

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. NO. 129 OF 2010**

IN THE MATTER OF:

Ex. Rect. Mool Singh**Applicant**
Through : Mr. A.K. Trivedi, counsel for the Applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Romil Pathak, proxy counsel for Dr. Ashwani
Bhardwaj, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 04.07.2011

1. The OA was filed before this Tribunal on 25.02.2010.
2. The applicant vide his application has prayed for quashing and setting aside the impugned order of discharge and order dated 02.05.2009 (**Annexure A-1**) by which his representation was rejected. The applicant has also prayed that his case be considered for reinstatement in service after condonation of 4/8 days absence of the applicant on medical grounds and consequently the applicant may be entitled to all consequential benefits including seniority and arrears of pay and allowances.

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 16.04.2000. After completion of the basic military training, he was granted 14 days Recruit Leave from 03.09.2000 to 16.09.2000. He met with an accident on 14.09.2000 at Jodhpur and sustained injury "*Fracture Tibia Fibula (LT)*" while getting down from a bus.

4. The applicant was admitted in a Military Hospital (MH), Jodhpur on 14.09.2000. He was granted 56 days sick leave w.e.f 16.10.2000 to 10.12.2000. On 11.12.2000, he reported back to MH, Jodhpur and was again discharged from hospital on 10.01.2001 having been placed in Low Medical Category (LMC) A3 (T) w.e.f. 08.01.2001 for two months. Thereafter he attended training till 05.03.2001 when he was again admitted in MH, Ahmednagar for re-categorization. He was transferred to MH, Kirkee for specialist opinion. He was finally discharged from MH, Ahmednagar on 19.04.2001 in medical category Shape 1 w.e.f. 17.04.2001.

5. The applicant was put under Advance Training for 12 weeks from 20.04.2001 till 31.07.2001. However the applicant was discharged from service on 01.08.2001 as applicant's "*services no longer required*".

6. The applicant made a petition to the Government for reinstating him into service but the same was not disposed of by the respondents despite number of reminders sent by the applicant.

Therefore, he filed writ petition in the Hon'ble Delhi High Court bearing W.P.(C) No. 11693 of 2006. The Hon'ble Court decided on 21.07.2006 by holding that *"we dispose of this petition with direction to the respondent to deal with the said appeal/petition as expeditiously as possible and in any case not later than six months from today. Parties are left to bear their own costs"*. The petition was disposed of by the authorities vide their order dated 02.05.2009 **(Annexure A1)** in which it was held that the applicant had missed 218 days of training and, therefore, applicant was *"rightly discharged from service as per existing rules and policy/instruction on the subject after obtaining proper sanction from the competent authority."*

7. Learned counsel for the applicant argued that the applicant had attended the training while he was low medical i.e. A3 (T) for two months. He also argued that had the applicant been sent to the hospital for re-categorization in good time, the process of re-categorization would have taken place earlier and the applicant would not have missed the training as has been purported to be more than 210 days.

8. Learned counsel for the applicant further argued that inordinate time was taken by MH, Ahmednagar and MH, Kirkee to finalize his case of upgrading him of Shape 1. This was not the fault of the applicant and, therefore, could not be blamed that the applicant missed his training on medical grounds.

9. Learned counsel for the applicant also stated that the applicant was on his way back to the Regimental Centre from Recruit Leave when he met with that accident in Jodhpur. Therefore, he was very much on duty and if at all he should be entitled to discharge on medical grounds.

10. Learned counsel for the respondents stated that there are no disputes in the facts of the case. He argued that the applicant was absent from training for 214 days as under :

<i>“(a) Period spent in Military Hospital</i>	<i>= 123 days</i>
<i>(b) Sick Leave</i>	<i>= 56 days</i>
<i>(c) Present on duty in low Medical Category (A3)</i>	<i>= 53 days</i>
<i>Total</i>	<i>= 232 days</i>

<i>(d) Recruit leave not availed to be adjusted against total period of absence</i>	<i>= (-) 18 days</i>
<i>Total</i>	<i>= 214 days”</i>

11. Learned counsel for the respondents stated that a Court of Inquiry was held immediately after the accident took place. The Court of Inquiry had opined that the applicant sustained the injury while not performing the military service, therefore, the injury was not attributable to military services.

12. Having heard both the sides at length and examined the documents in original with specific reference to the Medical Board proceedings of re-categorization, we have observed that the applicant had resumed the training for two months after he was discharged from hospital on 10.01.2001 although he was kept in medical category A3 (T). Having examined the Medical Board proceedings, it is revealed that the applicant was admitted in MH, Ahmednagar for re-categorization on 05.03.2001. He was due for re-categorization on 08.03.2001. He was transferred to MH, Kirkee on 10.03.2001 for specialist opinion. As per record on 31.03.2001, the medical specialist opined that the applicant was Shape I. The applicant was transferred back to MH, Ahmednagar on 07.04.2001 where a Medical Board was to be convened. The medical board finalized its opinion by putting the applicant in Shape 1 category on 17.04.2001 and discharged him from the hospital on 19.04.2001.

13. From perusal of this record, it is obvious that the hospital authorities both at MH, Ahmednagar and MH, Kirkee have taken inordinate time to examine the applicant and opine. MH, Kirkee has taken more than two weeks to obtain the specialist opinion. Similarly MH, Ahmednagar has taken more than 10 days to conclude the medical board proceedings and discharge the applicant to be able to continue with his training. The applicant is certainly not responsible for this kind of delay that has taken place was beyond his control. It could have been avoided had the medical authority both at MH,

Ahmednagar and MH, Kirkee would have approached the problem with dispatch.

14. It is also revealed from the impugned order dated 02.05.2009 that the applicant was absent from training for 218 days while the counter reply as filed by the respondents on 13.07.2010 claims that the applicant was absent from training for 214 days. In this calculation the authorities have included 53 days of training that the applicant has attended as category A3(T) i.e. from January to March, 2001. As per rules in this case absence of 210 days was permissible. Thus as per their own version, there was a delay of 4 days for that applicant cannot be blamed and penalized.

15. From the foregoing, it is obvious that the authorities have not applied themselves in the spirit of the policy instruction contained in the Army HQ letter dated 28.02.1986. The applicant has missed training by only 161 days if his absence while he was Medical Category A3 (T) is also taken into account. To our mind, this period should not be taken as if applicant was not present on training. Had he failed in any test which was consequent to his attendance of training as a LMC, then perhaps this period could have been counted as not attended the training. In this case, there has been no such averment made by the respondents that he has not passed any such mandatory test during this period of 53 days when he was LMC. Thus this period should not have been included in total absence period.

16. Also looking at the medical in which hospital authorities have taken their own time to dispose of his case in terms of specialist medical opinion and specifically holding of medical board and discharge, it is obvious that the applicant got unnecessarily delayed in terms of joining his training which was not due to the applicant's fault. While the medical authorities could have addressed the situation faster in order to ensure that the applicant was able to rejoin his training at the earliest.

17. Having considered all these issues, we strongly feel that the respondent have incorrectly invoked the provisions of Army HQ Instruction dated 28.02.1986 by mechanically calculating the period of absence including the period of training that the applicant attended as a LMC and thus making him ineligible for retention being absent for 214 days. The period of absence beyond 210 was certainly not because of the applicant's fault. His representation was also not considered properly. The applicant cannot be blamed for delay as his representation has been disposed of in 2009 after the Hon'ble High Court's directions.

18. In view of the foregoing, we set aside the impugned order of discharge and order dated 02.05.2009 and direct the respondents to reinstate the applicant without arrears of pay and allowances and without seniority as he has not completed the training.

19. The case is partially allowed. The orders be implemented within 90 days from the date of issue of the present order.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 04th day of July 2011