

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.130 of 2014

Monday, the 17<sup>th</sup> day of August 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH  
(MEMBER – ADMINISTRATIVE)

R. Azhagu Raja  
aged 24 years  
S/o R.Rama Raju  
Muthalakkam Patti (Village)  
Varatharaj Nagar (Post)  
Periyakulam Taluk  
Theni District.

.. Applicant

By Legal Practitioners:  
Mr. S. Mujibur Rahman  
& K.Sivakumar.

vs.

1. The Additional Director General  
Personnel Service  
Adjutant General's Branch  
Integrated Head Quarters of  
Ministry of Defence (Army)  
Delhi Head Quarters Post Office  
New Delhi-110 011.

2. The Commanding Officer  
Training Regiment  
Artillery Centre  
Hyderabad-31  
C/o 56 APO, Pin-900 398.

3. The Colonel  
CO.1 Training Regiment  
Artillery Centre  
Hyderabad-31.

4. Union of India  
rep.by its Secretary to Government  
Ministry of Defence  
Department of Pension A & AC  
New Delhi-110 011.

5. The Chief of Army Staff  
Army Head Quarters  
Sena Bhavan  
New Delhi-110 011.

.. Respondents

By Mr.V.Kadhirvelu, CGSC

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiyah, Member (Judicial))

1. The applicant has filed this application to set aside the impugned order dated 12.02.2010 passed by the 3<sup>rd</sup> respondent, viz., Colonel, CO.1 Training Regiment, Artillery Centre, Hyderabad-31 vide order No.Ref.Para-605 (b) ARI-1990 and to direct the respondents to take the applicant into the strength of Army as Sol/GD with effect from 12.02.2010 and to pay all the monetary benefits and also to pass an order of stay of the impugned order pending disposal of the application.
2. The factual matrix of the applicant's case would be as follows:

The applicant joined the Army on 23.06.2009. He got through Common Entrance Examination including the Physical Measurement Test, Physical Fitness Test and Medical Examination. He served in the Army from 10.07.2009 to 12.04.2010. However, the 3<sup>rd</sup> respondent suddenly passed the impugned order, discharging the applicant under Rule 13(3) of the Army Rule without any valid reason. The applicant therefore filed O.A.No.44 of 2011 before this Tribunal and it was dismissed for default. When a restoration application in M.A.No.101 of 2011 was filed, this Tribunal by order dated 05.01.2012 directed the applicant to prefer appeal before the 1<sup>st</sup> respondent. Accordingly, an appeal was filed on 07.02.2012. The applicant submits that till date, the 1<sup>st</sup> respondent has not passed any order as per the direction of this Tribunal. The applicant served in the Army for 6 months and 25 days without any complaint. The applicant submits that prior to filing the earlier application, he sent many representations, but all of them were rejected by the respondents. Therefore, the applicant prays that this application may be allowed.

3. The respondents filed reply-statement which would be as follows:

The applicant Azhagu Raja R (No.15181969M) Ex Rect (GD) was enrolled under Unit Headquarters (UHQ) quota at Artillery Centre, Hyderabad on 10.07.2009. His Basic Military Training (BMT)

commenced from 21.09.2009 and during sixth week, he failed in Proficiency Aptitude Test (PAT) on 26.10.2009 which is a mandatory test for continuing further training. Recruits of "General Duty" category are permitted only once to appear in PAT as per the provisions of IH of MOD (Army) vide letter dated 17.06.2002. Consequent to his failure, the feasibility of adjusting him in Soldier Tradesman category was explored, but due to non-existence of vacancy in the said category, the applicant could not be re-mustered. Accordingly, the applicant was discharged from service with effect from 12.02.2010, under item IV of Table annexed to Rule 13(3) of the Army Rules 1954. The respondents submit that the applicant was only undergoing Military Training from 10.07.2009 to 12.02.2010 and not from 10.07.2009 to 12.04.2010 as stated by him. After his unsuccessful attempt for the second time in the PAT, he was served with a "Show Cause Notice" on 14.11.2009. The discharge was ordered as per the existing instructions. The respondents submit that all the civil education certificates of the applicant were sent to Artillery Records for obtaining necessary verification from civil authorities by 7 RR & D Battery. After being discharged from service, all Field Service documents including the documents that were sent to Arty Records for their retention and closing of documents for financial benefits to the applicant for which he is entitled. The respondents

submit that as "Aptitude Test" is a separate issue and it is conducted deliberately to select the right person for the right trade/job during sixth week of BMT of the recruit and it takes four to five weeks for a recruit to become familiar with the new environment which is totally different from his civil background. Therefore, the respondents submit that both "Common Entrance Examination" before enrolment and "Aptitude Test" after enrolment are mandatory for a recruit as per the extant policies on the subject. The applicant's claim that he had unblemished records has no value when the applicant failed in the "Aptitude Test". The respondents submit that the reference quoted in the complaint, i.e., ARI 1990 Para 605 (b) is incorrect in view of the fact that Artillery Records Instructions (ARI) 1990 have already been superseded by new edition ARI 2000 and ARI 2011 which is now in force. The respondents also submit that ARI is the "Artillery Records Instructions" for reference purpose only which cannot be quoted as "authority" and the organization cannot overrule the existing policies and instructions in vogue.

4. The respondents also filed additional reply-statement which would be as follows:

The applicant was enrolled in Soldier GD Category. Had he qualified in the Aptitude Test, he would have been allotted the appropriate trade based on his performance, but he miserably

failed in the Aptitude Test. However, it was checked up for the possibility of adjusting him in Soldier Tradesman, but it was found that there was no vacancy for the said category. Therefore, it was recommended for change of trade by the Commanding Officer and Training Regiment minute sheet dated 30.11.2009. Under the provisions of IHQ of MOD (Army) vide letter dated 17.06.2002, recruits of soldier GD category are permitted only one time to appear in PAT. The respondents submit that sending the applicant to other regiment is also not justified since a recruit can only be sent to other regiment for undergoing Advance Military Training (AMT) after allotment of appropriate trade based on the Aptitude Test. The respondents therefore pray that this application may be dismissed.

5. On the above pleadings, we find the following points emerged for consideration:

- (1) Whether the impugned order dated 12.02.2010 passed by the 3<sup>rd</sup> respondent is liable to be set aside?*
- (2) Whether the respondents are liable to take the applicant in the strength with effect from 12.02.2010 and to pay all the monetary benefits payable from that date?*
- (3) To what relief the applicant is entitled for?*

6. We heard the arguments of Mr.S.Mujibur Rahman, learned counsel for the applicant and Mr. V.Kadhirvelu, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents. We also perused the written arguments submitted on either side.

7. The learned counsel for the applicant would submit in his argument that the applicant joined the Army on 23.06.2009 as per the result of Recruitment Rally held in May 2009 and he had also passed the Common Entrance Examination including the Physical Measurement Test, Physical Fitness Test and Medical Examination. He was directed to appear before the Intake Board with all the necessary documents and accordingly, he had produced all those documents and served in the Army from 10.07.2009 to 12.04.2010, but all of a sudden, the applicant was discharged under Item IV of Table annexed to Rule 13(3) of the Army Rule 1954 after issuing Show Cause Notice dated 14.11.2009. He would further submit that the applicant answered the Show Cause Notice by submitting his option for Soldier (Tradesman) category but without considering the same, the applicant was discharged. He would further submit that the applicant was discharged on the sole ground that he was "unlikely to become an efficient soldier". He would also submit that the respondents had also recommended for change of trade in the month of December 2009 and since there was no vacancy in Tamil Nadu Quota, he was discharged

from service. If it is so, there was no necessity to issue Show Cause Notice to the applicant. Therefore, he would submit that the order passed by the second respondent in discharging the applicant may be quashed.

8. The learned CGSC would submit in his argument that the applicant did not qualify the Aptitude Test and was given another chance and yet he did not qualify the same. In the said circumstances, he was left with the option of selecting another lower trade as per the existing policy and accordingly he applied to change of his trade, viz., (a) Steward (b) Chef (Com) (c) Barber (d) Washerman and (e) Masalchi. But there was no vacancy available for those trades in Tamil Nadu and therefore, the applicant could not be permitted to change his trade by the order dated 20.11.2011. As per the rules, the request of the applicant could not be entertained and therefore, the claim of the applicant is not sustainable.

9. We have given our anxious thoughts to the arguments advanced on both sides and we have also considered the written arguments submitted on either side. We also perused the documents produced on either side in this case.

10. **Point Nos.1 and 2:** The indisputable facts are that the applicant was enrolled under Unit Headquarters quota at Artillery, Hyderabad on 10.07.2009 and reported to training on 18.09.2009 and

he successfully completed five trainings, but during the sixth training, viz., Proficiency Aptitude Test (PAT) on 26.10.2009 which is a mandatory test to pass in order to continue further training and the applicant failed in the said test for being mustered in General Duty Trade. The Proficiency Aptitude Test is permissible on only one time as per letter of Ministry of Defence dated 17.06.2002. Similarly, the fact that the respondents explored the possibility of adjusting him in Tradesman category as per the instructions, could not be provided to the applicant due to the non-existence of the vacancy of tradesman in Tamil Nadu State is also not disputed. It is also an admitted fact that the applicant had sought for change of tradesman category, viz., (a) Steward (b) Chef (Com) (c) Barber (d) Washerman and (e) Masalchi, but in those trades also there was no vacancy available with regard to Tamil Nadu State. The applicant addressed the respondents through his letter dated 22.04.2010 seeking for the benefits due to discharge and for return of documents, viz., School Leaving Certificate, Community Certificate and OBC certificate which were submitted to the respondents at the time of enrolment would show that the applicant had no intention to pursue further against the discharge proceedings taken by the respondents. He has renewed the claim for those certificates and AFPP amount once again through his letter dated 20.09.2010. However, he filed an application before this Tribunal in

M.A.No.101 of 2011 in O.A.No.44 of 2011 for similar reliefs and this Tribunal on 05.01.2012 dismissed the applications with a direction to exhaust the statutory remedies available before approaching the Tribunal within one month from the date of the said date. However, the applicant had belatedly preferred an appeal on 07.02.2012 to the Additional Director General (PS). The applicant ought to have preferred the appeal before a competent authority, viz., Chief of Army Staff. Still the claim of the applicant for re-instatement in the trade of soldier cannot be ordered because he failed in the Proficiency Aptitude Test which is a must for a soldier in Artillery GD and there is no compromise in that aspect as per the rules in vogue. Moreover, an effort was made to re-muster the applicant in other trades, however, this could not be done as there were no vacancies; the applicant cannot put blame against the respondents for the inefficiency of the applicant. In view of the foregoing, the discharge order passed by the respondents against the applicant is found to be correct and in accordance with the rules. Therefore, the relief sought for by the applicant cannot be ordered. Accordingly, these points are decided against the applicant.

11. **Point No.3**: In view of the findings in the foregoing points, the relief sought for by the applicant for setting aside the impugned order and re-instatement of the applicant cannot be ordered and therefore,

this application is liable to be dismissed. Accordingly, this point is decided against the applicant.

12. In fine, the application is dismissed. No costs.

Sd/  
LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

Sd/  
JUSTICE V.PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**17.08.2015**  
**(True copy)**

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No

Internet : Yes/No

vs

To:

1. The Additional Director General  
Personnel Service  
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Integrated Head Quarters of  
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Department of Pension A & AC  
New Delhi-110 011.

5. The Chief of Army Staff  
Army Head Quarters  
Sena Bhavan  
New Delhi-110 011.1. The Secretary

6. M/s. S. Mujibur Rahman  
& K.Sivakumar  
Counsel for applicant.

7. Mr. V.Kadhirvelu, CGSC  
Counsel for respondents.

8. OIC, Legal Cell,  
ATNK & K Area, Chennai.

9. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN K. SURENDRA NATH  
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