

**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 25 of 2017****Monday this the 23rd day of July, 2018****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

No 4589487M Ex Recruit (Dresser)

Prem Chandra

Son of Shri Sonpal

Village – Majhgaon

Post – Rampur Majhgaon

District – Farrukhabad (UP)

PIN - 209724

.....Applicant

Ld. Counsel for : **Shri R. Chandra, Advocate**  
the Applicant

Versus

1. Union of India, through, the Secretary,  
Ministry of Defence,  
Government of India, New Delhi – 110011.
2. Chief of the Army Staff,  
Integrated Headquarters of Ministry of Defence (Army)  
DHQ Post Office, New Delhi – 110011.
3. Directorate General of Recruiting/Rtg B (E),  
Integrated HQ of MoD (Army),  
PIN-900108  
C/o 56 APO.
4. Commandant,  
Mahar Regiment Centre,  
PIN-900127  
C/o 56 APO.

.....Respondents

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

**ORDER (Oral)**

**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs :-

*“(i) The Hon’ble Tribunal may be pleased to direct the respondents to conduct the event of Physical Proficiency Test (P.P.T.) of the applicant and further action should be taken as per out cum of the result of Physical Proficiency Test.*

*“(ii) The Hon’ble Tribunal may be pleased to summon the results of the Physical Proficiency Tests (P.P.T.) in respect of applicant were taken by the respondents in which applicant is fail for perusal.*

*“(iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”*

2. The facts, as pleaded in the O.A., may be summarised as under :

The applicant was enrolled in the Army in Mahar Regiment on 19.09.2015 as Tradesman Dresser from BRO Bareilly after passing all written and medical and physical examinations. On 24.08.2016, the applicant was discharged from service without intimating any reasons and no discharge certificate and movement order was given to the applicant. Only a Railway warrant was given from Sagar (M.P.) to Kamalganj (U.P.). On 27.09.2016 the applicant wrote a letter to the Army Recruiting Officer, Bareilly with a copy to the Chief of the Army Staff, in which he mentioned that he was ousted from Army on 24.08.2016 without disclosing any reasons for ousting and he was forced to make signatures on blank papers but the applicant denied for putting his signature on blank papers. However, he requested to join his duty. On 01.12.2016, Army Recruiting Officer, Bareilly forwarded the applicant’s complaint to Mahar Regiment Centre, Sagar Cantonment

with a request to investigate the case and forward the reason of discharge directly to the individual under intimation to them. On 20.12.2016, the Mahar Regiment Centre gave the reply to the applicant and in the said reply, it was informed as under:

“It is bring to your kind notice that you were discharged from service under the provisions of Army Rule 13 (3) (iv) for “UNLIKELY TO BECOME AN EFFICIENT SOLDIER” ON 24.08.2016 and he had failed in both applicable chances in Physical Proficiency Test and relegated twice on training grounds. Third relegation is not applicable to a recruit as per policy vide IHQ MoD (Army) dated 28<sup>th</sup> February 1986 and he was liable for discharge from service. However, on humanitarian grounds, a special chance was also given to the applicant to improve his physical standards. However, no improvement was shown and he again failed in special chance in Physical Proficiency Test. As per policy vide IHQ of MoD (Army) dated 28.02.1986 he was discharged from service under “UNLIKELY TO BECOME AN EFFICIENT SOLDIER”.

3. It is submitted on behalf of the applicant that the applicant was excellent in BPET and PPT. He was marked less in Toe Touch event of Physical Proficiency Test even after giving good performance by the applicant. The applicant has been failed illegally. It is submitted that the act of the respondents is illegal and arbitrary because the respondents have discharged the applicant without any enquiry and there is no material with the respondents which shows that the applicant was UNLIKELY TO BECOME AN EFFICIENT SOLDIER.

4. On behalf of the respondents, it has been submitted that the applicant failed in two additional chances in Physical Proficiency Test, as his physical performance was not upto the standards of the Army. Apart from these two chances, he was given one special chance on

humanitarian ground, but the applicant could not succeed even in the said special chance and, therefore, he was discharged from service.

5. Admittedly, the facts are that the applicant was undergoing training and during training he was found not successful in Physical Proficiency Test (PPT). A perusal of the averments shows that as per the own pleading of the applicant, he had failed in PPT, but on this point it has been stated by the respondents in Para 5 of the counter affidavit, which reads as under :

*“5. That while undergoing basic military training he had failed in both applicable chances in Physical Proficiency Test and relegated twice on training grounds. Third relegation is not applicable to a recruit as per Army Headquarters policy letter number A/20314/MT-3 dated 08 February 1986 (Appx ‘C’) and he was liable for discharge from service. However, on humanitarian grounds a special chance was also given to him for improving his physical standards as per Minute Sheet No. 1424/KD dt 25 Jun 2016 (Appx ‘D’). However no improvement was shown and he again failed in the special chance in Physical Proficiency Test (Appx ‘E’). A show cause notice was also issued to him vide 1412/KD Company dated 18 Aug 2016 which he refused to receive in presence of witnesses (Appx ‘F’).”*

6. Thus, even after giving two opportunities to clear the Physical Proficiency Test and one special chance given to the applicant, a show cause notice dated 18<sup>th</sup> August 2016 was issued to the applicant, which reads as under :

“1424/KD

18 Aug 2016

**KD COY OFFICE**  
**SHOW CAUSE NOTICE**

1. While undergoing military training you have been relegated on the grounds :-
  - (a) First relegation on trg grnd (Failed in PPT) from Course 97 (JG Coy) to Course-99, PL-192 (AU Coy) on 23 Mar 2016.
  - (b) Second relegation on trg grnd (Failed in PPT) from Course-99, PL-192 (AU Coy) to Course 101, PL-195 (KD Coy) on 09 May 2016.
2. After being relegated twice you were undergoing basic military training Course -101, Platoon-195 (Kalidhar Company) in Course – 101 when you have again appeared for the physical proficiency test, you failed in both the applicable

chances in physical proficiency test. Thereafter you were given a special chance to improve in physical standard and were again tested after two weeks of intensive training. Training Cell vide Minute Sheet No 1424/KD dated 22 Jun 2016. You failed in that special chance of physical proficiency test.

3. As per the Army Rule 13 (3) (iv) you are supposed to be discharged from service "FOR BEING UNLIKELY TO BECOME AN EFFICIENT SOLDIER".
4. In view of the above, please state reasons as to why you should not be discharged from service under the provisions of Army Rule 13(3)(iv).
5. Your reply should reach this office by 23 Aug 2016.
6. Incl refused to receive the show cause notice in presence of under mentioned witnesses :-

Sig \_\_\_\_\_  
 No 4589487M  
 Rank : Rect Dresser  
 Name : Prem Chandra  
 KD Coy, Trg Bn  
 The Mahar Regt Centre, Saugor (MP)  
 PIN 900127

Sd/- x x x x x  
 (Anand Rathee)  
 Lt Col  
 Officiating Trg Bn Cdr

1. \_\_\_\_\_  
 (JC-57004L Sub Maj Triloknath Singh)
2. \_\_\_\_\_  
 (JC-570519L Sub Prakash Roy)
3. \_\_\_\_\_  
 (No-4569144W Hav Sunil Kumar)

**Countersigned**

Sd/- x x x x x x x  
 Lt Col  
 Officiating Trg Bn Cdr  
 The Mahar Regiment Centre"

7. The submission of the learned counsel for the applicant is that the applicant was enrolled only in the Trade of Barber and, therefore, such strict physical fitness test is not expected from him. Additionally the submission of the learned counsel for the applicant is that no enquiry, whatsoever, was conducted nor the applicant was given any notice to prove his fitness and without conducting any enquiry, he was discharged from service, as such, the order is not sustainable under law.

8. Per contra, it has been argued on behalf of the respondents that under the Army, every person, who is enrolled in Army, whatsoever his trade may be, must stand to the strict physical fitness tests, as required for a combatant Jawan in the Army, but the applicant has utterly failed to clear the said tests, even after availing three opportunities made available to him.

9. Admittedly, the applicant was undergoing training. He was not even attested. Thus, the status of the applicant was only of a probationer. Law is settled on the point that a probationer can be discharged from service at any point of time by his employer. Hon'ble Supreme Court in a recent judgment in the case of **Union of India and others vs. Major Deswal and others** (2016 (15) SCC 511) had an occasion to consider this point. In the facts of that case, the applicant remained absent from training without sanctioned leave from 02.04.2005 till 20.07.2005 and resumed his duty on 21.07.2005. He was discharged from service on 27.08.2005 by the Commanding Officer as he was unlikely to become an efficient soldier. The said order was challenged before the Hon'ble High Court and the Hon'ble High Court allowed the writ petition and directed the respondents, in that case, to hold a fresh enquiry and it was also directed that the judgment of payment of back wages shall depend upon the final out come of the fresh enquiry. Feeling aggrieved by the said judgment, the Union of India preferred this appeal before the Hon'ble Apex Court, which has been dismissed by the Hon'ble Apex Court. The relevant Para 15 of the said judgment is quoted 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.”*

10. The policy No. A/20314/MT-3 dated 28<sup>th</sup> February 1986 deals with the relegation of recruitments has been annexed as Annexure to the counter affidavit. The relevant part reads as under :

“Relegation for Failure in Recruit’s Test

*3. Recruits in all groups of the Army who are unable to pass the recruit’s test within the specified training period but are fit in all other respect for retention in the Army will be relegated at the discretion of the Commandant of the Training Centre, as under :-*

- (a) For a maximum period of six weeks during basic military training.*
- (b) For maximum period of three months during technical training.*
- (c) Should the concerned recruit fail to qualify at the end of this period, he will be discharged from service.”*

11. Thus, in the instant case, it was discretionary for the Commander of the Training Centre, who in his discretion, gave two opportunities and after issuing a show cause notice to the applicant, has held that the applicant cannot be a good soldier. The special chance given to the applicant vide letter dated 22<sup>nd</sup> June 2016 is reproduced as under :

“SPECIAL CHANCE: RECT

- 1. No.4589487M Rect Dresser Prem Chandra was enrolled through ARO Bareilly on 19 Sep 2015 reported to Trg Bn. The Mahar Regt Centre, Saugor (MP) for mil trg.*
- 2. While undergoing Mil Trg. The indl has been relegated twice on the fwg grnds:-*
  - (a) First relegation on trg grnd (failed in PPT) from Course- 97, Pl-18 Course-99, Pl-192 (AU Coy) on 23 Mar 2016. Trg attended 17 weeks (Flag A).*
  - (b) Second relegation on trg grnd (failed in PPT) from Course-99, Pl-192 (AU Coy) to Course-101, Pl-195 (KD Coy) on 09 May 2016. Trg attended 17 weeks (Flag-B).*
- 3. The indl has been relegated twice earlier and is now liable for third relegation as he has again failed in both applicable chances in PPT (Flag-C).*
- 4. As per policy in vogue, instead of third relegation, the indl is due for discharge from service under “UNLIKELY TO BECOME AN EFFICIENT SOLDIER”. However, on compassionate grnd the indl may be given a fair chance to improve his physical standard.*
- 5. Therefore, it is recommended that the indl be tested by spl BOO for PPT after two weeks of intensive trg.*
- 6. Put up for your perusal and direction pl.*

*Col*  
*OIC Legal Cell*  
*For Comdt*

*(Anand Rathee)*  
*Lt Col*  
*OC KD Coy*  
*22 Jun 2016"*

12. The submission of the learned counsel for the applicant is that the applicant was physically absolutely fit. For the purpose of Army, a very high standard of physical fitness is required to the satisfaction of the Recruiting Officer and not to the satisfaction of the applicant himself. The Tribunal has no role to play in assessing the physical fitness of a particular person and to declare him physically fit for his enrolment in the Army. If the applicant has failed to perform Physical Proficiency Test thrice, then there is absolutely no illegality or irregularity on behalf of the respondents to discharge him from service.

13. Thus, the submission of the learned counsel for the applicant that he could not have been discharged from service without holding proper enquiry, has no substance. A show cause notice was also issued to him. Since the applicant failed to clear the Physical Proficiency Test three times, therefore, he could not have been retained in the Army and the respondents were justified in discharging the applicant from service as UNLIKELY TO BECOME AN EFFICIENT SOLDIER. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents.

14. O.A.No. 25 of 2017 has no merits, deserves to be dismissed and is hereby **dismissed**.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice S.V.S.Rathore)**  
**Member (J)**

Dated: July 23<sup>rd</sup>, 2018.  
 PKG