

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

THIS 22nd DAY OF JULY, 2013

CORAM : **Hon’ble Mr. Justice Raghunath Ray, Member (Judicial)**
 Hon’ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

1. O.A. 13 of 2011

Rect. Jai Prakash Choudhary, No. 18003395 M
S/o Diwakar choudhary, R/o Vill Santinagar,
PO Bhutta Bazar, PS Maranga, Dist. Purnea, Bihar
Last Unit No. 1, Training Battalion Bengal Engineer
Group and Centre, Platoon : G-10/2009, Roorkee 247667

2. O.A. 14 of 2011

Rect. Pankaj Kumar Singh, No. 18003378 M,
S/o Sri Prakash Chand Singh, R/o Vill : Mashrak
Gopal Bari, PO Mashrak, PS : Civil Lines,
Dist. Chapra, Bihar, Last Unit No. 1,
Training Battalion Bengal Engineer Group
and Centre, Platoon – G-10/2009, Roorkee-247667

..... Applicants

- Versus -

1. Union of India
Service through the Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters,
South Block, New Delhi-110 011
3. General Officer Commanding-in-Chief,
Central Command, Lucknow Cantt. PIN 226002
4. Commanding Officer,
Bengal Engineers Group and Centre,
Quarter, attached to Military Head Quarters,
Lucknow, Roorkee, PIN 247 667

5. Battalion commandant No. 1
Training Battalion, Bengal Engineers Group
and Centre, Roorkee PIN 247667

6. Company Commander,
Ghuznee Company No. 1, Training Battalion,
Bengal Engineers Group and Centre,
Roorkee, PIN 247 667

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.....Respondents

For the applicant : Mr. Subhash Chandra Basu, Advocate

For the respondents : Mr. S.K.Bhattacharyya, Advocate

O R D E R

Per Hon'ble Lt. Gen. K. P. D. Samanta, Member (A) :

Both these original applications are taken up together for disposal since common facts and points of law are involved. For the sake of convenience, we will refer to the pleadings and annexurs of O.A. No.13/2011 (Joyprakash Chowdhury).

2. Applicant, Joyprakash Chowdhury, was enrolled in the Army as recruit clerk through the Army Recruiting Office, Katihar on 13.03.2009. He reported for Basic Military Training (BMT) in the Bengal Engineers Group and Centre on 23.03.2009. The duration of the BMT was for a total period of 19 weeks. On the 10th week of first phase of BMT, a test to determine proficiency and aptitude to become a clerk is conducted for all recruit clerks. Accordingly, the applicant was subjected to such aptitude and proficiency test; but it appears that he failed in the said test. According to the applicant, the said test was conducted contrary to rules inasmuch as more subjective type questions were set than objective type questions, whereas as per policy decision, 80% should be objective type questions and 20% should be subjective type. The applicant having failed in the said aptitude test was issued with a show-cause notice dated 24.09.2009 (Annex. A/1 of OA) asking him to show cause

why he should not be discharged from service for his failure in the mandatory aptitude test. The grievance of the applicant is that he was given very short time i.e. five days to reply to the said show-cause notice. During the course of hearing Ld. Advocate for the applicant submitted that the applicant submitted a reply to the said show-cause notice and thereafter by the impugned discharge order issued by BG/No-1 Trg. Bn letter No. 40184-31/XY/GC/CT dt. 01.10.2009 the applicant was discharged from service with effect from that date. The applicant has challenged the said discharge order as illegal, arbitrary and against the rules and has prayed for quashing of the said show-cause notice dated 24.09.2009 as also the discharge order dated 01.10.2009 and for his reinstatement and to give more chances to clear the trade test or to absorb him in a lower trade.

3. In O.A. No.14/2011, the facts are identical except that this applicant (Pankaj Kumar Singh) was enrolled on 9.3.09 and the discharge order in his case was issued on 06.10.2009. He has also prayed for identical relief as in the other OA.

4. The respondents have contested the application by filing a reply affidavit in which they have stated that the applicant was enrolled in the Army on 13.03.2009 (9.3.09 in respect of other applicant) and his Basic Military Training was started with effect from 23.03.2009 in the BEG Centre. In the 10th week of BMT, proficiency/ aptitude test was held in which he could not qualify. Accordingly, a show-cause notice was issue and subsequently he was discharged from service with effect from 01.10.2009 under the provision of Rule 13(3)(IV) of the Army Rules, 1954. It is also stated that the applicant was also considered for change of trade but in that case also he could not meet the physical criteria. They have, therefore, prayed for rejection of the O.A.

5. We have heard ld. counsel for both parties and perused the documents placed on record.

6. Mr. Subhas Chandra Basu, ld. counsel for the applicants in both the cases, has very vehemently contended that the aptitude test was conducted unfairly without giving the candidates appropriate notice regarding change of syllabus. His contention is that as per circular dated 17.03.2003 issued by the Director General, not more than 20% should be subjective type questions and remaining 80% should be objective type but in the ibid examination the respondents have reversed the said policy and put more subjective type questions. He has urged that the respondents be directed to produce the question papers and/or result sheets to verify the allegation. His further contention is that even though it is admitted that the applicant could not come out successful in the trade of clerk, he should have been considered in other trade which was not done and the applicant was illegally discharged from service.

7. His next contention is that the discharge order should have been signed by the Commanding Officer as per Section 23 of the Army Act but the impugned discharge order has been signed by a different authority who is not competent to do so. His further contention is that no rule has been quoted in the discharge order under which the applicant was discharged.

8. Ld. counsel for the respondents in both the OAs, Mr. Sandip Kumar Bhattacharyya has, however, submitted that it is not correct that more than 20% subjective type questions were set. He has produced the question papers/result sheets as directed by us and submitted that a perusal of the same would make it amply clear that the questions were set according to rules. He has further submitted that in the show-cause notice it was clearly mentioned that the applicant had failed in mandatory aptitude test and, therefore, reason for discharge was made known to the applicant. He

has further contended that the discharge order was passed by the competent authority and the impugned order was signed by a Major on behalf of the Commanding Officer which cannot be faulted with. He has also contended that it is not mandatory to quote the rule under which a recruit is discharged because the applicant was only a recruit having only a few weeks of training and was not yet allotted to a Corp or Department on successful completion of training. His status was only a Recruit and during training period he failed to qualify in the mandatory test. Therefore, reason for discharge is well known to the applicant. He has also categorically submitted that the applicant did not submit any reply to the show-cause notice as stated by the Id. counsel for the applicants. He has pointed out that the alleged reply to the show-cause notice as annexed in page 22 of the O.A. does not bear any date nor there is any indication that it was actually submitted in the office of the concerned authority.

9. We have considered the rival contentions and have gone through the documents produced including original result sheets of both the applicants, as submitted by the Id. advocate for the respondents.

10. On perusal of the question papers, we find that total 10 questions were set, out of which 2 were subjective types whereas rest 8 were objective types. Therefore, the contention of the Id. adv. for the applicant that established mode of examination was not followed does not appear to be correct. In fact, 80% questions were objective type which was the policy set by the authorities. We also find that Jai Prakash secured only 16 marks out of 100 whereas Pankaj secured 25 marks out of same total marks and both of them have been declared as failed. The question papers and result sheets of both the applicants were shown to the Id. adv. for the applicant, who after perusal of the same, remained satisfied that there was no irregularity in the examination process nor was there any arbitrariness in awarding marks.

11. We also find that when the applicants failed in aptitude test for clerk trade during training, the respondents wanted them to be accommodated against other lower category. In other words, opportunity of change of trade was given to them for which they were tested by a selection board. But both of them could not be recommended for change of trade because of their short height. It is seen that Jai Prakash was 167 cms at the time when he was recruited but at the time of physical test conducted for change of trade after the 10 weeks of training, his height was measured as 168 cm. Similarly, so far as Pankaj is concerned, at the time of his initial recruitment, he was 163 cm and when he was physically examined after 10th week of training, he was found to 164.5 cm. The required height was 169 cm considering the area where they belonged. The physical test was conducted by the board presided over by a Lt. Col. with two other officers of the rank of Major and Captain. The board's proceedings were counter-signed by the Deputy Commandant of the BEG Group & Centre on 10.9.09. The Board did not recommend the applicants for change of trade on account of height and accordingly, they have been discharged from service. The original board proceeding was also perused by the Id. adv. for the applicants and he could not find any irregularity with the same.

12. The Id. adv. for the applicants has raised a contention that in the case of the applicants provisions of Sec. 23 of the Army Act were not followed under which an enrolled person who is discharged is to be furnished by his commanding officer with a certificate in the language which is the mother tongue of such person and also in English giving details of the cause of termination and period of service and the authority terminating his service. However, the respondents have clarified that the applicants were discharged under Army Rule 13(3)(IV) as the applicants were found not likely to become an efficient soldiers. So far as reason is concerned, it is already

stated above that the appropriate show cause notice was issued giving reason i.e. their failure to qualify in the aptitude test. It also appears that they applicants knew about their short height for which they could also not be given change of trade and in fact, in the alleged reply to the show cause as annexed to the application, it appears that the applicants mentioned about their height. Therefore, it is quite obvious that the reason for discharge was already made known to the applicants.

13. On a consideration of the facts and circumstances of the case, we do not find any merit in the application and it is liable to be dismissed. Accordingly, the original application stands dismissed on contest but without any costs.

14. This common order will govern both the OAs being OA 13 of 2011 and OA 14 of 2011.

15. Let the original records be returned back to the respondents on proper receipt.

16. Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both sides.

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER