

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

T.A. No. 495 of 2010

W.P.(C) No.10442 of 2009 of Delhi High Court

IN THE MATTER OF:

Ex. Rect. Ramesh Kumar**Applicant**
Through: Mr. R.S. Kalkal, Counsel for the applicant

Versus

Union of India & Ors.**Respondents**
Through: Ms. Barkha Babbar, Counsel for the respondents

CORAM:

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

JUDGMENT

Date: 09/12/2010

1. The petitioner/applicant filed Writ Petition (Civil) No.10442/2009 before the Hon'ble Delhi High Court on 24.07.2009 challenging the order of his discharge with a prayer that the letters dated 14.11.2004 (Annexure P-2), 13.12.2008 (Annexure P-4) and 16.05.2009 (Annexure P-8), conveying him that he failed in several tests during training, be quashed and directions be issued to provide him an

additional chance to pass swimming test and reinstate him in service with his all consequential benefits w.e.f. 03.03.2003. Thereafter, this petition was transferred to this Tribunal. Notice was issued to the respondents and respondents filed their counter.

2. Brief facts for the just disposal of the application are narrated as under.

3. The applicant was enrolled on 21.01.2002 in Indian Army. On 03.03.2009 he was discharged from the army under Army Rule 13(3) Item (IV) as unlikely to become an efficient soldier. It is contended by the applicant that he belongs to Rajasthan and being from a desert area the applicant was not having experience of swimming, hence, it was not possible for him to pass swimming test without special training. He further states that on 10.08.2003 his father wrote letter to the Commandant, Brigade of Guard to reinstate his son in the army. He also requested under RTI Act to supply the test results. He was intimated that he failed in 8 tests out of 45 tests. It is contended by the applicant that, except swimming test, he had passed all other tests. He

also filed a statutory complaint on 12.01.2009 and served legal notice dated 15.04.2009 (Annexure P-7) through his counsel, but no redressal was granted. Thereafter, he filed the writ petition.

4. The respondents in their counter affidavit have submitted that the applicant was weak in training. He failed in physical proficiency test on 12.07.2002. Due to this he was relegated from the course serial No.38 to course serial No.40. Again he was failed in various tests. He was relegated from course Nos.40 to 41. He was again given third chance on 13.01.2003 in swimming and physical efficiency test. The applicant was also provided 16 days' extra coaching and given a special chance on 30.01.2003. He, however, could not pass the test. It was also contended that the passing of swimming test was mandatory, but he failed to pass. Thereafter, on 03.03.2003 he was discharged as unlikely to become an efficient soldier under Item (IV) of the table 13(3) of the Army Rule, 1950. His statutory complaint was also rejected.

5. We have heard the arguments. During the course of arguments learned counsel for the applicant reiterated the grounds as stated in the application and contended that a special chance, to pass the requisite tests, should have been given, but the respondents failed to do so. A prayer was made to quash the discharge order and aforementioned letter and he be reinstated. It was also contended that before discharge no notice was given to him. Learned counsel appearing for the respondents stated that despite several chances applicant could not pass the requisite tests. Thereafter, he was discharged as per rules after considering all aspects. The applicant is not entitled to any relief. He was discharged in the year 2003, but had filed statutory complaint in the year 2009, at a belated stage. Learned counsel for the respondents also placed reliance on the decision given 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. This ruling was maintained by the Apex Court.

6. We have considered the rival submissions and perused the record as well as the judgment cited by learned

counsel for the respondents. From the perusal of record it is revealed that adequate chances were given to the applicant for passing the requisite test, but he failed to pass the same. The applicant has failed several tests during training. The contentions of the applicant that extra chances were not given are not correct. He was discharged under the Army Rule 13(3) Item (IV), in the year 2003 and approached the Court in the year 2009 at a very belated stage. On the basis of the aforesaid discussion, the applicant is not entitled to any relief. Our conclusion also gets support from the judgment given in ***Dipak Kumar Santra*** (supra).

7. In the net result, no interference is required, the application filed by the applicant is liable to be dismissed. The same is, accordingly, dismissed. No order as to costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on the day of 09th December, 2010**