
(2003) 09 DEL CK 0122
In the Delhi High Court
Case No : CW. 926 of 2002

Rajbir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Army Rules, 1954 — Rule 13(3), 13(3)(IV)

Citation : (2003) 6 AD 541 : (2003) 107 DLT 544 : (2003) 71 DRJ 73 : (2004) 2 SLJ 300

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : P.D.P. Deo, for the Appellant; Anupama Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

B.N.Chaturvedi, J.—The petitioner was enrolled in the Army on 7th of December, 2000. He reported at BRO, Meerut to undergo basic military training for the post of Soldier Clerk(General Duty). He completed his basic military training on 19th of May, 2001, where after he was granted 14 days recruit leave with effect from 20th of May, 2001 to 4th of June, 2001. The next recruit clerk training course was scheduled to start with effect from 27th of August, 2001. The petitioner was yet to undergo a 32 weeks technical training, which was to commence post basic military training before he could qualify for appointment as Soldier Clerk(General Duty). On 17th of August, 2001, a proficiency and aptitude test, in pursuance of an Army Headquarters letter No. 2030/ACTS/Inf-2 dated 13.7.2001 was conducted. This was aimed at adjudging the petitioner's aptitude for clerical cadre. The petitioner, however, failed in that test. Notwithstanding his failure in clearing the said Proficiency and Aptitude Test, on 27th of August, 2001, the petitioner was sent for technical training for Soldier Clerk(General Duty), which was to last for 32 weeks. A second Proficiency and Aptitude Test was held on 3rd of September, 2001. But the petitioner once again failed to clear that test.

2. A show-cause notice dated 7.10.2001 was served on the petitioner calling

upon him to show cause as to why he should not be discharged from service for "lack of academic aptitude and unlikely to become an efficient soldier". The petitioner submitted his reply to the said show-cause notice stating that having already qualified for appointment as Soldier Clerk(General Duty) at the time of his recruitment by BRO, Meerut and having successfully undergone basic military training, contemplated discharge from service was not justified. It was also added that in the event of his not being considered for appointment as Soldier Clerk(General Duty), the petitioner could be considered for appointment in some other trade instead of discharging him from service. The petitioner was, however, eventually discharged from service w.e.f. Jan 1, 2002.

3. Aggrieved by his discharge, the petitioner approached this Court by way of present writ petition for quashing the impugned order of discharge and for his reinstatement in service with all consequential benefits, apart from being allowed to complete his technical training as Soldier Clerk(General Duty).

4. The stand taken by the respondents in their counter-affidavit is that apart from successful completion of 19 weeks" basic military training, after his enrolment, the petitioner was to undergo a 32 weeks" technical training and in terms of an Army Headquarters letter No. 2030/ACTS/Inf-2 dated 13.7.2001, he was also to clear a proficiency and aptitude test. However, the petitioner failed in proficiency and aptitude test held on 17th August, 2001. He was advised to improve his performance to pass the proficiency and aptitude test to be held for the second time. He was given extra coaching to help him improve his performance. On 3rd of September, 2001, a second proficiency and aptitude test was held. The petitioner, however, again failed to clear that test. His failure in the proficiency and aptitude test for the second time resulted in issuance of a show-cause notice dated 7.10.2001, which was served on the petitioner calling upon him to show cause as to why he should not be discharged from service in terms of Rule 13(3)(IV) as he was unable to become an efficient soldier.

5. In his reply to the show-cause notice, the petitioner pleaded against his discharge and alternatively requested to be re-mustered in some other trade. His request in this respect was taken up with the Army Headquarters for Garhwal Rifles Regiment vide fax No. 3272/G dated 5.11.2001. However, the same did not materialise as in Garhwal Rifles Regiment, only Garhwali domiciles could be enrolled for soldier(General Duty) and since the petitioner is not a Garhwali domicile, his request for change of trade could not be acceded to. His case was further taken up with the controlling branch at Army Headquarters for change of trade to Soldier(General Duty) or to any other category in other regiments vide fax No. 3272/G dated 5.11.2001, but this was also turned down vide Army Headquarters Sig. No. 3434/43/Inf-2 dated 29.11.2001, for non-availability of any vacancy. In the circumstances, the petitioner and other recruit clerks, who had failed in the proficiency and aptitude test, were discharged from service with effect from 1st of January, 2002 under Army Rule 13(3).

6. We have heard parties" counsel.

7. Impugned order of discharge is being assailed by the petitioner primarily on the ground that at the time of recruitment at BRO, Meerut, he having already qualified in the aptitude/written test, to subject him to another aptitude/written test by respondents, was not just and fair. His assertion is that on successful completion of 19 weeks" basic military training, he had become an efficient soldier and, Therefore, there was no justification in issuing a show-cause notice stating that he was unlikely to become an efficient soldier. It was further pleaded that at the time of recruitment, the petitioner was never apprised of the requirement of passing any subsequent aptitude/written test before being appointed as Soldier Clerk(General Duty) on completion of 32 weeks" technical training, nor this constituted terms and conditions for being appointed as a Soldier Clerk(General Duty).

8. Contention of the respondents is that before a recruit is qualified to be appointed as a Soldier Clerk(General Duty), he has to undergo 19 weeks" basic military training followed by a 32 weeks" technical training and mere successful completion of basic military training is not sufficient for a recruit to be appointed as Soldier Clerk(General Duty). Clearance of proficiency and aptitude test on completion of basic military training is, according to the respondents, essential in terms of a policy decision contained in Army Headquarters letter No. 2030/ACTS/Inf-2 dated 13.7.2001.

9. The petitioner being an enrolled person, on his recruitment, he was obviously to undergo requisite training essential for his eventual appointment as Soldier Clerk(General Duty). On successful completion of 19 weeks" basic military training, all recruits, including the petitioner, were required to clear a proficiency and aptitude test, which appears to have constituted a part of the training programme. The proficiency and aptitude test was required to be conducted in terms of an Army Headquarters letter No. 2030/ACTS/Inf-2 dated 13.7.2001. Relevant part of this letter provides:

"A proficiency and aptitude test, based on the existing syllabus and question banks will be conducted immediately on completion of the basic military training (BMT). Recruits obtaining minimum 40 percent marks will be considered qualified and will continue with technical training. Failures will be governed as under.

(a) Recruit clerks failing in the first PAT will be advised to improve their competencies during the leave granted at the end of BMT. Extra coaching may also be organized for them during the leave period. It will be impressed upon them that failure in the second PAT will render them ineligible for technical training.

(b) Second PAT will be conducted on return from leave and successful candidates will be permitted to continue the technical training. Failure will be remoistened/disposed off as per existing instructions on the subject."

10. Evidently, the requirement of clearing proficiency and aptitude test, as

provided in the aforesaid letter, was applicable to all recruits, who had successfully completed the basic military training. Being an enrolled person, the petitioner was subject to the provisions of the Army Act and Rules and Regulations made there under, as well as the relevant Army instructions in vogue governing the training programme. In the circumstances, it is not open to the petitioner to cover up his failure to clear the proficiency and aptitude test by pleading that having already qualified in the aptitude/written test at the time of his recruitment, he became an efficient soldier on successful completion of basic military training. This is not the case of the petitioner that he was unaware of the fact that following his recruitment, he was to successfully complete 19 weeks of basic military training followed by a technical training of 32 weeks. Holding of proficiency and aptitude test was simply a part of such training for adjudging the suitability of the recruit for a particular category/group. It is for the respondents to decide what training was required to be undertaken before his appointment as a Soldier Clerk(General Duty). Therefore, to say that on his completion of 19 weeks basic military training, he became an efficient soldier is simply in the nature of a self-serving statement without any valid basis. It was for the concerned military authority to decide if the petitioner had successfully undergone the entire training course, which included clearance of proficiency and aptitude test as well. As the petitioner failed to clear that test twice, he was found lacking in academic aptitude and was accordingly found to be unlikely to become an efficient soldier. Simply on the strength of his recruitment, the petitioner cannot claim to be vested with any enforceable right for his appointment as a Soldier Clerk(General Duty), notwithstanding his failure to clear the proficiency and aptitude test, which constituted an essential part of the training programme.

11. The petitioner was served with a show-cause notice dated 7.10.2001 calling upon him to show cause as to why he could not be discharged from service on grounds of lack of academic aptitude and unlikely to become an efficient soldier under item IV to the Table annexed to Army Rule 13.(3). The petitioner submitted his reply to the show-cause notice which was duly considered by the competent authority. Even the request of the petitioner for being remustered in some other trade was actively taken up and considered but somehow the same could not be granted for the reasons set out in para 5 hereinabove. Finding that the petitioner was not suitable for being appointed as Soldier Clerk(General Duty) and also could not be re-mustered in any other trade, by an order dated 31.12.2001, he was discharged from service w.e.f.1.1.2002 under Army Rule 13(3)(IV) for 'lack of academic aptitude and unlikely to become an efficient soldier'. In the facts and circumstances of the case, we find no scope to interfere with the impugned discharge order.

12. In the result, finding no merit, the petition is dismissed.

13. No costs.