharge on application. - (1) Any enrolled person not entitled to his discharge under the Act or these rules who is desirous of being discharged before the expiration of the period for which he was enrolled, shall apply in writing stating the reason for his application to the Officer Commanding the unit to which he is for the time being appointed.

(2) The Officer Commanding the unit shall, on receipt of such an application, forward the same to the Sub-Area Commander [or an equivalent or higher commander] who may in his discretion authorise the discharge of such applicant.”

10. In the instant case, there is no dispute that applicant has himself submitted his resignation application, signed by him which is not denied in the Original Application. The allegation that applicant was forced to write resignation application forcefully (Jabardasti), is not supported by any evidence, hence, this plea of the applicant is not justified.

11. We find that applicant himself expressed his inability to continue training due to his domestic and physical problems and therefore, he submitted his personal application in his own hand writing to the Commanding Officer of the unit, requesting therein to relieve him from Territorial Army service which was witnessed by two personnel of the unit and accordingly, it was processed/sanctioned by the then Commanding Officer of the unit, i.e. Colonel Nripendra Singh, CO, 114 Inf Bn (TA) JAT. The ‘Certificate of Service’ has been signed by the applicant on 16.04.2010 which is countersigned by the Commanding Officer, Colonel Nripendra Singh on 22.05.2010.

12. There is no dispute that applicant has himself submitted his resignation application, signed by him which is not denied in the Original Application. The allegation that applicant was forced to write resignation application forcefully (Jabardasti), is not supported by any evidence, hence, this plea of the applicant is not justified.

13. As per Rule 15 of TA Rules, 1948, the Commanding Officer of the unit is empowered to sanction discharge of a recruit for which no further sanction from any higher Headquarters/authority of Sub Area/Area Headquarters/Command Headquarters/Chief of the Army Staff or Central Government is required. Since, the Commanding Officer of the unit, of the rank of Colonel had sanctioned the discharge, there was no need to take further sanction from any higher headquarters, as the Commanding Officer is himself empowered to sanction discharge of a recruit (applicant).

14. As far as applicability of Army Rule 15-A, 16-A and 16-B is concerned, these are applicable in the case of discharge of an officer and the applicant being recruit, these rules are not applicable in the case of the applicant. The applicant being a Territorial Army recruit, rule 16 read in conjunction with rule 15 (1) of Territorial Army Rules, 1948 are relevant and the same have been followed by the Commanding Officer of the unit in granting/sanctioning discharge of the applicant.

15. In this background and after perusing the T.A. Rules as applicable, we are of the opinion that the respondents have been very fair in processing of applicant's request for discharge and discharge

of the applicant has been sanctioned by the Commanding Officer of the unit as per rules 15 & 16 of T.A. Rules, 1948. Therefore, we do not find any merit in the contention of the learned counsel for the applicant that the applicant's discharge should be set aside for not following the provisions of Rules 15 & 16 and his services should be resumed.

16. In this context, we would also like to clarify that the status of a trainee is like a probationer and therefore, if the individual fails to meet the organisational requirements during training, the respondents have every right to discharge him from service. This aspect of law has been clearly established by the Hon'ble Supreme Court in its judgment in the case of **Union of India & Others vs. Manoj Deswal & Others**, reported in (2016) 15 SCC 511.

17. Since the applicant has been discharged from service at his own request, we find no illegality, irregularity or impropriety in the discharge order passed by the respondents (Commanding Officer of the unit).

18. In view of the above facts, Original Application is devoid of merit, deserves to be dismissed and is accordingly **dismissed**.

19. No order as to costs.

20. Pending Misc. Applications, if any, shall stand disposed off.

(Maj Gen Sanjay Singh)

Member (A)

Dated: May, 2024

SB

(Justice Anil Kumar)

Member (J)