

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 490 of 2018

Thursday, this the 7th day of October, 2021

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

No. 18016888M Ex Rect Kamlesh Rawat
S/o Hony Naib Subedar Bharat Singh (Retd)
R/o Village – Koylakh, Post Office – Panchali, Tehsil – Gairsain,
Distt – Chamoli (Uttarakhand)

.... **Applicant**

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

Versus

1. The Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Sena Bhawan, New Delhi-110011.
3. Commandant Bengal Engineer Group & Centre Roorkee (Uttarakhand) Pin – 247667.
4. The Commanding Officer No. 1 training Battalion, Bengal Engineer Group & Centre, Roorkee (Uttarakhand) Pin – 247667.
5. Major Ravinder Rana, Company Commander, 'M' Company, No. 1 Training Battalion, Bengal Engineer Group & Centre Roorkee (Uttarakhand), Pin – 247667.

... **Respondents**

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

ORDER

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

- “(i) To quash the impugned order dated 22.11.2017.
- (ii) To direct Respondent Nos. 3 and 4 jointly and severally to provide the copies of the policy letters to the applicant on the basis of which the Warning Orders and the SCN had been issued to the applicant for his contemplated discharge from service.
- (iii) To direct Respondent No. 3 to convene a fresh testing board, preferable comprising of the officers only, in which Respondent No. 5 should not be included in any capacity for testing the swimming proficiency of the applicant as per the policy being applied to other recruits.
- (iv) To direct Respondent No. 3 to permit the applicant’s father to be present during the conduct of the swimming test of the applicant.
- (v) To reinstate the applicant with all consequential benefits in case the applicant passes the swimming test as per policy and
- (vi) To grant any other relief or reliefs which the Hon’ble tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Bengal Engineer Group) on 12.04.2016. The applicant successfully completed his basic Military Training on 27.08.2016 and was sent on recruit leave for 28 days. After rejoining from leave, the applicant was sent on CET phase and completed successfully on 26.02.2017. Attestation test includes BPET, PPT, Swimming and range classification in which he passed all his tests except swimming test which is mandatory test before attestation for recruits of Engineers”. The applicant failed in his mandatory swimming test for attestation in all progressive practice tests, three mandatory chances

and in an additional chance given to him. Therefore, the applicant was discharged from service on 22.11.2017 in accordance with DGMT, MoD (Army) letter dated 28.02.1986 on the basis of not passing the mandatory swimming test for attestation. The applicant submitted many complaints/letters which were suitably replied by BEG Centre, Roorkee vide letter dated 05.03.2018. The applicant was discharged on 22.11.2017 and moved out of the Centre on 03.12.2017 as during this period applicant carried out some discharge formalities including documentation and medical and finally handing over the ward to his father. The applicant was sent to MH Roorkee for his medical examination before handing over him to his parents to avoid any medical complication at later stage. The applicant being not satisfied with his discharge, has filed this Original Application to quash his discharge order.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army (Bengal Engineer Group) in the trade of 'Electrician' on 12.04.2016. On joining the Training Centre applicant was informed about training schedule. The applicant completed his BMT phase of his training on 27.08.2016 and was granted 28 days recruit leave. On rejoining from leave, he completed his CET phase of training on 26.02.2017. After CET, applicant was informed to pass Swimming test before attestation. The applicant informed his Platoon Commander that he hailed from a hill region of the State of Uttarakhand where 'cycling' and 'swimming' were not the ordinary part of civilian life and therefore, he would not be able to pass the

swimming test unless he was given proper training/coaching by the trained instructors. The applicant, in response to his query, was informed that on certain days Swimming Pools are left open for practice for recruits from 1300-1500 hrs and during this period he can go for practice on his own but there being no instructors to teach swimming and most of the time applicant being detailed in various administrative duties, he could not get sufficient time to do swimming practice. During 1st swimming test in May 2017, applicant could not complete 50 meters of swimming and was declared as 'Failed'. Thereafter, applicant was served with 1st Warning Order vide letter dated 20.05.2017 stating that *"a total of three chances will be given for passing the attestation tests. You have availed your first chance. Your next test will be held after 04 weeks."* However, on the request of applicant, he was given about 3 months time to pass swimming test. On 03.08.2017, swimming test of the applicant alongwith other recruits was conducted by respondent No. 5 and applicant was asked to do two lengths of swimming continuously which he could not do and was declared 'Failed'. Thereafter applicant was issued 2nd Warning Order dated 09.08.2017 in which a false statement in para 3 was given that applicant has availed three chances and chance given to him on 03.08.2017 was the third chance, whereas as per applicant it was second chance. Personal details of Presiding Officer of the 'Testing Board' were also not mentioned in the result sheet. On 11.09.2017, swimming test was again conducted by the same Respondent No. 5 who insisted that in order to pass the test, applicant was required to complete two lengths of swimming of 50

meters of the swimming pool continuously. The applicant completed one full length of swimming pool measuring about 50 meters and 40 meters in reverse direction but he was declared as 'Failed' intentionally by Respondent No. 5. Thereafter, applicant was issued 3rd Warning Order dated 14.09.2017. However, swimming result copy was not issued to the applicant.

4. Learned counsel for the applicant further submitted that on 18.09.2017, applicant was issued a Show Cause Notice (SCN) asking him to show cause as to why he should not be discharged from service as he had failed to clear the attestation swimming test in all the three attempts. The applicant in his reply to SCN requested to give one more chance which was granted but applicant could not pass fourth swimming test and was declared 'Failed'. On 22.11.2017, applicant was discharged from service but was not allowed to go home. On 25.11.2017, applicant was taken to MH Roorkee for medical inspection and was declared medically fit in SHAPE-1.

5. Learned counsel for the applicant further submitted that the applicant was continued to be borne on the strength of Army till 25.11.2017 and discharged from service with retrospective effect from 22.11.2017 which is prohibited by Rule 18 of Army Rules, 1954. Therefore, impugned discharge order dated 22.11.2017 is 'void' in law. The applicant kept in illegal confinement by Respondent No. 4 till 03.12.2017 when he was handed over to his father. The father of the applicant being aware of the manner in which the applicant had been illegally declared as 'Failed' in attestation swimming test tried to meet

Commanding Officer of No. 1 Training Battalion and also to Commandant BEG but he was not allowed to meet. Under these circumstances applicant's father submitted complaints to various authorities but all in vain. He pleaded that discharge order of the applicant has been issued in an illegal and arbitrary manner and therefore, his discharge order to be quashed.

6. Learned counsel for the respondents submitted that applicant has successfully completed his Basic Military Training on 27.08.2016 and was sent on recruit leave for 28 days. After rejoining from leave, the applicant was sent on CET phase and completed successfully on 26.02.2017. Attestation test includes BPET, PPT, Swimming and range classification in which he passed all his tests except swimming test. Swimming is a mandatory test as per Appendix 'A' of Basic and Battle Physical Training for trainees pamphlet No. 2 946051/PCT by HQ ARTRAC, August, 2008, as part of PPT before attestation and vide CE Dte/CE-3, Engineer-in-Chief Branch letter dated 11.07.2017, wherein it was directed that "Swimming as a mandatory test in FE Ph before attestation for recruits of Engineers". The applicant failed in his mandatory swimming test for attestation in all progressive practice tests, three mandatory chances and in an additional chance given to him. Therefore, the applicant was discharged from service on 22.11.2017 in accordance with DGMT, MoD (Army) letter dated 28.02.1986 on the basis of not passing the mandatory swimming test for attestation. The applicant submitted many complaints/letters which were suitably replied by BEG Centre, Roorkee vide letter dated

05.03.2018. The applicant was discharged on 22.11.2017 and moved out of the Centre on 03.12.2017 as during this period discharge formalities including documentation, medical examination and finally handing over the ward to his father were completed. The applicant was sent to MH Roorkee for his medical examination before handing over him to his parents to avoid any medical complication at later stage. Therefore, applicant was discharged from service according to rules without any bias or prejudice and he pleaded for dismissal of O.A.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. From perusal of records, we observe that applicant's request for grant of one additional chance to pass swimming test was also given but he could not pass swimming test in all four swimming tests and failed. Therefore, as per rules, Show Cause Notice was issued and considering the reply of the applicant being not found sufficient and proper, applicant was discharged from service as per Rules 13 (3) IV of Army Rules, 1954. The contention of the applicant that he has been shown 'Fail' knowingly by Respondent No. 5 is incorrect, illogical and baseless.

9. We are of the view that applicant was discharged from service on 22.11.2017 in accordance with DGMT, MoD (Army) letter dated 28.02.1986 on the basis of not passing the mandatory swimming test for attestation. Hence, the applicant is not entitled the relief prayed in

