

**COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**TA No 292 of 2009**

**WP (C) No 8068 of 2007 of Delhi High Court**

**IN THE MATTER OF:**

**Ex Sowar Lokesh Kumar** .....**Applicant**  
Through Mr DK Singh with Mr Pramod Shukla counsels for the  
applicant

Versus

**The Union of India and others** .....**Respondents**  
Through: Maj (Retd) Mohan Kumar, counsel for the Respondents.

**CORAM:**

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

**Order**

**Date: 28 -5-2010**

1. The applicant filed a writ petition (civil) No. 8068 of 2007 in the Hon'ble Delhi High Court. The applicant has challenged his order of discharge from service. The same was transferred to the Armed Forces Tribunal on 04.9.2009.

2. The brief facts of the case are that the applicant appeared in a recruitment rally at Mathura on 20/4/03. During his medical test on 21/4/03 he was suspected to have retracted TM and DNS and was referred to Military Hospital (MH) Agra. The ENT specialist, Lt Col Rahul Arora, declared him fit for “Mild DNS and Retracted TM”. After the recruitment authorities were satisfied that the applicant met all the requirements he was asked to proceed to Armoured Corps Centre at Ahmednagar, Maharashtra on 02/09/2003. It is further stated that the applicant completed his recruit training without any medical problem. After the attestation on 21/8/04 the applicant was posted to 3 Cavalry at Pathankot on 04/01/05.

3. Subsequent to a Staff Court of Inquiry (C of I) convened at Station HQ Agra to investigate involvement of some AMC personnel (Sep/NA Gajendra Singh and Sep/NA Shivaji Shankar Bhosle) in alleged malpractices in conduct of medical examination of candidates and found unfit for recruitment the applicant was asked on 30/01/06 to appear for review medical at Military Hospital MH Pathankot wherein he was declared “unfit” for the Army by the ENT Specialist Col RK Mishra (Annexure P-6).

4. The applicant avers that during the Court of Inquiry it was never pointed out by any of the witnesses that the applicant had taken advantage of any alleged malpractice. He was also not given any opportunity to be present during the proceeding of C of I or to cross examine any of the witness, including Lt Col Rahul Arora who had conducted his medical examination.

5. On 15/1/2007 the unit of the applicant received a show cause notice dated 08/1/07 issued by Brigadier (Brig) A Nagpal Commander 2 (I) Armoured Brigade stating that on the basis of C of I held to investigate alleged malpractices in conduct of medical examination during recruitment rally the enrolment of the applicant was found to be bogus and he was served a show cause notice dated 08/01/07 asking why his services should not be terminated (Annexure P-4). The applicant replied on 16/1/07 stating that he never had physical problems during his 4 years service and requested that he be allowed to continue in service (Annexure P-5).

6. The applicant states that the Commander Meerut Sub Area issued a direction on 18/7/06 (Annexure P-7) that the services of the applicant, alongwith three other soldiers, be terminated as they had been found

medically unfit by a review medical examination and thus enrolment was bogus.

7. The discharge formalities of the applicant was completed on 14/2/07 and he was told that his services had been terminated and that relevant documents and discharge certificate would be sent to him subsequently at his home address.

8. The applicant contends that he never had any medical problems even in two high altitude tenures and subsequent to his discharge he sought a second medical opinion from AIIMS 23/07/07 where the ENT specialist gave the opinion that though the applicant had an ENT problem the same was curable after surgical treatment and clinically. It was submitted by the applicant that he was fit for a civilian/Army job (Annexure P-8). The applicant contends that he was not treated for his medical problem by the Army.

9. After waiting for a period of more than 6 months the applicant wrote a letter to Cdr HQ 2 (I) Armd Bde asking for his discharge certificate. In reply he was told that his discharge certificate had been handed over to him at the time of discharge. A copy of the discharge certificate (Annexure P-9) dated 14/02/07 was sent to him much later. It

reflected that he had been discharged wef 14/02/07 under Army Act Section 20 (3) in conjunction with Army Rule 13 (3) Item III (V).

10. The applicant contends that declaration of being unfit for the Army can only be done after an invaliding medical board under Army Rule 13 (3) Item III (V) and has prayed that the impugned order of his discharge dated 14/02/07 be quashed.

11. In their counter affidavit the respondents have stated that the applicant had appeared for recruitment rally on 20/04/2003 at Mathura and was found “unfit” because of “retracted TM and DNS”. He was further referred to Military Hospital (MH), Agra where he was declared “fit”. The applicant completed his training at Ahmednagar and was subsequently posted to 3 Cavalry at Pathankot on 04/01/2005.

12. A staff Court of Inquiry was convened at Agra on 03/02/2004 to investigate the involvement of Sepoy/NA Gajendra Singh and Sepoy/NA Shivaji Shankar Bhosle of MH (Agra) in alleged malpractice in conduct of medical examination of candidates found “unfit” during recruitment. It was found during the court of inquiry that a few candidates who were “unfit” were declared to be “fit” by the medical board constituted at MH (Agra). The applicant was one of candidates whose medical examination

had been conducted in an ambiguous manner, in contravention of prescribed procedures.

13. In view of the above the applicant was subjected to a Review Medical Board at 167 MH, Pathankot on 18/01/06 and declared medically unfit by ENT specialist Col RK Mishra. The applicant was summoned to Agra at witness No 12 in the ongoing court of inquiry which revealed that the enrolment of the applicant was bogus. The Commander, Meerut Sub Area therefore directed that his services be terminated on grounds of fraudulent enrolment. Commander 2 (I) Armoured Brigade therefore served a show cause notice on 08/01/07 (Annexure R-1). After due consideration of the reply filed by the applicant his services were terminated vide order of 25/01/07.

14. The respondents have stated that the discharge certificate was handed over to the individual on 14/02/07. He however refused to accept the same and also refused to sign any of the discharge documents. The discharge certificate and other documents were subsequently sent to him by registered post on 23/09/07.

15. The respondents have stressed that the armed forces function on the basis of prescribed medical standards and no deviation from such

rules is permissible. Subsequent to the court of inquiry disciplinary action was taken against Lt Col Rahul Arora and Lt Col I Chakraborty alongwith two nursing assistants for involvement in malpractice in connection with review medical examination of unfit/temporary unfit candidates. The service of the applicant alongwith three others who were found to be medically unfit during review medical examination had to be terminated, being bogus enrolment.

16. In a rejoinder affidavit the applicant has questioned the basis on which court of inquiry had concluded that his enrolment was bogus. There was no material to support such a conclusion and to discharge him from service on the basis of findings of court of inquiry which was illegal. Since the court of inquiry was to affect his character and military reputation he was required to be present through out the inquiry and should have been given an opportunity to cross examine the witnesses. The applicant contends that he has been found fit by Dr RC Deka, ENT specialist at AIIMS, New Delhi.

17. We have heard the arguments and perused the records. During the course of arguments the applicant has stated that Army Rule 180 was not observed during the court of inquiry and his reply to show cause

notice was not given weightage. The applicant contends that he had no medical problems during training and service. The correct procedure has not been followed in ordering his discharge. On the contrary learned counsel for the respondents refuted the contention and submitted that after court of inquiry the applicant was subjected to a medical review and found unfit. His services were terminated after a show cause notice. The respondent also averred that a similarly affected person approached the Hon'ble Delhi High Court for relief. The Hon'ble High Court declined to order relief and the termination of service was maintained. We have considered the rival submissions. A perusal of record shows that during his medical test during recruitment rally at Mathura on 20/04/03 the applicant was suspected to have retracted TM and DNS and was referred to MH Agra where he was declared fit. The medical tests at Agra were suspect and therefore a court of inquiry was conducted and it was found that the applicant was one of the lot who were incorrectly declared "fit". The applicant, before issue of show cause notice, was medically reviewed and found unfit. A show cause notice was therefore given alongwith relevant documents. The applicant has not agitated the result of review medical board in which he has been declared



medically unfit. The contentions raised by the applicant are not sustainable. He was discharged after confirmation by review medical board which indicated that he was a case of bogus enrolment. It was also revealed that in a similar case of 62 candidates enrolled by Branch Recruiting Office, Agra were ordered to undergo Review Medical Board and subsequently declared medically unfit by MH, Agra Cantt during review medical and who were dismissed on grounds of bogus enrolment. The Hon'ble Delhi High Court in its judgement dated 02/7/2008 given in WP (C) 4641/2008 had upheld the order of release.

18. In view of the above there no justification of any relief to the applicant in the impugned order. Application dismissed. No costs.

**MANAK MOHTA**  
**(Judicial Member)**

**Z.U.SHAH**  
**(Administrative Member)**

**Announced in the open court**  
Dated: 28-5-2010