

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1389/2018

Rect Nand Kishore	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Ms. Sangeeta Tomar, Advocate
For Respondents	:	Mr. V.S. Tomar, Advocate

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**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal, 2007, the applicant has filed this OA and has made the following prayers:

- (a) Direct to call for records of test assessment of applicant during his training and progress cards;
- (b) Direct the respondents to reinstate and attest the applicant to army with full dignity;
- (c) Any other order as may be deemed fit and proper in the facts and circumstances of the case.
- (d) In the interim, direct the respondents to furnish the complete progress report of his training period, and illegal relegation from course 113 to 116.

Brief Facts of the Case

2. The applicant was enrolled as a recruit in Brigade of the Guards Regiment on 20.11.2016 and thereafter underwent basic and advance training for 39 weeks as part of recruit training. On 21.11.2016, the applicant was assigned with course No.113 and began his training. The training consists of a total of 13 weeks, split into Basic Training for 19 weeks followed by Advanced Training for another 19 weeks, with a week's break in between. The Basic Tests comprise of BPT, PPT and Drill and the Advance tests comprise of Swimming, Drill, BPET, IPET. A recruit is given three chances to clear each of the tests. On 05.12.2016, the applicant passed all his basic tests with Course No.113 in his first attempt except the drill training which he cleared on second attempt. Following the completion of basic training, the applicant availed 28 days leave from 15.04.2017 to 13.05.2017.

3. Upon resumption, the advanced training began from 15.05.2017 and the applicant cleared BEPT and IPET test in his first attempt and cleared the swimming and drill tests in his second attempt. However, on 15.09.2017, the applicant failed in the confirmatory drill test. Subsequently, on 16.09.2017, the applicant

went through the confirmatory drill test once again and failed. He was, therefore, relegated to Course No.114 on 21.09.2017.

4. On 25.09.2017, the applicant was further relegated from course No.114 to 115 where he passed all tests in first attempt except the drill test, which he cleared in his second attempt although no specific remarks were provided for his performance. On 30.12.2017, he was again relegated from course No.115 to 116 and underwent training. Thereafter, on 19.01.2018, the applicant received a discharge certificate with the remark "*Unlikely to become an efficient soldier*" and was expelled from the Brigade of the Guards Regimental Centre without receiving a Show Cause Notice. Aggrieved by the same, the applicant made a representation dated 18.04.2018 challenging the discharge. The respondents vide the impugned letter dated 18.05.2018, intimated that he had been discharged under the provisions of Para 67 of the Infantry Recruit Training Pamphlet 2007 and DGMT letter No A/20314/Mt-3 dated 28.02.1986, and no further relief was granted. The applicant has filed this OA challenging the legality of his discharge and the denial of relief.

Arguments by the Counsel for the Applicant

5. The counsel recapitulated that the applicant had successfully completed all required basic and advanced tests for Course No.113, including BPT, PPT, Drill, Swim, BEPT, IPET, and Drill, on either the first or second attempt. Despite meeting all criteria for becoming an infantry soldier, the applicant was improperly and arbitrarily relegated from Course No.113 to Course No.114. She further stated that the applicant cleared all tests in Course No.114 except for Drill, for which he was only given one chance instead of the permissible three chances as per policy, and that he was not informed of his test results and was simply told that he had failed, while others who performed poorly were passed. The counsel emphasised that these actions by the respondents were arbitrary, improper, and legally questionable. She further added that the applicant was unjustly relegated to Course No.115 and was therefore required to redo advanced training, where he passed the BPT, IPET, and swimming tests. However, he received no remarks on his drill test nor was he given any remarks for the TBC interview, while others who performed poorly were passed. The counsel emphatically stated that the relegation from Course No.113 to 114 and then to 115 was illegal, and the fact that the results were not communicated

suggests improper procedures. Further, the differential treatment indicated a clear bias against the applicant by the training officers and all this amounted to maltreatment.

6. Furthermore, the counsel stated that the applicant was unlawfully relegated from Course No.113 to 114, then to 115, and finally to 116, violating the regulations stated in the Records Brigade of The Guards letter dated 18.05.2018 (Annexure A-1) and the Infantry Recruit Training Pamphlet 2007, which allow a maximum of two relegations. The counsel then stated that despite passing both the basic and advanced training, the applicant had been subjected to more than the permissible number of relegations, once again indicating a clear bias and prejudice by the training officers. The counsel further added that the respondents unlawfully withheld the applicant's results and remarks from the TBC Interview on 07.12.2017, as well as his drill test results in Courses No.114 and 115. The counsel then emphasised that the pattern of not disclosing results had deprived the applicant of his right to know his performance and the reasons for his relegation to the junior course. She further stated that the relegation of the applicant to Course No.116 and the mandatory drill training was illegal, violating the rules outlined in the DGMT letter and Infantry Recruit

Training Pamphlet 2007. Additionally, the applicant was discharged without a show cause notice, breaching principles of natural justice. Despite consistently passing all training and maintaining excellent conduct, he faced unjust treatment and discharge for unknown reasons, warranting an inquiry into the actions of the officers involved.

7. The counsel further stated that the applicant was discharged without a show cause notice, violating principles of natural justice and Article 21 of the Constitution, which guarantees the right to life and liberty through due process. She relied upon the judgment of the Hon'ble Delhi High Court in the case of **Ex Recruit Manoj Deswal Vs. Union of India and Ors.** [142 (2007) DLT 791] and emphasized that even if Army Rules do not require a show cause notice for discharge, the Commanding Officer cannot act arbitrarily as the termination has serious consequences, and due process must include the right to a hearing before such action is taken. This lack of procedure indicates a breach of the applicant's rights. The counsel concluded her arguments stating that the applicant had dedicated over a year to training but was unfairly deprived of a legitimate career in the army due to the actions of the officers at the Brigade of Guards Regimental Centre. This experience caused him

mental distress, a loss of confidence, and significant financial hardship. She further emphasised that such arbitrary treatment should not deny him his career and livelihood and therefore prayed that the OA be allowed and the applicant be reinstated.

Arguments by the Counsel for the Respondents

8. The counsel reiterated the facts of the applicant's case and stated that according to the relevant policy outlined in the DGMT (GS Branch) letter No.A/20314/MT-3 dated 28.02.1986, and Para 67(b) of the Infantry Recruit Training Pamphlet 2007, a recruit failing any centralised tests may be relegated to a lower week, with a maximum of two permissible relegations for those in the Guards Regimental Centre. If a recruit does not pass the mandatory tests after two relegations, they may be discharged under Rule 13(3)(IV) of the Army Rules, 1954, on the grounds of being "not likely to become an efficient soldier" (Annexure R-1 Colly).

9. The counsel further stated that the applicant, a recruit in Course No.113, failed the drill tests on 19.06.2017 and 19.09.2017, leading to his relegation to Course No.114 on 20.09.2017 (Annexure R-2). He further added that the applicant attempted the drill test again on 22.09.2017, but failed the Commandant's Drill Test and the results from 19.06.2017 onward were at Annexure R-3 (Colly).

The counsel then stated that subsequently, the applicant was relegated to Course No.115 on 23.09.2017, and that the approval of the competent authority was at Annexure R-4.

10. The counsel further added that the applicant again participated in the Commandant's Drill Test on 23.10.2017 as part of Course No.115 but unfortunately did not pass. Following this, he underwent additional testing on 11.11.2017 and 24.11.2017, but failed both attempts (Annexure R-5 Colly). Furthermore, on 14.12.2017, the Commandant approved the applicant's relegation due to his inability to pass the drill tests, with the formal approval as given at Annexure R-6. Subsequently, on 08.01.2018, the Training Officer submitted a note sheet to the Commandant, requesting that the applicant be granted one final opportunity to pass the drill test and the same was favorably considered and approved by the Commandant (Annexure R-7). The applicant then took the drill test once more on 11.01.2018, but unfortunately failed again. The results of this final attempt are recorded and attached as Annexure R-8. This sequence of events highlights the applicant's ongoing struggle with the drill tests, despite multiple opportunities provided by the Commandant and Training Officer. Thus, the

counsel firmly concluded that the plea of the applicant was devoid of any merit, therefore, the OA needs to be dismissed.

Consideration

11. Having heard both parties, the only issue to be decided is whether the respondents were justified in discharging the applicant, having found him unlikely to become an efficient soldier, having failed in the drill test thrice.

12. It is undisputed that the applicant, during training, had appeared in various tests and had failed to pass the mandatory drill test, because of which he was relegated from Course No.113 to Course No.114 on 21.09.2017. Thereafter, on 25.09.2017 he was again relegated to next lower Course No.115 as he again failed in drill test. It is also not in dispute that the applicant, even after having relegated twice, was given an additional chance on the direction of the Commandant of the Regimental Centre. Perusal of the record reveals that due chances were given to the applicant for passing the drill test, but he failed to pass the same. We have examined the results of the tests conducted on 19.06.2017, 17.07.2017, 22.09.2017, 23.10.2017, 14.11.2017, 24.11.2017, 11.01.2018, in which the applicant has failed in the drill test. Though in the result sheet of the test held on 17.07.2017, the

applicant is listed as having passed, the respondents sought time to clarify this and had subsequently stated that this was an error in compilation. The fact that the applicant had to undergo the drill test in subsequent chances, is clearly indicative of the fact that he had not passed.

13. The contentions of the counsel for the applicant that although an extra chance was given to the applicant, but the test was conducted with pre-determined mind and he was discriminated upon and deliberately made him to fail the test are unfounded as the record of supporting documents showing the results in the above tests performed by the applicant clearly indicate that the applicant had failed in this test despite having been given a total of seven opportunities. The applicant after having failed the mandatory test and relegated twice, was admittedly given an additional chance by the Commandant although an individual is normally as per policy required to be given only two chances to pass the test.

14. The reliance of the applicant on the Hon'ble Delhi High Court judgement in the case of ***Ex Recruit Manoj Deswal*** (supra) does not help him as the circumstances of that case are entirely different from the case here, in that, the petitioner there had absented

himself from training for three months and was thus discharged. In the applicant's case here, he failed to pass the mandatory drill test despite having been given adequate opportunities. Though a show cause notice has not been issued here, the complaint dated 18.04.2018 submitted by the applicant (Annexure A-3), does not state any reason why the applicant had failed to pass the test or any other cogent reason why he should not have been discharged. In our opinion, the fact that no show cause notice was issued has not caused any prejudice to the applicant, since the records clearly indicate that the applicant had failed despite having been given adequate opportunities to pass the test.

15. It is clearly evident from the records that the applicant could not pass the mandatory drill, wherein even after his relegation twice, he has been provided an additional opportunity to clear his drill test and the applicant failed to qualify in the mandatory training requirement. He was, therefore, accordingly discharged under the relevant rules and policy. We would like to state that Army is a fighting force and if they have laid out certain parameters for training standards for soldier as a matter of policy, then in the present case, we do not find sufficient reasons to interfere with it and the respondents were justified in discharging the applicant from

service as 'Unlikely to become an efficient soldier'. Thus, we find no illegality or irregularity in the order of discharge passed by the respondents.

16. In view of the above, finding no case made is out for interference into the matter, the OA thus stands dismissed.

17. No order as to costs.

18. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 27th day of September, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(LT GEN P.M. HARIZ)
MEMBER (A)

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