

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 183 of 2010

Thursday, this the 08th day of April, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Satish Kumar Singh (No 211441-Z Rank:MA II) S/O Shri Vir Pratap Singh,
resident of village: Duhavihara, Post-Duhavihara (Harpura), Distt-Balia,
State – Utter Pradesh.

..... Applicant

Ld. Counsel for the: **Shri Virat Anand Singh, Advocate**
Applicant

Versus

1. Union of India, Through the Secretary, Ministry of Defence,
Government of India, New Delhi.
2. The Chief of the Naval Staff, Directorate of manpower Planning and
Recruitment, Integrated Headquarters, Sena Bhawan, New Delhi.
3. The Commanding Officer, I.N.H.S. ASVINI, Colaba, Mumbai.
4. The Training Officer, I.N.H.S. ASVINI, Colaba, Mumbai.
5. Surgeon Commander Jaideep Choudhary, I.N.H.S. ASVINI, Colaba,
Mumbai.

..... Respondents

Ld. Counsel for the :**Shri Amit Jaiswal, Advocate**
Respondents Central Govt Counsel.

ORDER

1. This Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (i) That this Hon'ble Tribunal may be graciously pleased to set aside the discharge order dated 5th September, 2006 passed by the Respondent No. 3 hereinabove discharging the applicant from the service.
- (ii) That this Hon'ble Tribunal may be pleased to issue order and direction to the Respondents to re-instate the applicant in the service with all consequential benefits from the date of discharge from service and-
- (iii) Pass any other appropriate order or directions, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

2. Brief facts of the case are that applicant was enrolled in Indian Navy on 01.02.2005. During technical training, while undergoing medical branch test, he failed in examination despite being given another opportunity to clear the test. When applicant failed to clear the test, he applied for change of branch and alternatively opted for discharge from service vide application dated 14.01.2006. He was discharged from service w.e.f. 05.09.2006. Earlier, applicant had filed Writ Petition No 6966 of 2009 at the Hon'ble High Court of Mumbai which was dismissed as withdrawn vide order dated 18.01.2010. This O.A. has been filed for quashing discharge order dated 05.09.2006 and re-instatement in service.

3. Learned counsel for the applicant submitted that applicant was discharged from service without giving him due opportunity for his defence and without giving any cogent reason. His further submission is that there appears a cutting in the application dated 14.01.2006 submitted by

applicant for change of branch and discharge from service which clearly shows malafide intention on the part of the respondents. Learned counsel for the applicant further contended that applicant was time and again threatened for dire consequences if he does not submit application for discharge. Further submission of learned counsel for the applicant is that applicant was falsely admitted in psychiatric ward of hospital twice by initiating AFMSF-10 but was discharged from there when there were no symptoms related to psychosis. His further contention is that respondents have not considered applicant's change of branch and he was straightway discharged from service without giving due weightage of his application dated 14.01.2005. Other submission of learned counsel for the applicant is that applicant was not issued Show Cause Notice as mandated under rules prior to issue of discharge order. He concluded by pleading quashing of discharge order dated 05.09.2006 and re-instatement of applicant in service with all consequential benefits.

4. Per contra, submission of learned counsel for the respondents is that applicant was given enough opportunity to pass the required test of medical branch but when he could not pass the same, he himself opted to submit an application for change of branch and alternatively pleaded for discharged from service, if change of branch was not feasible, vide application dated 14.01.2006. Further submission of learned counsel for the respondents is that since applicant has himself submitted an application for discharge, which is apparent at the face of record, the same cannot be challenged as he has no ground to challenge the same once opted himself. Learned counsel for the respondents has further contended that on receipt of application for change of branch and discharge from service, it was processed through proper channel vide letter dated 20.02.2006 and accordingly discharge order was issued vide communication dated

05.09.2006. He submitted that this application requires to be dismissed in limine as applicant is himself responsible for failing in requisite test and an application for discharge from service was submitted by applicant himself which is on record.

5. We have heard rival submissions of both the counsel and given our anxious consideration to the pleadings on record.

6. It is not in dispute that applicant has failed in medical branch test and he himself has submitted an application for change of branch and alternatively discharge from service vide application dated 14.01.2006. The record shows that on receipt of aforesaid application from applicant, the respondents have forwarded the same to competent authority as per prevailing orders on the subject for consideration vide letter dated 20.02.2006 (Annexure CA-6).

7. The applicant himself felt unable to cope with the course, consequently he himself withdrew from the course and submitted application for change of branch and alternatively pleaded for termination of his services, if change is not possible. We have scrutinized the original documents and found that having been failed in examination even after giving second opportunity, applicant was re-batched with the next course but again he failed. Applicant's performance was sub optimal in the course and he was not able to cope up with the prescribed course curriculum for medical branch and that was the reason he submitted an application for change of branch and discharge from service. Every endeavour was made to help the applicant to serve the organization but all efforts became futile and in the result he was discharged from service on his own request. Further, in the application dated 14.01.2006 applicant has categorically stated that he is fearful about medical practice and if change of branch was not agreed to, he would like to be discharged from service.

8. With regard to discharge of incompetent and undesirable sailors, para 278 of Navy Regulations reads as under:-

“278. Unsuitable, Incompetent or Undesirable Sailors. – (1) If the Commanding Officer finds that any sailor of the ship’s company is unable, either through mental or physical incapacity or through incompetence, to perform the duties of the lowest rate in his branch to which he can be reduce in rank or if the retention of any sailor is considered undesirable on grounds of conduct or character, he shall take the appropriate course among the following: -

(a) If the sailor volunteers for some other rank, the duties of which he is considered competent to perform, application for transfer is to be made in accordance with Regulation 273. When sailors, who are serving in a different branch from that in which they were entered, are found unsuitable for the duties of the lowest rate to which they can be reverted in their present branch, application may be made for compulsory reversion to their original branch.

(b) full particulars accompanied by the sailor’s service documents shall be forwarded to the Captain Naval Barracks through the Administrative Authority, for transmission to the Chief of the Naval Staff, should be think fit, with a recommendation for discharge as ‘Unsuitable.’ © Any sailor whose efficiency, physical condition or value to the Service becomes materially impaired may be recommended for discharge under this clause.

(2) In all cases of recommendations for discharge of sailors as ‘Unsuitable’ on grounds of professional incompetence, Captains shall establish clearly the fact that the sailor recommended for discharge has been given suitable warning and opportunity to improve. Evidence to this effect shall accompany the recommendation.

(3) Discharge ‘Unsuitable’ shall not be looked upon as a punishment, nor shall it be recommended for men who can properly be dealt with by a medical survey. (4) Any Boy, Artificer

Apprentice or Man, during probationary service, shall be liable to be discharged as 'Unsuitable' under orders of the authorities herein stated, if his progress or conduct is unsatisfactory.

(a) Boys at the Naval Training Establishments. – by the Captain of the Training Establishment. In the case of Boys afloat, by the Captain Naval Barracks on the recommendation of the Captain of the ship in which the boy is borne.

(b) Artificer Apprentices. – by the Captain of the Training Establishment concerned, unless he can be absorbed in any other branch.

(c) Direct Entry Sailors. – by the Captain of the Training Establishment concerned during the period of training and thereafter by the Captain Naval Barracks.”

9. Thus, keeping in view the aforesaid regulations on the subject, and the fact that applicant has himself made request for discharge from service vide application dated 14.01.2006, applicant seems to be rightly discharged from service.

10. Accordingly, the petition fails and is hereby **dismissed**.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08th April, 2021
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