

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

29.

O.A.No. 587 of 2010

Rakshak/Clerk A.K. Jain

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER  
28.02.2011

1. Petitioner, by this petition, has prayed that discharge order dated 29<sup>th</sup> April 2010 from DSC Centre and likewise the discharge certificate dated 6<sup>th</sup> May 2010 may be quashed.

2. The petitioner was inducted in the Indian Air Force on 6<sup>th</sup> July 1987 and he was discharged on superannuation on 31<sup>st</sup> July 2007. He is a Graduate and was working as a Clerk (Equipment & Accounts Trade). The post of DSC was advertised for General Duty Clerks and in pursuance of the same, the petitioner applied, and he was selected and appointed on 4<sup>th</sup> January 2010 but he was discharged on 6<sup>th</sup> May 2010 while giving a show cause notice on 19<sup>th</sup> March 2010 and in fact, he has been wrongly recruited because he was holding the post of Clerk (Equipment & Accounts Trade) whereas the post which was advertised, was of General Duty Clerk and was in violation of the clarification issued on 9<sup>th</sup> December 2004 to all the Recruiting Officers that the person should be recruited who has been working as a General Duty Clerk but the petitioner was holding the post of Clerk (Equipments & Accounts Trade). Therefore, he has been wrongly recruited by the Recruiting Officer in violation of the clear directions issued on 9<sup>th</sup> December 2004. The petitioner replied

to the show cause notice and tried to emphasize that he is a Graduate and has been doing the Equipment & Accounts job for a long time and has a long experience. Therefore, his services may not be discharged. Despite that, the petitioner was discharged from service. As such, he has filed this petition challenging the order of discharge.

3. Reply has been filed by the respondents and the respondents stated that the recruitment policy was clear that a person who has experience of working as a General Duty Clerk will only be recruited and clear directions were issued way back on 9<sup>th</sup> December 2004 that no person who has requisite qualification should be recruited but a bonafide mistake appears to have been committed by the Recruiting Officer and he has recruited the petitioner, who was essentially in the post of Clerk (Equipments & Accounts Trade). Therefore, there is an apparent mistake in recruiting the petitioner and, therefore, he was discharged from service. However, before parting with the case that a person with such a long experience as an Accounts Clerk though the order passed by the Recruiting Officer is bad but still if it is felt that they will be benefited by the past experience of that person then they may consider the case sympathetically. However, so far as granting of relief by this Court is concerned, that cannot be given because recruitment of the petitioner was irregular.

4. Consequently, the petition is dismissed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

New Delhi  
February 28, 2011