

(Reserved)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 78 of 2023

Monday, this the 7th day of August, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

1. Army Service No. 10505463Y Sep Subodh Kumar, Son of Baleshwar Prasad, Resident of Village: Attardhh, Post Office: Ramna, Tehsil and District : Muzaffarpur, Bihar.
2. Army Service No. 10505456H Sep Mukesh Kumar Thakur, S/o Surya Dev Thakur, R/o : Village : Massa, Tehsil and District: Darhanga, Bihar - 847102

..... Applicants

Ld. Counsel for the Applicant : **Shri Dharamveer Singh and Shri Alok Kumar Singh, Advocates**

Versus

1. Union of India through its Secretary Ministry of Defence, Delhi Headquarters, Post Office: South Block, New Delhi.
2. Chief of Army Staff Army Headquarter of Ministry of Defence (Army) West Block IInd R.K. Puram, New Delhi.
3. Directorate General of Territorial Army, Directorate, IHQ of MoD (Army) ‘L’ Block, Church Road New Delhi - 110011.
4. DSC Directorate (Legal Cell) GS Branch, IHQ of MoD (Army), West Block - III, RK Puram, New Delhi - 110066.

5. Officer - in - Charge Records, The JAT Regiment, JAT Record Centre, Vijay Chowk Road, Civil Lines, Bareilly, U.P. - 243001.
6. Officer - in - charge, Defence Service Corps DSC Records, Burnacherry, Kannur - 670013, Kerala

.....Respondents

Ld. Counsel for the Respondents.

**:Ms. Appoli Srivastava,
Central Government Counsel.**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following relief:-

“8. This Hon’ble Court may kindly be please to direct the Opposite Parties to appoint the Applicants into the DSC service w.e.f. from the issuance of Joining letter with all consequential and Monetary Benefits.”

2. The brief facts of the case are that the applicants were selected for duty in Defence Service Corps (DSC) on 21.01.2021. On 26.08.2021 they were directed by Recruiting Office JAT Regt Centre, Bareilly to report to DSC Centre, Kannur, Kerala for training and duty. They were taken on strength of DSC Centre, Kannur on 29.08.2021. They were asked to wait for further orders and later on fresh recruitment was made and applicants were not considered for

training and duty. Being aggrieved, applicants have filed instant O.A.

3. Learned counsel for the applicants submitted that applicants were recruited in DSC on 21.01.2021 from JAT Regt Centre, Bareilly and they were sent to DSC Centre Kannur for training and duty on free railway warrants from JAT Regt Centre. Applicants were taken on roll and strength of DSC Centre on 29.08.2021. They were physically fit to join DSC. On reaching at DSC Centre Kannur, they were told to wait for further order. The applicants felt cheated by the act of respondents as their candidature was not considered and fresh candidates were being recruited by JAT Regt Centre. Applicants represented their case by way of Legal Notices dated 20.02.2022 and 03.03.2022 which was replied by JAT Regt Abhilekh Karyalaya Records vide dated 06.04.2022 in which DSC Records was asked to look into the matter but till date nothing has been done. Learned counsel for the applicants pleaded that policy letter dated 19.08.2021 is not applicable to them as applicants were selected under the old policy which was existing at the time of their recruitment. Learned counsel for the applicant pleaded that respondents be directed to appoint the applicants into DSC service from the date of issuance of joining letter.

4. On the other hand, learned counsel for the respondents submitted that applicants retired from 151 JAT Territorial Army (TA)

on 31.03.2019. They participated in recruitment rally conducted by the JAT Regt Centre and cleared physical fitness and medical examination. Due to COVID-19 Pandemic, Integrated Headquarters of MoD (Army) issued letter dated 02.06.2021 and as per this letter fresh dispatch schedule for the recruiting year 2020-2021 and 2021-2022 was allotted. As per dispatch schedule for batch No 01 and 02 the Centre dispatched 02 x Ex servicemen (included 01 x ex-serviceman TA) on 01.07.2021 and he was accepted by DSC Centre Kannur. Amendments in schedule issued by Integrated Headquarters of MoD (Army) vide letter dated 20.07.2021, a total of 10 ex-servicemen were required to be dispatched to DSC Centre for batch No 3 and 04. Therefore, Centre prepared documentation for dispatch of 10 ex-servicemen including 04 ex-servicemen TA including applicants and dispatched the individuals on 26.08.2021. The individual reported at DSC Centre, Kannur on 29.08.2021 but DSC Centre Kannur refused for intake of ex-servicemen TA personnel vide authority of IHQ MoD (Army) letter dated 19.08.2021 and the same letter was received by the Centre on 26.08.2021 evening due to postal delay. As per this policy letter, T.A. veterans will only be re-enrolled by Regt Centre as per the vacancies allotted by the TA Directorate to the respective TA units affiliated to their Centre. Due to change of policy, TA veterans who attended re-enrolment DSC Rally at JAT Regt Centre, became ineligible for selection and all TA personnel who attended the rally were not

considered against the vacancies released to them by DSC Directorate.

5. Learned counsel for the respondents further submitted that fresh recruitment rally for ex-servicemen TA personnel on 30.01.2022 for recruiting year 2021-2022 as per directions received from IHQ of MoD (Army) and all eligible ex-servicemen TA personnel were informed through call letters. However, the applicants were not informed as they lacked eligibility criteria. Centre conducted recruitment rally in Jan 2021 as per directions received from IHQ of MoD and dispatched the ex-servicemen as per dispatch schedule. No order/ instruction has been received from IHQ of MoD (Army) for joining of applicants till date. Learned counsel for the respondents pleaded that in view of fresh policy letter dated 19.08.2021, applicants have no case and instant O.A. is liable to be dismissed.

6. We have heard learned counsel of both the parties and perused the documents/policy letter available on record.

7. The moot question which needs to be answered is “Whether the applicants (TA Army) selected for DSC service on 21.01.2021 can be taken in service of DSC irrespective of change of policy vide letter dated 19.08.2021 ”?

8. In the instant case applicants were willing for re-enrolment in DSC. Their documents were collected and sent to the Records

Office for verification. After clearing physical and medical examination, the applicants were re-enrolled in DSC on 21.01.2021 and they reported for training and duty to DSC Centre Kannur, Kerala on 29.08.2021.

9. We have come across a copy of policy letter dated 19.08.2021 issued by DSC Directorate, New Delhi on the subject –RE-ENROLMENT OF EX TA PERSONS INTO DSC’. This letter is not applicable to the applicants as their tests for selection in DSC service was conducted on old policy and new policy letter dated 19.8.2021 is not applicable to them.

10. In view of the policy dated 19.08.2021, issued by the DSC Directorate, strictly speaking no fault can be find out in the order of discharging the applicants. But this is not the lone aspect of the case. We have to consider the impugned action of DSC Centre in the peculiar facts of the case and the attending circumstances. The call letter was issued and the re- enrolment in DSC to TA personnel was offered in the situation as it then existed and clarified subsequently. The applicants cannot be blamed.

11. The only ground to not allow applicants to join training and duty is that DSC Directorate changed the policy of enrolment of TA personnel vide letter dated 19.08.2021. It is not disputed that applicants were selected and reported for training and duty on 21.01.2021, much before the issuance of new policy letter. Policy

letter dated 19.08.2021 relied upon by the respondents cannot operate retrospectively for rejecting the candidature of the applicants who were governed and selected for recruitment in DSC under old policy.

12. The other circumstance is that there is no allegation against applicants that either they played fraud and fabricated documents. Candidates were physically and medically found fit for enrolment in DSC service. At this stage, the respondents cannot say that the re-enrolment of TA personnel in DSC is illegal. In the facts and circumstances of the case when applicants have not played any fraud or guilt of forgery of any documents, respondents have no right to cancel their candidature and DSC Centre is liable to take the applicants on their strength and allow them for training and duty. Now respondents cannot change their position and say that they were wrongly selected in DSC under old policy. All care and precautions before offering re-enrolment should have been taken by the respondents at their end. They having failed to perform their duty, cannot take advantage of their own lapses and wrong.

13. A conceptus of our observations made above is that the O.A. deserves to be partly allowed, hence partly **allowed**. The applicants shall report to DSC Centre, Kannur, Kerala along with copy of this order within 20 days from the date of this order. The respondents shall take them on strength and allow to join training and duty as per

rules. The applicant shall not be entitled for any back wages or other benefits for the period, they were out of service.

14. No order as to costs.

15. The Registry is directed to provide a copy of this order to learned counsel of both the parties for its onwards transmission and necessary compliance.

16. Learned counsel for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 07 August, 2023

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