

\$~8 to 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 23.01.2023

+ W.P.(C) 12871/2021

EX RECT SHUBHAM KUMAR

..... Petitioner

Through: Ms.Chhavi Yadav, Adv. for Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Ajay Digpaul, CGSC with Mr.Kamal Digpaul, Ms.Swati Kwatra, Advocates.
Major Partho Katyayan.

+ W.P.(C) 12928/2021 & CM APPL. 40715/2021

EX RECT MANOJ KUMAR

..... Petitioner

Through: Ms.Chhavi Yadav, Adv. for Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIAN & ORS.

..... Respondents

Through: Mr.Vikrant N. Goyal, Ms.Tesu Gupta & Ms.Ayushi Garg, Advs.
Mr.Rajesh Gogna, CGSC with Ms.Rupali Kapoor (GP)
Major Partho Katyayan.

+ W.P.(C) 12948/2021

EX RECT GAURAV KUMAR

..... Petitioner

Through: Ms.Chhavi Yadav, Adv. for Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr.Harish Vaidyanathan Shankar,
CGSC with Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat & Mr.Alexander
Mathai Paikaday, Advs. for UOI.
Major Partho Katyayan.

+ W.P.(C) 676/2022

EX. RECT SANDEEP KUMAR (14952810-K) Petitioner

Through: Ms.Chhavi Yadav, Advocate for
Mr.Ajit Kakkar, Adv.

versus

UNION OF INDIA THROUGH THE SECRETARY & ORS.

..... Respondents

Through: Mr.Vijay Joshi, Mr.Mohit Joshi,
Mr.Gurjas Singh Narula, Advocates.
Major Partho Katyayan.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present petitions have been filed challenging the impugned discharge order dated 26.07.2021 passed under Army Rule 13 3 (IV) as passed in W.P.(C) No.12871/2021 and 12928/2021 and discharge order dated 03.08.2021 in W.P.(C) 12948/2021. Petitioners also seek directions to the respondents to reinstate Petitioners in the Army and grant them the same seniority as their batchmates. Petitioners further seek directions to the

Respondents to conduct re-verification from various sources about petitioners' residence and allow them reinstatement if found accurate and correct.

2. Since the prayers and the issue(s) raised in these petitions are same, therefore, with the consent of learned counsel for parties, these petitions have been heard together and are being disposed of by this common judgment.

3. Learned counsel appearing on behalf of the respondents have raised preliminary issues that the petitioners are enrolled in the Army and discharged under the Army rules. Therefore, this Court has no jurisdiction.

4. Moreover, learned counsel for the respondents submit that the same and similar issue has already been dealt with by this Court in W.P.(C) 465/2023 titled as "Ex Recruit Himanshu Tewtia vs. Union of India & Ors." on 16.01.2023 whereby this Court observed as under:

"9. Section 3(o) of the Armed Forces Tribunal Act, 2007 is para materia to Section 14 of the Administrative Tribunals Act, 1985, which provides that the tenure including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions.

10. Admittedly, in the present case vide impugned order dated 24.07.2020 the petitioner has been discharged from Army service under Rule 13(3)(IV) of Army Rule, 1954 w.e.f 24.07.2020 (A/N) on the ground that the petitioner is "Unlikely to become an efficient Soldier".

11. It is not in dispute that the petitioner had been given Army No.3217440W and he was discharged from the service under Rule 13(3)(IV) of the Army Rules, 1954. Once, a candidate is enrolled in the Army and the Army Number is given and action is also taken against the Army Rules, it is the learned Tribunal which shall have the jurisdiction. Thus, we do not agree with the opinion of the learned Tribunal whereby it is observed that in view of judgment of Full Bench

of Armed Forces Tribunal (AFT) and the order of this Court, the Tribunal has no jurisdiction.

12. In view of the above discussion and the settled position of the statutory provisions of law, we are of the opinion that the learned Tribunal has the jurisdiction. Accordingly, we hereby dispose of the present petition directing the learned Tribunal to revive O.A.1098/2020 in Re: Ex Recruit Himanshu Tewatia vs. Union of India and dispose of as per law which has been disposed of vide order dated 16.11.2022."

5. It is not in dispute that petitioners have been discharged under the Army Rules and once, a candidate is enrolled in the Army and the action is taken under the Army Rules, the petitioners may challenge the said action before the learned Armed Forces Tribunal, as submitted by counsel for the respondents.

6. Accordingly, we hereby direct the Registry of this Court to transfer the present petitions to the AFT and on receipt of the same, Registrar of the learned Tribunal is directed to place the abovesaid petitions before the appropriate bench, after taking order on the administrative side from the Chairperson of the learned Tribunal, on 30.01.2023 for directions and disposal.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 23, 2023/ab