

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

ORIGINAL APPLICATION No. 738 of 2020

Friday, this the 08th Day of October, 2021

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

No. 7245305X Recruit (NA Vet) Anshuman Pal, S/o Shri Ram Balak Pal, R/o Village & Post -Pokrayan, Tehsil - Bhoganipur, District- Kanpur Dehat (U.P.) 209111.

..... Applicant

Ld. Counsel for the : **Shri Prabhat Kumar Tripathi , Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff through Ministry of Defence, Government of India, New Delhi.
3. The Commandant, Remount Pashuchikitsa Corps Centre aur College, RVC Centre and College, Pin No. 900468, C/o 56 APO.

.....Respondents

Ld. Counsel for the:
Respondents.

Dr. Shailendra Sharma Atal,
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

(a) Issue an order, direction certiorari quashing the order dated 23.06.2018 contained in Annexure No.1 passed by the Commanding Officer for and on behalf of respondent No.3 with all consequential benefits.

(b) Issue an order, direction and command to the respondents to reinstate the applicant in service without reference to the order contained in Annexure No.1 impugned in the Application, with all consequential benefits.

(c) Issue such other order / direction which may be deemed just and proper in the circumstances of the case.

(d) Allow the Original Application with cost against the respondent in view of the facts and circumstances, legal provisions and Grounds raised in the Application.

2. In brief, the facts of the case are that the applicant was enrolled in the Indian Army on 02.04.2016. While undergoing training, the applicant was admitted in Military Hospital, Meerut Cantt on 18.01.2017. He was granted 10 days leave wef 07.03.2017 to 16.03.2017 but did not rejoin duty after

termination of leave period and became absent. A Court of inquiry was held after 30 days from absent and applicant was declared deserter. The applicant was neither apprehended/ arrested nor did he surrender. In the meantime, father of the applicant filed O.A. No 393 of 2017 in this Tribunal. The interim order was passed on 28.07.2017 in the said O.A. with direction to applicant to report in the unit within one month. Applicant reported for duty on 02.06.2018 after 309 days of the order of Tribunal. Applicant was discharged from service on 23.06.2018 with the remark 'Unlikely to become an efficient soldier due to illegal absence from Basic Military Training'. Being aggrieved, applicant has filed present Original Application for reinstatement him in service.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army vide order dated 17.02.2016 with a direction to report at RVC Centre and College for Basic Military Training on 02.04.2016. Applicant completed his first training of about four and half months by performing his best in swimming, drill and weapon training. During swimming training applicant along with 7 other candidates was admitted in Military Hospital. 7 other candidates were allowed to join training but the applicant was compelled to be continued in Military Hospital in

spite of being well and was not allowed to join training. Brother of the applicant was also in the Army and respondent No 3 instructed his brother to take him back (applicant) on the application or he would be invalid out on fulfilling the Form- 10. Applicant filed O.A. No 393 of 2017 before this Tribunal which was allowed and as interim relief applicant was directed to report to unit within one month and it shall be open to the respondents to proceed against the applicant in accordance with rules after he reports to the unit. While admitting the Original application Tribunal granted time to respondents to file counter affidavit within for weeks and rejoinder within 2 weeks.

4. In the meanwhile Military Hospital issued leave certificate granting 10 days casual leave from 07.03.2017 to 16.03.2017. Respondent No 3 issued a letter dated 03.06.2018 stating therein that applicant was granted leave but he did not report for duty on 17.03.2017 as a consequence thereof, he has been treated as 'Fugitive' wef 17.03.2017 by directing to report at Military Hospital for re-examination of his medical condition. Applicant reported for duty on 02.06.2018. On 05.06.2018 applicant was again subjected to psycho evolution in the Military Hospital in which the applicant was found in SHAPE-1

category. Respondent No 3 issued an order dated 23.06.2018 discharging the applicant from service wef 23.06.2018 under Rule 13 (3), Army Rules, 1954 read with clause 'Recruit Unlikely to Become An Efficient Soldier'. Learned counsel for the applicant submitted that the applicant has been victimized with the malafide intention of respondents who had instructed to brother of the applicant to take his brother from the training centre back on the application, otherwise completing the Form- 10 will do his brother invalid out from service. As per provisions contained in Sections 14, 15 and 15-A of Army Rules, 1954, any incident caused by the candidate in the department which is not suitable in the department first that should be informed to the candidate and if that is not possible, the information should be given to the relative of the candidate, but procedure was not followed in the instant case. Prior to discharge from service, neither so cause notice was given, nor opportunity of hearing was provided to the applicant, hence impugned discharge order having been passed in utter disregard of the Rules on the subject. Learned counsel for the applicant prayed that impugned order of discharge being arbitrary and illegal be quashed and applicant be reinstated in service.

5. On the other hand, learned counsel for the respondents submitted that applicant was granted 10 days casual leave from 07.03.2017 to 16.03.2017 but he did not join his duty. After 30 days of absent, applicant was declared deserter and apprehension roll was issued. Applicant filed O.A. No 393 of 2017 which was allowed and interim order dated 28.07.2017 was passed with direction to applicant to report in the unit within one month of the order. Applicant did not comply the order of the Tribunal and finally reported voluntarily on 02.06.2018 after 309 days of the order of Tribunal. As per rule applicant was not allowed to rejoin his training and was discharged from service on 23.06.2018 under the clause 'Recruit Unlikely to Become an Efficient Soldier' due to illegal absence from Basic Military Training. On 20.11.2018 Original application No 393 of 2017 was dismissed.

6. Applicant has now filed instant O.A. challenging the discharge order dated 23.06.2018. As per policy letter dated 28.02.1986, a recruit who is absent for more than 30 days during training, will not be allowed to rejoin his training. Learned counsel for the respondents prayed that instant O.A. be dismissed being devoid of merit.

7. We have heard learned counsel for the parties and perused the record.

8. The question before us to decide is whether the applicant can be reinstated in service or not?

9. It is admitted fact that the applicant during his basic military training was granted leave for seven days with effect from 07.03.2017 to 16.03.2017 but reported for duty on 02.06.2018 after 309 days against the order of Tribunal to join duty within one month from the date of order. At that point of time the applicant was under training and he continued to remain absent till 01.06.2018 for 309 days.

10. 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.”

11. Thus a recruit who has been absent more than 30 consecutive days from training shall not be permitted to rejoin his training. Apart from, 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.”

12. 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. We are of the considered opinion that the applicant cannot be reinstated in service.

13. 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 309 days. Moreover, a person who voluntarily joins the armed forces is bound to maintain high level of standards for efficient discharge of his duties and maintenance of discipline as the tasks which a soldier may be called upon to perform and the circumstances under which such tasks may have to be performed in the Armed Forces call for a high degree of discipline especially because of solemn supreme role to defence the nation. Hence, high level of Military Training, discipline, integrity and efficiency is required to become an efficient soldier. 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.

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

15. No order as to costs.

16. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 08 October, 2021

Ukt/-