

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI**

**OA-20/2023**

Shri Rajib Robidas  
(No. A0100908L)  
Rank - Agniveer  
S/o- Horen Robidas  
R/O & P.O. Rangamati  
Dist- Golaghat, Assam  
Pin-785614

..... Applicant  
By legal practitioners for Applicant  
**BK Das**  
**HP Guwala**

**-Versus-**

1. Union of India,  
Represented its Defence Secretary to the  
Govt. of India, Ministry of Defence,  
Raksha Mantralay,  
101-A, South Block,  
New Delhi-110011.

2. The Chief of the Army Staff  
COAS'S Secretariat  
Army Head Quarters,  
South Block, DHQ PO  
New Delhi - 110011

3. Commanding Officer  
Basic Training Regiment  
56 APO, Pin - 900476

..... **Respondents**

By legal practitioner for Respondents  
**PJ Barman, CGSC**

**CORAM :**

**HON'BLE MR. JUSTICE SHAILENDRA SHUKLA, MEMBER (J)**  
**HON'BLE LT GEN P GOPALAKRISHNA MENON, MEMBER (A)**

**ORDER (ORAL)**

**03.10.2024**

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**(Shailendra Shukla, J)**

1. The applicant has filed the present OA under section 14 & 15 of the Armed Forces Tribunal Act, 2007 seeking to set aside the impugned discharge order dtd 12.04.2023, and for allowing the applicant to continue as Agniveer of Indian Army.
2. The factual matrix of the case, in short, is that the applicant joined as Agniveer (General Duty) AIAC in the Armored Corps, Ahmed Nagar on 27.12.2022 after the screening rally conducted on 09.09.2022 at Dergaon, Assam. Pursuant to that, the applicant joined and training had started with effect from 02.01.2023. While undergoing the training in the Basic Training Regiment (RTR), Ahmed Nagar, C/O 56 APO, the applicant received serious injuries in his knee on 27.01.2023. The applicant was treated at the Military Hospital, Kirkee. However, he could not recover from the injury and pain and as such, on 08.02.2023 he was again admitted at Military

Hospital, Kirkee for treatment. There he underwent treatment from 08.02.2023 to 12.02.2023. The attending Doctor discharged him to go home for taking rest for a period of 4 weeks. On the basis of which the applicant returned home for taking rest and exercise of knee. He reported on duty on 21.03.2023 and the Commanding Officer allowed him to resume his training. Thereafter the impugned order dtd 12.04.2023 was issued whereby the applicant was discharged from service for missing the training for more than 30 days under the provisions of Rules 13(3), item 4 of the Army Rules 1954. The applicant submits that his absence from training for the period of 39 days was not willful and was purely on account of medical ground. There was no intentional lapse on his part, though he was discharged from service without giving any opportunity of being heard and without issuing any show cause notice, and that if the relief is declined the applicant shall suffer severe prejudice.

3. In the counter affidavit filed by the respondent, it is submitted that the applicant was discharged in accordance with the policy HQ ARTRA letter No. 10010/CAT-B/Trg B dtd 17.11.2022 Annexure 'H' and letter dtd 21.12.2022 issued from office of Addl Dte Gen Pers Services integrated headquarters of MoD letters No.



B/33513/NMR/AG/PS-2(c) Annexure 'F' to the counter affidavit. As per this letter, absence from duty even on medical ground qualifies a Agniveer for discharge from service. It is stated that there is no provision for show cause notice as cause of absence was well established based on medical document and the physical absence from training, the original application thus is sought to be rejected.

4. The moot question for consideration is whether the applicant should not have been discharged as the absence was not willful but was on account of medical reason.

5. The learned Counsel for the applicant has relied upon the Hon'ble Supreme Court's judgment pronounced in (2012) 3 SCC 178 (**Krushnakant B. Parmar**) in which it has been held that wilful absence from duty qualifies Armed Forces Personnel for discharge from duty. The relevant paragraph of the judgment is as under  
*"18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct".*

6. On the contrary the learned Counsel has drawn this Tribunal's attention to the policy letter dtd 17.11.2022 (Annexure 'H') in which it has been laid down that an individual missing for more than 30 days of cumulated training for any reason will be liable to be released and for calculation of 21 consecutive/30 cumulative days of missing training, the following absence period will be included:-

- "(i) Admission in hospital, including Attend "C"/ Bed Rest.*
- (ii) Sick Leave.*
- (iii) Absent without leave (AWL)/ Overstaying Leave (OSL), if special leave taken.*
- (iv) Excused physical activity (i.e Excused PPG) and organized training activities (each day accounting for 25% absence – i.e total of 84 consecutive / 120 cumulative days).*

**Note:** *Sundays and holidays observed by the Training Centers, absence due to organized activities or any other reason beyond control of the Agniveer will not be counted towards the training period thus missed".*

7. A perusal of Annexure 'H' shows that these statutory Rules have been framed in respect of Agniveers who as such are recruited for a period of 4 years. Keeping this aspect in mind, it appears that period of absence even for medical reason has been included (not exempted) while computing 30 days of absence. The judgment cited by the applicant in **Krushnakant B. Parmar** (supra)

is not in respect of Agniveers. Moreover, the aforesaid judgment relates to misconduct of the applicant due to alleged wilful absence from duty. The present case is not related to any misconduct on the part of the applicant but only related to breach of rules in respect of Agniveers. The computation of period of absence of the applicant can be seen at page 58 of the OA, the details of the medical treatment and hospital admission / sick leave are given below:

- (a) Admitted in MH, Ahmed Nagar - 5 days.
- (b) Transfer to MH, Kirkee - 06 days.
- (c) Sick leave - 28 days.
- (d) Admitted to MH, Kirkee - 08 days.
- (e) Total number of days absent - 47 days.
- (f) Less Sundays and holidays - 08 days.
- (g) Total remaining absent days - 39 days.

8. The discharge of the applicant is thus in accordance with the policy letter No. 10010/CAT-B/Trg B dtd 17.11.2022 (Annexure 'H'). There is no provision for giving show cause notice in the aforesaid policy. The policy has been framed as per whole concept of Agniveer scheme. No prayer has been made for declaring the aforesaid policy as unconstitutional and hence it is futile to question the propriety of the aforesaid policy. Consequently, no



case is made out in favor of the applicant to grant relief as prayed and his discharge is not liable to be set aside.

9. The OA stands dismissed.

10. There will be no order as to costs.

(Lt. Gen. P. Gopalakrishna Menon)  
Member (A)

(Justice Shailendra Shukla)  
Member (J)

Mc/gm