

**ARMED FORCES TRIBUNAL**  
**REGIONAL BENCH GUWAHATI**

**O.A. 48 of 2019 with M.A. 33 of 2019**

**Ex-Rect Enamul Hoque**

**... Applicant**

**Versus**

**Union of India and Ors.**

**... Respondents**

**For Applicant** : Mr. Abdul Kalam Azad

Mr. Matiur Rahman

**For Respondents** : Mr. PJ Barman

**CORAM**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**

**HON'BLE LT GEN P.M.HARIZ, MEMBER (A)**

**M.A. 33 of 2019**

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in **Union of India and Others** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

**O.A. 48 of 2019**

3. The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is seeking reinstatement into service by setting aside/quashing the discharge order. He has made the following prayers: -

(a) To set aside and quash the Impugned Discharge Certificate dated 16.02.2019 issued by the Respondent No.3 (Annexure-3) and consequential effects and action.

(b) Directing/commanding the respondent authorities to immediately reinstate the applicant in service with all service benefits and break in service.

(c) Directing/commanding the respondent authorities to immediately release and make payment of salary and allowances of the applicant for his period of 11 months 5 days of service and other entitled service benefits.

(d) In the interim, pending disposal of the OA, discharge order be stayed with all consequential benefits.

### **Brief Facts of the Case**

4. The applicant was enrolled in Armored Corps on 11.03.2018, from ARO, Narengi as a soldier General Duty. Subsequently, the applicant reported to the Basic Training Regiment (BTR) Armoured Corps Centre and School (ACC&S) Ahmednagar on 12.03.2018, and commenced his basic military training on 10.04.2018, with Troop No. 33 of the XIV Basic Training Wing. During training, the applicant was informed of his mother's illness, following which he absented himself from the Basic Training Regiment without leave for a period of 17 days from 0515 hours on 24.05.2018, to 1328 hours on 09.06.2018. Upon his return, the applicant underwent the due legal process for his offence of being Absent Without Leave (AWOL) for 17 days, under Section 39(a) of the Army Act. The applicant pleaded guilty and was awarded seven days of rigorous imprisonment (RI) from 19.06.2018 to 25.06.2018; by the Commanding Officer (CO) under Section 80 of the Army Act. Later upon termination of the punishment, the applicant rejoined, and was relegated to a junior troop. On 30.08.2018, the applicant was admitted to the Military Hospital, Ahmednagar, with a diagnosis of "PAIN ABDOMEN." On 14.09.2018, he was transferred to the Command Hospital (Southern Command), Pune,

where he was diagnosed with "NON-ULCER DYSPEPSIA." He was discharged to his unit (BTR/ACC&S) at Ahmednagar on 06.10.2018, in SHAPE-1 condition. However, instead of reporting to the Basic Training Regiment, Ahmednagar, as directed, the applicant absented himself without leave for a second time for a period of 40 days. It is alleged that he also tampered with the Movement Order by overwriting it with the intent to mislead military authorities. Consequently, he was awarded seven days of RI and a fine of seven days by the CO, Basic Command Regiment. The applicant was then issued a Show Cause Notice (SCN) dated 31.01.2019, regarding his discharge. In response, the applicant replied vide order dated 08.02.2019. Subsequently, he was discharged on disciplinary grounds vide order dated 28.02.2019.

### **Arguments by the Counsel of the Applicants**

5. The counsel for the applicant stated that after selection, the applicant was recruited and deputed for basic training, at BTR/ACC&S, Ahmednagar. Approximately three months into the training, he was informed telephonically about his mother's illness. The counsel stated that the applicant then submitted an application for leave to his CO(Resp No. 3),

and that the fact of his mother's illness was verified by the office of the CO through a telephonic conversation with the village headman of Haldilgaon, Assam. However, despite this verification, his leave was not granted.

6. The counsel stated that due to these compelling reasons, the applicant left for his village after informing his immediate superior and without any formal grant of leave. Furthermore, upon rejoining his duty, he was subjected to a punishment of quarter guard and was allowed to rejoin after 18 days. The counsel further stated that the applicant completed his service without any complaints and to the satisfaction of the concerned authorities for a period of 11 months and 5 days until his date of discharge. However, he was not paid any salary for the aforementioned period.

7. The counsel stated that the applicant was discharged vide letter dated 16.02.2019, on disciplinary grounds, with his character at the time of discharge categorized as 'Fair.' However, no disciplinary proceedings were initiated against the applicant, and he was discharged without being given an opportunity to represent himself, which constitutes a gross violation of the prescribed procedures under Chapter III of the Army Rules, 1954, and Sections 22 and 23 of the Army Act, 1950. The counsel further stated that,

aggrieved by the discharge order, the applicant filed a representation petition dated 25.06.2019, before his CO, but has received no reply. Consequently, aggrieved by the discharge order, the applicant filed the instant OA.

### **Arguments by the Counsel of the Respondents**

8. The counsel reiterated the details of the applicant's recruitment into Armoured Corps and his joining for basic military training on 11.03.2018 at BTR/ACC&S. He then stated that the applicant had absented himself from training and was absent from the BTR without any leave or permission for a period of 17 days with effect from 24.05.2018 (0515 hrs) to 09.06.2018 (1328 hrs), when he voluntarily returned.

9. The counsel stated that the applicant had not informed any superior officer or the CO's office before absenting himself without leave. The counsel asserted that there were no records which shows that the applicant had requested any officer or authority for leave on learning of his mother's illness. Further there was no communication/indication given by the applicant regarding his mothers illness to any authority and the

contention of the applicant that the COs office was informed by the village head of Haldigaon was denied.

10. It was stated by the counsel that after reporting back on 09.06.2018 the applicant underwent due legal process for an offence under Army Act Section 39(a) of being AWOL for a period of 17 days. A tentative Charge Sheet was served to the applicant on 15.06.2018 and the applicant was given sufficient opportunity to prepare and present his defence. During the ensuing trial the applicant pleaded guilty of the offence charged and he was awarded seven days RI by the CO. Further upon termination of his sentence he was duly relegated to a junior troop so that he could continue with his basic training.

11. Elaborating on the second incident of being AWOL, the counsel stated that on 30.08.2018 the applicant was admitted in Military Hospital, Ahmednagar with diagnosis "PAIN ABDOMEN". Further on 14.09.2018, the applicant was transferred to Command Hospital (Southern Command), Pune where he was diagnosed with 'NON ULCER DYSPEPSIA'. He was discharged from CH(SC) to his unit on 06.08.2018 (AN) and directed to report to his unit at Ahmednagar pursuant to which he was accordingly

given the requisite Movement Order and railway warrant from Pune to Ahmednagar. However, instead of reporting to BTR/ACC&S as directed, the applicant absented himself without leave for a second time for a period of 40 days with effect from 06.10.2018 to 16.05.2018.

12. The counsel further stated that the applicant tampered with the movement order dated 06.10.2018 issued by CH(SC) wherein he had overwritten and added appending remarks. The counsel further added that the applicant had later confessed to tampering the movement order in a signed statement. The counsel then stated that after this incident the applicant was issued an SCN vide letter dated 31.01.2019 and was given sufficient time of one month to reply. After duly considering the reply dated 08.02.2019, the applicant was discharged from service on disciplinary grounds. Referring to the submission that the applicant had submitted an application dated 25.06.2019 the counsel stated that upon scrutiny of available records office, it was observed that the applicant's petition was not received by Armored Corps Records. The counsel concluded that the offences committed were not becoming of a disciplined soldier and that such a recruit was unlikely to make a good disciplined soldier. Accordingly the applicant has been discharged on disciplinary grounds.



### **Consideration of the Case**

13. Having heard both the parties at length, the only issue that requires consideration is whether the competent authority was justified in discharging the applicant from service on disciplinary grounds. The respondents have produced the files pertaining to the discharge for our examination.

14. As per the policy dated 28.02.1986, it is postulated that in case a recruit absents himself without leave for a period of 30 consecutive days during basic military training period, he will not be allowed to rejoin his training again. The policy further lays down that such recruits will be discharged after necessary disciplinary action. The absentees for less than 30 consecutive days may be considered for relegation if, otherwise, found suitable for retention. The policy further states that once the technical training of a recruit has commenced, the discretion to discharge the recruit for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case on its merit. The relevant policy dated 28.02.1986 is reproduced below.

*Tele:3010625  
Mahanideshalaya(MT)*

*Sainik Prashikshan  
General Staff Shakha*

Sena Mukhyalaya  
Directorate General of Military Training  
General Staff Branch  
Army Headquarters  
DHQ 20 New Delhi-110011

A/20314/MT3

28 Feb 86

The Commandants  
(All Training Centre and School Ahmednagar)

**POLICY RELEGATION OF RECRUITS**

1. Reference the following-

- (a) Army HQ Letter No 46509/Gen/MT 5 dated 21 Jan 71
- (b) Army HQ Letter No 46509/gen/MT 3 dated 07 Dec 71.
- (c) Army HQ letter No 46509/gen/MT 3 dated 07 Sep 72.
- (d) Army HQ letter No 07324/8-(D) dated 24 Sep 73.
- (e) Army HQ Letter No 16909/gen/MT-3 dated 05 Apr 82.

2. Policy letters on relegation of results were issued by this Headquarters from time to time. Some doubts have arisen on the existing instructions since these were issued separately over a considerable period of time. Therefore, unsolicited instructions on the relegation of recruits for various reasons are outlined in the succeeding paras.

**Relegation For Failure in Recruit's Test**

3. Recruits in all groups of the the Army who are unable to pass the recruit's test within the specified training period but are fit in all other respect for retention in the Army will be relegated at the discretion of the Commandant of the Training Centre, as under:-

- (a) For a maximum period of six weeks during basic military training
- (d) For maximum period of three months during technical training,
- (c) Should the concerned recruit fail to qualify at the end of this period, he will be discharged from service.

**Relegation For Absence Without leave:**

4. A recruit who has been absent without leave for a period of 30 consecutive days during basic military training period, will not be allowed to rejoin his training again. Such recruits will be discharged after necessary disciplinary action. The absentees for less than 30 consecutive days may be considered for relegation if otherwise found suitable for retention. However, once the

*technical training of a recruit has commenced, the discretion to discharge a recruit for such absence will be left to the commandant of the center, who may retain or discharge him considering the case on its merits."*

*Relegation on Medical Ground:*

5. *The maximum period for which a recruit can be relegated on medical grounds will be six months. A recruit falling ill due to disease or injury during training whether attributable to or aggravated by service, on discharge from hospo may be placed in a temporary medical category for not more than three months provided there is a reasonable prospect in the opinion of medical specialist that the individual is likely to be fit for training and the total absence from training including hospitalization period is not likely to be more than six months. If on the other hand he is unlikely to be fit for training within six months of first absence from duty due to illness, the individual will not be discharged from hospital in temporary medical category but will be invalided out of service.*

6. *However, if a recruit is being discharged for being absent from training for more than 180 days purely on medical grounds the period of absence may be extended to 210 days provided the recruit forgoes his annual leave of 30 days which he is entitled during recruit training. This period of annual leave will be utilized for carrying out important aspects of training misused (missed) during his absence on medical grounds,*

7. *These instructions will be incorporated in the GS publication on Basic Military Training for Recruits which is under revision at this Headquarters.*

*(Rajendra Kumar)*

*Lt Col*

*GSO-1, MT 3*

*For Deputy Chief of the Army Staff*

15. The policy letter dated 28.02.1986 postulates that 30 days consecutive absence from training would result in disciplinary action and by removal from service. In the instant case, the applicant absented himself on two occasions during basic training. On the first occasion the applicant was absent for 17 days from 24.05.2018 to 09.06.2018 . Since the period of absence was less than 30 days, under provision of Para 4 of the policy

letter disciplinary action was taken and he was relegated to the next group and permitted to continue with his training . However, on the second instance since he absented himself for 40 days, his training was terminated and the individual was discharged after following the laid down procedure as per the policy.

16. Discipline is the backbone in the Army and has a direct impact on the efficiency of a soldier as well as the efficiency of a unit. To cap it all, the applicant being a mere recruit, was still not an attested soldier. In our view, looking at the significance of discipline in the Army, any soft approach in such cases would have an adverse impact on other soldiers of the Army under training. Such acts are not becoming of disciplined soldiers and such recruits are unlikely to make a good soldier.

### **Conclusion**

17. Thus in light of this consideration, we are of the opinion that the authorities are justified in discharging the applicant as he had absented himself from training beyond the permissible period of absence. The process of discharge has been done as per the laid down policy and procedure and there is no mala fide in the action.

18. The OA is, therefore, dismissed, being bereft of any merit.

19. No order as to costs.

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

Pronounced in open Court on this 25th day of September, 2024.

**(JUSTICE RAJENDRA MENON)  
CHAIRPERSON**

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

Ashok