

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

**T.A. No. 462 of 2009**

**W.P.(C) No.353 of 1998 of Delhi High Court**

**IN THE MATTER OF:**

**Sepoy Kallu Singh** .....**Applicant**  
Through: Mr. Virendra Kumar, Counsel for the applicant

Versus

**Union of India & Anr.** .....**Respondents**  
Through: Mr. Anil Gautam, Counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 20/01/2011**

1. The petitioner/applicant filed Writ Petition (Civil) No.353/1998 before the Hon'ble Delhi High Court challenging the order of discharge dated 21.07.1996 passed under Army Rule 13(3) (iv) by which he was discharged on the ground of "unlikely to become efficient soldier" due to failure in training.

A further prayer was made that discharge order be quashed and he be reinstated with all consequential benefits. Thereafter, the case was transferred to this Tribunal.

2. Brief facts of the case are that the applicant joined the Army with Jat Regiment Centre, Bareilly, U.P. on 27.12.1994. It was contended that during training period applicant suffered from 'Jaundice', but army authorities did not take care of it. Thereafter, applicant was locally discharged by Jat Regiment Centre under Rule 13(3)(iv) of the Army Rules, 1954. It was contended that Rule 13(3)(iv) is not applicable as applicant had not made any request for discharge from service. He also contended that in Annexure A-2 issued by the C.O. it has been specifically mentioned that applicant is an "efficient soldier". He should not, therefore, have been discharged. It was submitted that while discharging neither discharge order was passed nor any movement order or railway ticket etc. was given. The applicant was struck off from the service strength locally on 26.06.1996 and was sent back to his home. The applicant

was coerced into signing some blank papers and other written papers. It was further submitted that applicant was again called back to join vide letter sent in envelop at Annexure-1. Due to non-fulfilment of respondents demand this letter was later withdrawn. The applicant also submitted photocopy of the discharge certificate purportedly issued by one Lt. Col. N. Singh, O.C. DOGRAI COY. JAT RC. A prayer was made that discharge order be quashed.

3. The respondents filed their counter affidavit stating, inter alia, that petitioner reported to Jat Regiment Centre, Bareilly, U.P. on 28.12.1994 and started his basic training with Batch 1/95 in Mooltan Company w.e.f. 23.01.1995, but he failed in Battle Physical Endurance Test. He was warned, but no improvement was shown by the applicant. As per policy letter dated 28.02.1986 he was relegated to Batch 3/95, but again he failed in 5 Kms run of Battle Physical Endurance Test. Again he was relegated to Batch 5/95 and was provided a third chance to pass the Commandant's test, but he could not clear the same. It was contended by the

respondent side in their reply that adequate training and extra coaching were given, but the applicant could not pass the Commandant's test. He was found extremely weak in 5 Kms. run test. Before discharge he was given show cause notice to which he replied (Annexure R-6). It was contended that in reply he admitted that he failed in the test. After considering his reply, the applicant was discharged in view of para 3 of the letter dated 28.02.1986 read with Army Rule 13(3)(iv), as the applicant was not likely to become an efficient soldier. In reply it was also contended that the applicant has concealed the material facts and he has produced a fictitious discharge certificate (Annexure P-2). The alleged certificate was purportedly issued by Lt. Col. N. Singh. There was no such officer posted in the Jat Regiment Centre during the year 1996. Further the purported certificate is not on prescribed proforma i.e.. IAFY 1964 and was not issued. It was contended that in the certificate the authority of Part II was shown as Dograi Company, JRC CRO Part II Order No.3/323/6/96 dated 21.07.1996 which is not correct. The correct authority is Mooltan Company, JRC CRO Part II order

No.3/323/6/96 dated 21.07.1996. It was contended that the applicant, being a recruit, was to pass requisite test, but his performance in training was poor and he failed to pass 5 Kms run test despite additional chances given to him. A request is made to dismiss the petition/application.

4. A rejoinder was filed by the applicant reiterating the grounds as stated in the writ petition/application.

5. We have heard the arguments and perused the record. From the perusal of record it is revealed that during training period the applicant failed to pass the requisite tests. In accordance with the rules he was given additional opportunities to pass these tests, but he failed the requisite tests despite additional chances. The policy letter dated 28.02.1986 sub-para 3(c) provides that if a person fails to qualify the requisite test, he will be discharged. In this case, the applicant himself has admitted in his reply to show cause notice that he failed in test. It is further revealed that before discharge a show cause notice (Annexure R-VI) was given

and in reply to that notice the applicant has admitted that initially he was detailed in batch 1/95, which batch he failed in 5 Kms run test. Thereafter, he was relegated in batches 3/95 and 5/95. He has admitted that he could not pass 5 Kms run test. A request was made that the applicant is a poor person and should be retained in service. Thereafter, the discharge order was passed after due sanction. The formal discharge order was intimated to the applicant and the applicant has signed on the same.

6. During the course of arguments, one contention was raised that the applicant cannot be discharged under Army Rule 13(3)(iv) as he had not made any request for discharge. From a perusal of the said rule, it is clear that if a person fails during training period and is unlikely to become an efficient soldier he can also be dealt with under that rule. In this case, the applicant has been discharged under discharge dated 21.07.1996 under sub para 3(c) of said policy letter and Army Rule 13(3)(iv). The applicant has also produced photocopy of discharge certificate allegedly issued by Lt. Col. N. Singh.

The original certificate has not been produced nor was it established that the same was issued on the prescribed proforma. Therefore, no cognizance of that certificate can be taken. The contention raised by the applicant that he has been an efficient soldier is having no force. Likewise, the other contention that the applicant was given a call letter in an envelope and when he reported that call letter was taken back cannot be accepted. These contentions do not inspire any confidence and they are not helping the main issue raised in the application. Looking at the reply to the show cause notice filed by the applicant, it is seen that the applicant has admitted that he failed in various tests. He is, thus, not entitled for any relief. Our conclusion also finds support of the decision passed in ***Union of India & Ors. v. Dipak Kumar Santra*** (2009) 7 SCC 370, in which a recruit failed twice in proficiency and aptitude test and was discharged. His discharge was maintained by the Apex Court.

7. On the aforesaid basis, the application is liable to be dismissed. The same is, accordingly, dismissed. No orders as to costs.

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

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

**Announced in the open Court**  
**on the day of 20<sup>th</sup> January, 2010**