

Form No.4
[(SEE RULE 11(1))]
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION NO. O.A. No. 68/2014

APPLICANT (S)

EX RECT KALIKARAM

RESPONDENT (S)

UNION OF INDIA & ORS.

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Mahesh Prasad

Mr. D. K. Mukherjee

<u>ORDERS OF THE TRIBUNAL</u>	
<u>Order Serial Number :</u> 15	<u>Dated : 10-11-2016</u>
<p>Present : None for the applicant. Mr. D. K. Mukherjee, learned Advocate for the respondents. Maj Narendra Singh for OIC Legal Cell.</p> <p>Order was reserved on 14.09.2016 by Division Bench consisting of Justice S.S.Satheesachandran, Member (Judicial) and Lt Gen Gautam Moorthy, Member (Administrative). It is put up for pronouncement.</p> <p>Order is pronounced today in open court under Rule 98 of the Armed Forces Tribunal (Practice) Rules, 2009 for and on behalf of the Division Bench.</p> <p>Signed Order passed by the Division Bench in separate sheets be kept on record.</p> <p>Plain copy of this order be handed over to both the parties upon observing usual practice.</p> <p style="text-align: right;">(Lt Gen Gautam Moorthy) Member(Administrative)</p>	

A.F.R.

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

O.A.NO.68/2014

THIS 14TH DAY OF SEPTEMBER, 2016

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HON'BLE JUSTICE S.S.SATHEESACHANDRAN, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) : Shri Kalikaram, aged about 24 years,
Son of shri Ramugrah, Resident & Village-Dahia,
P.O. Durgawati Mohania, Dist Kaimur,
Bihar – 821105

-versus-

RESPONDENT(S)

1. The Union of India through the Secretary
Min of Defence, Government of India,
Army Headquarters, New Delhi – 110 011.
2. The Chief of Army Staff, Secretariat Army
Headquarters, New Delhi – 110 011.
3. The Adjutant General's Branch
Army Headquarters "L" Block, New Delhi-110 011
4. Addl Director General (Discipline & Vigilance)
Ministry of Defence (Army) South Block,
New Delhi – 110 011.
5. Record Officer, Mahar Regiment, PIN No.900127
C/o 56, Army Post Office.

For the petitioner(s) : Mr. Mahesh Prasad, Advocate

For the respondent(s) : Mr.D.K.Mukherjee, Advocate

ORDER

Per Justice S.S.Satheesachandran

The applicant viz Shri Kalikaram, an Ex recruit filed the above application under Section 14 of the Armed Forces Tribunal Act, 2007, for short 'the Act' for issue of direction to the respondents to reinstate him in service recalling the orders discharging him from military service. The applicant has also sought for a direction to the respondents to constitute a medical board or appellate board to assess his disability, if any, and to allow him disability pension and other benefits as per Army Rules.

2. The case of the applicant in brief can be summed up thus:
3. Applicant was recruited on 20-9-2012 after being found medically fit. During the course of physical training the applicant sustained injuries in his lower limb in January, 2013 and he was sent for treatment to Military Hospital, Bhopal. He was then sanctioned sick leave from 22-1-2013 to 18-2-2013 for 28 days. Applicant rejoined service on 19-2-2013 after availing sick leave, and again, after medical examination, he was placed in low medical category for some more period. Later he was declared fit, but he was not so. Applicant was

imprisoned with hard labour for 6 days on 20-8-2013 for his absence and overstayal of leave, which, according to him, was caused due to unbearable pain to his fractured leg. Applicant was later invalidated out of service under Army Rule 13(3)(iv). He was invalidated out without stating so in the order of discharge which, according to him, was illegal. The military authorities have not provided him any relief for injuries suffered during his military service and no medical board was constituted to assess his disability. Questioning his discharge ordered without constituting an invaliding medical board he has filed the above OA seeking the aforementioned reliefs.

4. The respondents have filed a reply affidavit opposing the claims of the applicant contending that during the training period the applicant had absented himself for more than thirty consecutive days and as per Army Rules applicable, after initiating the necessary disciplinary proceedings against him, he was discharged under Army Rule 13(3)(iv) holding that he was unlikely to become an efficient soldier. His discharge from service was not on account of any medical ground but solely for the reason that he had absented himself for a period of more than 30 days and, therefore, not eligible to continue in the military training and be inducted in military service after completion of training period.

5. we have heard Mr. Mahesh Prasad, the learned counsel for the applicant, and Shri D.K.Mukherjee, the learned counsel for the respondents.

6. Perusing the pleadings and materials produced by both sides and hearing the submissions of learned counsel for applicant and also the respondents, we find that over some of the basic facts involved in the case there is no dispute at all. Applicant after being recruited in the Army Service, it is seen, was relegated twice during the basic Military Training. The first relegation was on medical grounds after he suffered injuries to his lower limb during the training. The second relegation was on account of his failure to reach the required standard fixed. During the basic military training period the applicant had absented himself without leave for thirty six consecutive days and, therefore, disciplinary action was initiated against him and he was awarded 6 days rigorous imprisonment. Thus, for the period of absence of 36 days and also for the period of imprisonment, he lost 42 days in the military training. According to the Training Rules applicable issued by the Directorate General of infantry, Ministry of Defence (Army HQ letter No.A 20314/MT-3 dated 28-2-1986) in the event of absence for a period of thirty

consecutive days in Basic Military Training one will not be allowed to rejoin his training again and will be discharged from service after necessary disciplinary action initiated against him. In the case of applicant, we find that in view of the period of absence and also punishment imposed resulting in missing of training period of more than 30 days, the respondents had discharged him under Army Rule 13(3)(iv) holding that he was unlikely to become an efficient soldier. We do not find any impropriety, leave alone, any illegality in the action taken by the respondents in discharging the applicant holding that he is unlikely to become an efficient soldier. On account of his own wilful acts and deliberate laches he had missed more than a period of 30 days during training. It has also come out that he was relegated twice during the training period. He was relegated in the first instance on sustaining injuries which could be considered as a justifiable excuse, but with respect to the latter relegation, which was on account of his failure to reach the standard fixed, no excuse was available to him. Needless to point out when training is imparted not to one individual but to a group of recruits under a selection, recalcitrant acts or omission by one among them would derail the training programme and, further, it may affect the morale and discipline of the entire lot rendering them unsuitable to military service. The applicant had suffered punishment of hard labour

for 6 days as a penalty for his absence without leave for over a period of 30 days. He had absented for more than 30 days without leave that too during the training period. Whatever be the excuse canvassed by him, it clearly demonstrates that he was not prepared to abide by the discipline expected of from a recruit selected to become an efficient soldier. We find that discharge of the applicant, a recruit, during the training, holding that he was unlikely to become an efficient soldier is fully justified.

7. We do not find any merit in the case of applicant that he should have been invalidated out holding an invaliding Medical Board for assessing his disability. Though he suffered injuries to his lower limb during training later he was found fit and inducted for completing the training course. His discharge essentially was on account of his absence for more than 30 days and punishment of imprisonment for a period of six days for such misconduct. Army Instruction prescribes that any recruit absenting himself consecutively for more than 30 days during the training period will not be allowed to rejoin training, and, inevitably applicant was liable to be discharged from service. Respondents have ordered for his discharge in accordance with the Army Rules and Instructions applicable and there is no merit in the case of the applicant challenging that order of discharge.

8. In the result the O.A. is dismissed. No order as to costs.
9. The relevant case records may be returned observing all the usual formalities.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE S.S.SATHEESACHANDRAN)
Member (Judicial)

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