

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

**T.A. No.375 of 2009**

**W.P.(C) No.6115 of 2008 of Delhi High Court**

**IN THE MATTER OF:**

**Ex. Recruit Pramod Kumar Tripathi .....Applicant**

Through : Mr. S.S. Pandey, 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: 19-05-2011**

1. The writ petition was filed before the Hon'ble Delhi High Court for quashing the order dated 05.03.2008 (**Annexure P-7**), by which the petitioner was discharged under Army Rule 13(3)(iv) on being failed during training. He has made further prayer in the petition to reinstate him with all consequential benefits. Notice was issued to respondents, who appeared and filed their reply. Thereafter, the case was transferred to this Tribunal on 26.11.2009 on its formation.

2. Brief facts of the case are that the petitioner/applicant enrolled in Rajputana Rifles as a Clerk (Sepoy) through Recruitment Office, Delhi Cantt. and reported to Rajputana Rifle Regimental Centre for undergoing training which was stated to be commenced on 30.06.2007. It was further stated that the applicant fell sick on 28.06.2007. He reported to Medical Inspection Room and thereafter, he was admitted in Base Hospital, Delhi Cantt. for treatment till 01.07.2007. It was submitted by the applicant that thereafter, he actively participated in training to the best of his ability, but respondent No.4 was not pleased with him and he threatened the applicant that he would not let him complete the training. With this ulterior motive respondent No.4 recommended him again for medical treatment referring to AFSM-10 (which is filled up for psychiatric opinion). It was also stated by the applicant that on 15.11.2007 he was falsely implicated for an offence under Section 63 of the Army Act and was summarily tried by the respondent No.4 and was awarded three days' RI without following the due procedure. It was submitted that despite he achieved the satisfactory grading he was shown as fail in TBC (Training Battalion Commander) PPT training. A show cause notice, warning letter was also given by the Company Commander on 20.10.2007 (Annexure P-3) allegedly on the instruction of respondent No.4 for relegation by six weeks. Applicant replied to that letter on 29.12.2007. It was stated that the applicant was relegated by six

weeks on the ground of having failed the TBC - PPT test held between 14.01.2008 to 16.01.2008. He was again shown as failed. A letter (annexure P-6) was issued to the applicant for further relegation of three weeks. He also replied to the same. It was alleged that though the performance of the applicant in training was satisfactory, but he was malafidely shown as failed and ultimately he was illegally discharged from service on 05.03.2008 under Rule 13(3)(iv) without any show cause notice. Thereafter, he filed the writ petition.

3. The respondents, in their counter, denied all the allegations levelled by the applicant and submitted that the applicant could not clear the mandatory test and failed repeatedly therein. Copies of the result sheets submitted as **Annexure R-B**. It was submitted in reply that the applicant during the training period remained aloof and did not respond to the instruction and behaved erratically. He was sent to the Base Hospital for psychiatric opinion where the applicant was put under observation for a week. The applicant's father Gopal Tripathi, who was Naib Subedar, also met the psychiatric expert. The said report is marked as **Annexure-E**. In reply it was also stated that the applicant took a short-cut during a practice run when he was caught red handed. On being called he ran away which shows lack of mental fitness and obedience. Consequently, he was awarded three days' RI on 15.11.2007 under Section 63 of the Army Act. It was submitted that

the applicant could not clear the requisite test and training. Twice he was relegated, but despite that he could not clear the test as the applicant has not cleared the basic TBC - PPT test. Therefore, he was discharged under Rule 13(3)(iv) of the Army Act after following due process.

4. Rejoinder was also filed by the applicant, reiterating the averments made in the petition.

5. Arguments heard and perused the record. During the course of arguments again learned counsel for the applicant reiterated the grounds stated in the petition and submitted that in this case right from the very beginning the respondent No.4 was biased with the applicant and he intended to throw him out. It was also submitted that his performance during training was satisfactory despite that he was declared as fail. It was also submitted that though the show cause notice in the form of warning was given, but that was given with ulterior motive for making grounds for discharging the applicant. Learned counsel for the applicant also stressed that before discharge no show cause notice was given and the same was required to be given. Reliance was placed on the judgment given by the Hon'ble Delhi High Court in case of **Ex. Recruit Manoj Deswal vs. Union of India & Ors.** in W.P.(C) No.8400/2006 on 17.08.2007.

6. Learned counsel for the respondents submitted that ample opportunities were given to the applicant to clear the test, but his performance during training was very poor. His attitude was erratic and for that once he was penalised, three days' RI was awarded under Section 63 of the Army Act. Learned counsel for the respondents submitted that looking to his career he was relegated twice, but despite that he could not pass the test. Thereafter, he was discharged. It was also submitted that during the medical checking, his father met the psychiatrist. The applicant was in the hospital for treatment and the allegations of falsely recommending him for psychiatric test are baseless. It was also contended that before relegation warning letters in the shape of show cause notice were given to the applicant and replies were filed by the applicant and in replies nowhere he made any allegation against respondent No.4. Rather in reply to the first warning letter the applicant admitted that he failed in TBC & PPT test and sought one more chance to pass the test. In the second reply again he admitted that due to his overweight he could not pass the test and requested for some more opportunity. Therefore, the allegations levelled against respondent No.4 are afterthought and baseless. It was also contended that the maximum discretion which the C.O. can afford was given to the applicant by relegation. The applicant was well aware about the consequences of not passing the requisite tests. Before discharging in these

circumstances, under Statute there was no requirement of issuing separate notice, the judgment cited by the applicant is not applicable in this case. On the contrary, he cited the judgment given in the case of ***Union of India & Ors. vs. Dipak Kumar Santra*** (2009) 7 SCC 370 and submitted that where a recruit failed in basic training his order of discharge was maintained. A request is made to dismiss the case.

7. Considering the rival submissions and after perusal record, it is clear that the applicant was failed in TBC - PPT test. He was firstly relegated for six weeks. Before that a letter was given on 20.12.2007 (**Annexure P-3**). In that letter it was specifically mentioned that the applicant was not able to pass the TBC - PPT test. Further, in that letter it was warned that time is granted to clear the test. In reply the applicant has admitted that he could not pass the TBC - PPT test and one more opportunity was sought by the applicant to increase his physical standard and pass the test. Thereafter, again he was warned before second relegation on 31.01.2008 (**Annexure P-6**). In reply the applicant also admitted that due to overweight and pain in his leg he could not pass the test. Despite twice relegation he could not pass the said test. Thereafter, he was discharged under Rule 13(3)(iv) of Army Rules, 1954.

8. From the perusal of record it is revealed that ample opportunities were given to the applicant to pass the requisite test and

the allegations against the respondent No.4 are baseless and an afterthought, for the first time they were levelled in the writ petition.

9. During the course of arguments learned counsel for the applicant also submitted that before discharge show cause notice was required to be issued. We have also considered this aspect. Where a recruit is discharged on being failed in the basic training under Army Rule 13(3)(iv), under the Statute there is no provision for issuing notice before discharge. We have also considered the judgment cited by learned counsel for the applicant. In that case the petitioner successfully completed his basic military training, thereafter, he was granted 28 days' leave. His technical training was due. During that period due to domestic problem he remained absent for 108 days w.e.f. 02.04.2005 to 21.07.2007 without leave. On that basis he was held "unlikely to make an efficient soldier" and he was discharged. Under the relevant policy there was provision for considering the absent period by C.O. and to retain him in service. In that reference requirement of notice was considered. The relevant portion of the said judgment is reproduced hereunder: -

"12. There is yet another important aspect of this case which is culled out from the pleadings of the respondents contained in their counter affidavit. In para 13 of their counter affidavit, the respondents have referred to Army Headquarter letter No.A/20314/MT-3 dated 28.2.1986 according to which a recruit would not be allowed to rejoin his

training in the event of his remaining absent for 30 consecutive days during basic military training period. It is provided in the above referred circular that the absentees for less than 30 days may be considered for relegation if otherwise found suitable for retention. It is further provided that once the technical training of a recruit has commenced, the discretion to discharge a recruit for such absence is left to the Commandant of the centre who may retain or discharge him considering the case on merits. In the present case, the petitioner had successfully completed his basic military training and he allegedly absented himself for 108 days while he was undergoing technical training at Bangalore prior to his impugned discharge. In case the petitioner would have been given a show cause notice before his impugned discharge then probably he could have explained his alleged absence from training and satisfied the Commanding Officer that his was a fit case to retain him in service in view of discretion conferred on the Commanding Officer in the above referred circular.”

**10.** The same is not the position in the present case. Here the applicant has been discharged being failed in basic military training. He was deemed to be aware about the consequences of failing in test. Therefore, this judgment does not help his contentions. In case of ***Union of India & Ors. vs. Dipak Kumar Santra*** (supra) a recruit was failed twice in clerks’ proficiency and aptitude test, was discharged under Rule 13(3) of the Army Rules. The said discharge was maintained by the Apex Court.



**11.** On the basis of aforesaid discussion, there is no infirmity in the discharge order, no interference is needed. The application is dismissed. No orders as to costs.

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

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

**Announced in the open Court**  
**on this 19<sup>th</sup> day of May, 2011**