

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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OA 394 of 2010

Karnvir Singh	Petitioner(s)
Vs		
Union of India, Through Secy to GOI, MoD, New Delhi and others	Respondent(s)

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For the Petitioner (s) :	Mr. Ajay Pal Singh, Advocate, for Mr. Rajeev Anand , Advocate	
For the Respondent(s) :	Mr. Gurpreet Singh, Sr. PC.	

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative
Member.**

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**ORDER
09.10.2013**

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1. By this petition, the petitioner prays for setting aside the order of discharge and for issuance of a direction to the respondents to reinstate him into service with all consequential benefits and arrears with interest.
2. In brief the facts of the case are that the petitioner was enrolled as a Sapper in the Corps of Engineers-Bengal Engineer Group, Roorkee on 04.03.2003 and was admitted in the hospital twice, firstly in the month of July 2005 and secondly in the month of November 2005 on account of stress fracture during training. Subsequently on finding the petitioner to be incapable of achieving the requisite laid down physical standards for a trained soldier he was discharged under Item III (v) of Army Rule 13(3) on 15.06.2006. To the legal notice sent by the petitioner (vide A-4) dtd 01.08.2006 the respondents vide their reply dtd 01.09.2006 (A-5) took the stand that the petitioner was discharged on account of being an undesirable soldier due to his poor disciplinary record. However in the counter affidavit filed by the respondents on 04.07.2008 in reply to the petitioner's Writ Petition (Civil) No. 680 of 2007 in the Delhi High,

stand taken was that the petitioner has been discharged as inefficient soldier as he had failed to pass the requisite physical standards tests.

3. As per the averments of the petitioner he was enrolled on 04.03.2003 and during training was admitted into MH due stress fracture on left leg and granted 4 weeks sick leave against balance of Annual Leave, as suggested by the medical authorities. On rejoining duties, in spite of his medical problems, he undertook the tests and came in “Good” and “Satisfactory” standard however he was failed due to not achieving “Excellent” standard. That he was mentally and physically tortured and punished on flimsy and unrealistic grounds as brought out in his letter to the Resp No 2 dtd 05.05.2005. Further he was illegally discharged on 15.06.2006 without assigning any reasons or issuance of a Show Cause Notice. In answer to the legal notice sent by the petitioner the respondents contended that the petitioner was discharged on account of being an undesirable soldier due to his poor disciplinary record. Aggrieved, the petitioner filed a Writ Petition (Civil) No. 680 of 2007 in the Delhi High challenging his discharge. However in the counter affidavit filed by the respondents on 04.07.2008 in reply a different stand was taken in that the petitioner has been discharged as inefficient soldier as he had failed to pass the requisite physical standards tests. The petitioner filed a statutory complaint on 22.04.2009 challenging his discharge on failure to achieve requisite physical standards. On finding no response the petitioner has filed the present OA.

4. In the written statement filed by the respondents, it is stated that the petitioner was enrolled in the Army on 04 March 2003. During his training, he failed to clear his physical tests on the dates below:

Sl. No.	Chance	Date	Event	Result
(a)	First	18.07.2005	Physical Proficiency Test	Fail
(b)	Second	26.12.2005	-do-	-do-
(c)	Third	04.01.2006	-do-	-do-
(d)	Fourth	07.02.2006	-do-	-do-
(e)	Fifth	24.02.2006	-do-	-do-

After having been given adequate opportunity to pass the mandatory tests, the petitioner was served with a show cause notice on 8th May

2006. Finding the explanation of the petitioner without merit, the competent authority discharged him from service on account of his failure in Physical Proficiency Tests.

5. In the replication filed by the petitioner, it is averred that in view of the major contradictions which he highlighted in the OA, the respondents have failed to show the documents on which basis the petitioner has been ordered to be discharge from service. Even the order of the competent authority discharging him from service on the ground that he is not likely to become an efficient soldier has not been annexed with the reply. The petitioner is shown to be a recruit whereas he was an attested soldier and has also completed refresher course. The respondents have twisted the facts in their own way and in negation of the medical advice and opinion.

6. We have heard the learned counsel for the parties and gone through the record of the case.

7. Firstly taking up the issue of Physical Proficiency Tests, examination of Annexure A-1 placed at paper book No. 17 depicting the hospitalization record of the petitioner during training period, brings out the following:-

- (a) Discharge slip Srl.No.269/07/05 from MH Roorkee.
- (b) Date of admission of petitioner was 18.7.2005 at 1800 hrs.
- (c) Brief case summary brings out that the petitioner suffered stress fracture mid shaft tibia left onset 15.7.2005 during BPET.
- (d) Date of discharge is 8.8.2005 at 1800 hrs.
- (e) Instructions of the patient (Both administrative and Medical) –
 - i) DTU
 - ii) Recommended four weeks of sick leave or existing annual leave, if available and review at this hospital thereafter.

From the above it can be said that the stress fracture occurred during the BPET test held on 15.7.2005 and subsequently the

petitioner came up for treatment on 18.7.2005 at 1205 hours most likely after attempting second BPET test and was hospitalized till 8.8.2005. The second hospitalization slip from MH Dehradun placed as Annexure A-2 at paper book 18 confirms that the petitioner was declared fully fit in Shape-I on 1.12.2005.

8. Further the petitioner in his OA has admitted undertaking PPT Tests after returning from leave in spite of his medical problem. The record confirms that the petitioner participated and failed repeatedly in these tests held on 26th December, 2005, 4.1.2006, 7.2.2006 and 24.2.2006 as per chart below:

Sl. No.	Chance	Date	Event	Result
(a)	First	18.07.2005	Physical Proficiency Test	Fail
(b)	Second	26.12.2005	-do-	-do-
(c)	Third	04.01.2006	-do-	-do-
(d)	Fourth	07.02.2006	-do-	-do-
(e)	Fifth	24.02.2006	-do-	-do-

9. We find that the complaint pertaining to harassment and ill treatment at the Unit by the petitioner dated 5.5.2006 placed at Annexure R-III was acted upon and inquired into and suitably replied by the authorities vide their letter dated 27th June, 2006.

10. For taking further action on the failure of the petitioner to clear PPT Tests, a show cause notice was issued to the petitioner on 8.5.2006 (Annexure 1) page 75 of paper book and this was replied by the petitioner at page 76 of the paper-book.

11. Based on the reply to the show cause notice by the petitioner, further action as depicted at the noting sheet (at page 200 of the paper book) were initiated as under:-

“PERFORMANCE OF RECTS IN ATTESTATION/RC TESTS

1. Ref Army Rule 13(3)III(v) and 13(3)(iv)
2. The following indls of this Bn have repeatedly failed in BPET/PPT Tests in attestation/RC ph:-

S/No. Army No. Rank and Name

Chance Avaialed
BPET PPT

(a)	15349262 Rect Balwant Singh	-	05
(b)	15349475 Rect Harjinder Singh	03	03
(c)	15346124 Spr Karanveer Singh	-	05

3. The indls were given several chances but still could not pass their physical tests. A BOO convened vide GP HQ letter No. 20207/7/7/G(T) dt.03. May 06 has approved the discharge of these individuals.
4. Accordingly show cause notice in r/o the u/m indls was issued to each on 8th May, 2006. The reply to the show cause received from the indls on 15 May 06 have not been found convincing.
5. It is recommended that the above indls may be discharged from service under the provn of Army Rule 13(3)III(V) and 13(3) (IV) respectively as the indls are unlikely to become efficient soldiers due to non-achievement of requisite physical stds laid down for trained soldiers.
6. Put up for your approval please.

(Sd/-Sanjeev Bali
Col
Commanding Officer
02 Jun 06.”

12. As part of discharge drill, Discharge Certificate was promulgated and this was duly received by the petitioner on 25.11.2006 as borne out at page 202 of the paper-book. The details are:

“DISCHARGE CERTIFICATE

It is certified that No. 15346124Y Spr Karanvir Singh son of Shamsher Singh of No.2 Training Battalion, Bengal Engr Group and Centre Roorkee has been discharged from service due to non achievement of requisite physical std under Army Rule 13(3)III(v) after serving in the Army wef 04 Mar 2003 to 15 Jun 2008

His home address is as under:

Name:	Karanvir Singh Son of Shamsher Singh
Vill	Chatamall
Post	Kelewal
Tehsil	Ropar
District	Ropar
State	Punjab.

Training Battalion
Bengal Engr Cop & Centre
Roorkee-247667
Dated: 15 Jun 2006

Sd/- Coy Cdr

Sig: Karanvir Singh
Original copy received by No. 153461124 Ex. Spr Karanvir Singh on 25.11.2006.”

Further the Part-II order brings out the discharge details of the petitioner as under:

RESTRICTED

Unit CODE : 56E004

LAST PART II ORDER No: 3/0266/2006 DATED 15/06/2006

PART II ORDER NO; 3/0267/2006 DATED 15/06/2006

Unit: No. 2 TRG Bn BEEG & C Roorkee Sheet No. One Sheet No. One of One

Ser.No.	Army No.Rank and Name	Description	From dt/To date	Remarks
1	2	3	4	9

DISCHARGE601 15346124y Spr
KARANVIR SINGH

DISCH

15.06.2006 Discharge under Army Rule
13(3)III(v) being unlikely
To become an efficient
Soldier due to non
achievement of requisite
physical std after served 03
years 03 months and 11
days.SOS/SORs: 16 Jun 2006
(AN)
Character: GoodVill Chatamall
Post Kelewal
Tehsil Ropar
District Ropar
State Punjab.Auth: Noting sheet bearing
No. 50394/DC/2TB dt 02 Jun 2006
Approved on 08 Jun 2006

Sd/- Capt Adjt."

13. Thus from the above analysis and evidence on record, we find that the petitioner could not clear the PPT Tests in spite of repeated attempts and was discharged following the laid down procedure. There is no force in the petition and the same is dismissed.

(Justice Vinod Kumar Ahuja)

(Air Marshal (Retd) SC Mukul)

09.10.2013

raghav

Whether the judgment for reference is to be put on internet? Yes / No.