

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

**T.A. No. 652 OF 2009  
(Delhi High Court W.P (C) No. 5369 of 2003)**

**IN THE MATTER OF:**

**Rect Komal Singh** .....**Applicant**  
Through Col (Retd) K Digamber Singh , counsel for the applicant

Versus

**The Union of India and others** .....**Respondents**  
Through: Ms Jyoti Singh, counsel for respondents

**CORAM :**

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

**Order**

**Date: 5-3-2010**

1. The applicant Rect Komal Singh had submitted a writ petition (civil) 5369 of 2003 before the Hon'ble Delhi High Court. The same was transferred on creation of this Tribunal under Armed Forces Tribunal Act 2007.

2. The applicant has stated that he was enrolled on 28.11.2002 and reported for training to the Artillery Centre Hyderabad on 1.12.2002. Here his trade was changed from “**Gunner**” to “**Driver MT**” without assigning any reasons. It is stated that training only commenced on 1.1.2003 and the period before that was utilised for sundry duties. All recruits were sent on 28 days leave due to acute scarcity of water. He rejoined duty on 5.5.2003 and on 6.5.2003 he was beaten by Sub Maggar Singh and being under threat he left the Centre and proceeded to his home. The applicant reached home on 8.5.2003. He returned with his father and cousin to the Centre on 10.5.2003. There they met a few officials but the applicant was not taken back for training and had to return home on the same day 10.5.2003 (AN). It is further stated that in response to a legal notice dated 17.5.2003 served on them the respondents issued a desertion roll. The applicant and his father again went to Artillery Centre, Hyderabad on 20.5.2003. This time they were not even allowed to enter the premises. The applicant has produced copies of the rail tickets to show his journeys and efforts to rejoin training. The applicant surrendered to the police and was kept in the quarter guard of COD Agra till 17.6.2003 when he was escorted back to Arty Centre, Hyderabad. The applicant further stated that on arrival he

was ill-treated by Subedar Balbir Singh. Brig Rohit Kalia, Commandant, Artillery Centre interviewed the applicant in his office on 31.7.2003. He was however discharged on 4.8.2003 under Item IV of table annexed to Rule 13(3) of Army Rule 1954 “**unlikely to become an efficient soldier**” without issue of a show cause notice.

3. The applicant has prayed that his impugned order for discharge dated 4.8.2003 **Annexure P-4** be quashed and he be reinstated with continuity of service with all consequential benefits. He has also prayed for disciplinary proceedings against Sub Balbir Singh under Section 47, Army Act for ill-treating a subordinate.

4. The respondents in their counter affidavit have answered that the applicant could not withstand the rigours of training and being newly married felt home sick. He absented himself without leave on 6.5.2003 and subsequently himself, requested for discharge. The applicant had been allotted the trade of driver based on his aptitude. The applicant was finding difficult in coping with the training but was being coerced to continue by his father. The latter forced him to rejoin on 5.5.2003 but the applicant on his own accord left on 6.5.2003 without sanction of leave. An apprehension roll was issued on 7.5.2003 and the applicant

was arrested by the civil police and handed over to COD Agra from where he was escorted back to the Artillery Centre, Hyderabad on 17.6.2003. The applicant was never ill treated at the centre. These allegations have been levelled to challenge the discharge which was granted to the applicant on his own request. The applicant was interviewed by the Commandant Artillery Centre, Hyderabad twice on 01.7.2003 and 31.7.2003 and each time stated that he did not wish to continue training. The respondents have attached copies of the applicant's request for discharge which was accepted by the Commandant. The application therefore should be dismissed.

5. In rejoinder to the counter affidavit of the respondents the applicant has reiterated that he spent a huge sum of money travelling twice from Agra to Hyderabad in efforts to rejoin training. He denied the allegations made against applicant that he himself did not wish to continue training. But he was ill-treated there. Brig Rohit Kalia Commandant never interviewed him or his father. In fact the respondents have not given them the address of Sub Balbir Singh so that a legal notice could be served on him.

6. We have heard the arguments at length and examined the documents. The applicant had applied in his own hand to be discharged **Annexure R -2 & R-3**. The discharge was ordered by the Commandant, Brig Rohit Kalia on 4.7.2003 who after studying the case passed discharge orders under item IV of Army Rule 13(3) “**unlikely to become an efficient Soldier**”.

7. The applicant has alleged that when he rejoined duty on 5.5.2003 he was beaten and threatened on 6.5.2003 by Sub Maggar Singh but no cause has been assigned by the applicant for this beating. Further he had not made any complaint to higher authorities immediately in this regard. The applicant has nowhere explained under what circumstances he gave applications **Annexure R-2 & Annexure R-3** for seeking discharge. The applicant has also made allegations against Sub Balbir Singh but again no cause has been assigned for ill treatment. The allegations of ill treatment are not found reliable. The applicant himself had applied for discharge vide **Annexure A-2 & A-3**. He was interviewed by Brig Rohit Kalia who advised against seeking discharge but the applicant pressed for the same. This documentary evidence cannot be ignored. On the basis of his own request the applicant has been correctly discharged under item IV of Army Rule 13(3) “**Unlikely to become an efficient**

**Soldier”** A perusal of records also reveal that the applicant had remained absent from 30.12.2002 to 3.1.2003 for which he was awarded five days rigorous imprisonment. The contention of the applicant that he spent a huge amount of money in his efforts to rejoin training at Hyderabad do not strengthen his case in the light of his repeated requests for discharge for which no satisfactory explanation has been given.

8. There is no infirmity in the discharge orders which were given on the applicant's own request. There are no grounds for interference in the impugned order. Application is dismissed. No orders as to costs.

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

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

**Announced in the open court**  
**Dated: 5-3-2010**