

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

**T.A. No. 502 of 2010**

**WP (C) No 12012 OF 2006 Delhi High Court**

**IN THE MATTER OF:**

**Ex Recruit Pushpendra Singh** .....**Applicant**  
Through Mr P.D.P Deo, counsel for the applicant

Versus

**Chief of the Army Staff & 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: 05/10/2010**

1. The applicant filed writ petition No 10212 of 2006 in the Hon'ble Delhi High Court and the same was transferred to the Armed Forces Tribunal on 06/01/2010. The applicant has prayed that the order of his discharge dated 27/12/2005 be set aside and he be reinstated and retested for category of clerk. He has further

prayed that if he fails in the retest for clerk category he be remustered in tradesman category.

2. The applicant avers that the recruitment process as soldier clerk (GD) commenced on 01/12/2003. On 31/12/2003 he was administered a written test to check his aptitude as clerk (GD). The applicant contends that he qualified on the test on 09/01/2004 and commenced his training on 13/03/2004 at BEG Centre, Kirkee on 13/03/2004.

3. The applicant states that on 12/07/2004 he was administered a clerks proficiency aptitude test (PAT). On 18/08/2004 he was declared failed alongwith two other recruits clerk, namely Laxmi Narayan Panda and Vinod Mishra.

4. On 20/09/2004 (Annexure-P-1) the applicant was physically and medically retested and declared fit for remustering as soldier tradesman. He was assured that he would be remustered as

soon as any vacancy arose. In the interim he was asked to perform sundry military duties.

5. On 16/06/2005 persons who had failed in the PAT of 18/08/2004 were remustered as tradesmen. The applicant claims that he requested twice (Annexure P-3 & P-4) to be given another chance for passing the PAT. This was denied to him. Having no other choice the applicant on 07/01/2005 gave his option for remustering as tailor.

6. The applicant claims that on 17/10/2005 he was intimated that he would be discharged from service. This was despite the fact he had been enrolled one year and seven months earlier and during this period had completed his basic military training and continued performing sundry military duties. On 24/12/2005 the applicant was told that there was no vacancy for tradesmen till March 2006. He was also told that he did not meet the height criteria and thus remustering was not possible.

7. The applicant claims that he was discharged on 27/12/2005 without issue of a show cause notice after completing 21 months service. The applicant submitted an application to the COAS on 17/01/2006 (Annexure P-5) in which he contended that he should have been given a second opportunity for passing the PAT as laid down in Army HQ letter No 20030/ACTS/Inf-2 dated 13/07/2001. The main points raised by the applicant are that during his service of 21 months he performed military duties. He was not given a second opportunity to pass PAT. He was not remustered as tradesman although he was declared fit for the same. He was not given a show cause notice prior to his discharge.

8. In the counter affidavit the respondents have stated that the applicant was enrolled as clerk (GD) and reported for training at BEG Centre, Kirkee on 13/03/2004.

9. The applicant was administered a PAT in the 19<sup>th</sup> week of his training and failed in the same. The respondents state that vide Army HQ letter dated 17/03/2003 (Annexure R-1) persons who do not pass PAT are to be remustered in some other trade or

discharged. The respondents aver that the PAT is to be conducted only once during the entire duration of training. There is no provision for a second PAT test.

10. The respondents state that the applicant was considered for remustering but did not meet the prescribed criteria for remustering as laid down in Army HQ letter dated 17/06/2004(Annexure R-2). This lays down that the height for tradesman from the Central region (to which the applicant belongs and whose height is 164 Cms) as 168 Cms. This stipulation was to be made effective from 01/08/2004.

11. There are no provisions for issue a show cause notice for recruits, who have not been attested. The applicant was allowed to continue basic military training as he could not be kept idle till release of his vacancy as tradesman. During this period the applicant was paid his salary.

12. The respondents state that the policy given in Army HQ letter dated 13/07/2001 is applicable only for Infantry and Mechanised Infantry personnel. The applicant was enrolled in the Engineers for whom Army HQ letter dated 17/03/2003 (Annexure R-1) applies.

13. In a rejoinder to the counter affidavit the applicant has questioned whether two policies for conduct of PAT are permissible. He also questioned why he was retained in the Centre on the assurance of being remustered. The applicant avers that the revised height criteria for remustering vide letter dated 17/06/2004 (Annexure R-2) was not applicable to him as he was enrolled on 12/03/2004. The applicant avers that the respondents had all his details including height. He should have been discharged immediately instead of being retained in the Training Centre for 21 months.

14. We have heard the arguments and perused the records. The applicant's contention that he should have been given second chance to appear in PAT (Annexure P-7) is not applicable for

recruits enrolled in the Engineers. These persons are given only one chance under the provisions of Army HQ letter dated 17/03/2003 (Annexure R-1) which stipulates **“PAT will be conducted only once during recruit training”**. We are aware that each Arm/Service has different orders/instructions depending on their service requirement. Thus the contention raised by the applicant is not valid and he was not entitled to be administered a second PAT.

15. The applicant's height is undisputedly 164 Cms. In case he is given two Cms relief, being the son of an ex-serviceman he still would not meet the height criteria of 168 Cms, for tradesman from the Central Region. (Annexure R-2 paragraph 3(e) is quoted as under :-

S. No.	Region	Sol GD & Tdn	Sol Tech & NA	Clk/SKT
(a)	...	...	...	...
(b)	...	...	...	...
(c)	...	...	...	...
(d)	...	...	...	...
(e)	Central Region	168 cms	167 cms	162 cms
(f)	...	...	...	...

16. The applicant was ineligible for remustering as a tradesman because he did not meet the height criteria which was applicable from 01/08/2004. He failed his PAT on 18/08/2004. This should have been known to the respondents and he should not have been unnecessarily detained in the Training Centre for 21 months. The contention of the respondents explaining the detention till release of a vacancy for tradesmen is not sustainable as the applicant was not meeting the height criteria. We consider this an unusually long period for no fault of the applicant. He, therefore, should be compensated for the same by a sum of Rs. 21,000/- to be paid as compensation. Application dismissed with aforesaid order for compensation.

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

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

**Announced in the open Court**  
**on the day of 5<sup>th</sup> October, 2010**