

**COURT NO. 3, ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
O.A. No. 417 of 2010**

**IN THE MATTER OF:**

**Recruit Anil Kumar** .....**Applicant**  
Through : Mr. K. Ramesh, counsel for the Applicant

Versus

**Union of India and Others** .....**Respondents**  
Through: Mr. Anil Gautam, counsel for the Respondents

**CORAM:**

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

**JUDGMENT**

**Date: 15-04-2011**

1. The application was filed by the applicant on 13-07-2010 praying to set aside the discharge order dated 18-06-2008 being contrary to Rule 13 of the Army Rule 1954. He has also prayed for all consequential benefits that may accrue.

2. The brief facts of the case are that the applicant was enrolled in the army on 25-11-2007 as a recruit clerk. He did not qualify in the Professional Aptitude Test (PAT) which was held after 10 weeks. Having failed in that test, he was issued a show cause notice and his discharge was sanctioned by the competent authority on 18-06-2008.

3. Learned counsel for the applicant argued that the applicant was considered for re-mustering but was not selected as he did not qualify in the height criteria, being short by 5 cms at that time. Now the applicant has since grown in height and he could be considered for re-mustering to a different trade.

4. Learned counsel for the applicant further argued that the show cause notice issued to the applicant on 29-05-2008 was signed by Battery Commander and not by the CO or the competent authority. Therefore, show cause notice was bad in law and not as per Army Rule 13. The final discharge order was signed by the Commandant on 13-08-2008 while the discharge certificate was signed by the officiating CO.

5. Learned counsel for the respondents argued that the show cause notice was issued after the applicant had failed in PAT held after 10 weeks of training. This is as per the policy laid down for all recruit clerks (**Annexure R-1**). The policy also states that if an individual not qualify to become a clerk he should be considered for re-mustering into another trade or as GD Sepoy. In this case, the applicant did not qualify in medical criteria particularly in his height as he was 164 cm as against the requirement of 169 cms. under the policy. As such, a show cause notice was issued to him on

29.05.2008 (**Annexure R-2**). The show cause notice was issued by the Company Commander.

6. As per Army Rule 13 while discharging an individual who has not been passed i.e. recruit like it was in the case of applicant, no show cause notice is required. It has also been upheld by the Hon'ble Supreme Court of India in the case of **Union of India Versus Dipak Kumar Santra 2009 7 SCC 370** in which their Lordships upheld that no interference is warranted as service law is adequate for termination on the ground that the petitioner had failed to pass the professional aptitude test.

7. As regards the discharge certificate signed by the officiating commandant, learned counsel for the respondents stated that the officiating CO had only made recommendation in which he had recommended that it is unlikely that the applicant will become an efficient soldier. Based on this recommendation and the results of the PAT, the Commandant of the Regimental Centre who was a Brig had ordered a discharge. Therefore, there was no infirmity in the discharge order.

8. We have heard both the parties at length and having examined all the documents, we are of the opinion that even if it is assumed that the show cause notice was given incorrectly by the Battery Commander who was not a competent authority, Army Rule 13 is quite

clear that show cause notice in case of recruits is not mandatory. The applicant was deemed to aware about the consequences on failing requisite test. This has also been upheld by the Hon'ble Supreme Court of India in the case of **Union of India Versus Dipak Kumar Santra** (supra) where the person was discharged under Army Rule 13(3)(iv) when he was failed in training, the discharge was upheld.

9. The applicant was also considered for re-mustering in other trade, but he was not approved due to height criteria. The contention of the applicant that now he has grown up with the required height is also not having any force, firstly no strong documentary evidence has been produced by him in this respect and secondly at the time of consideration for re-mustering he was not having the requisite height, thus, no interference is warranted in the discharge order.

10. In view of the foregoing, the application needs no interference and is dismissed. No orders as to costs.

**M.L. NAIDU**  
**(Administrative Member)**

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

**Announced in the open Court**  
**on this 15<sup>th</sup> day of April, 2011**