

Court No. 3**(Ser No. 9)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 155 of 2021**Wednesday, this the 08th day of February, 2023**“Hon’ble Mr. Justice Anil Kumar, Member (J)**
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)

Pushkar Mishra son of Sri Late Awadh Raj Mishra, resident of village-Madan Patti, Post-Adilpur, District-Azamgarh-223221 at present serving as Naib Subedar, 15 Mechanized Infantry (No JC-422554M), C/o 56 APO.

..... Applicant

Ld. Counsel for the Applicant : **Shri Ashutosh Shahi**, Advocate
Shri Manoj Kumar Awasthi, Advocate

Versus

1. Union of India through Ministry of Defence, Government of India, New Delhi.
2. Director General, Recruiting, Integrated Headquarters of Ministry of Defence (Army), AG’s Branch, New Delhi.
3. Officer-in-Charge, Mechanized Infantry Regiment Records, PIN-900476, C/o 56 APO, Ahmad Nagar, Maharashtra.
4. Chief Record Officer, Mech Infantry Regt, PIN-900476, C/o 56 APO, Ahmad Nagar, Maharashtra.
5. Director of Recruiting Office (HQ) 236, Mahatma Gandhi Road, Lucknow.
6. Senior Accounts Officer, Pay Accounts Office (Army), Mechanized Infantry Regimental Centre, Ahmadnagar, Maharashtra.
7. Senior Record Officer, Mechanized Infantry Regiment, Ahmadnagar, Maharashtra.

.....Respondents

Ld. Counsel for the Respondents. : **Ms Appoli Srivastava**, Advocate
Central Govt. Counsel

ORDER (Oral)

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

(i) The Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 12.02.2020 passed by the Brigadier, OIC Records, The Mechanized Infantry Regt, PIN-900476, C/o 56 APO and order dated 18.10.2019 passed by Brigadier Additional Officer Rtg 'B' Integrated HQ of MoD (Army), AG's Branch, DG RTG/RTG B(E) as contained in Annexure No 1 and 2 to this O.A.

(ii) The Hon'ble Tribunal may kindly be pleased to direct the respondents to record the date of enrolment of the applicant as 14.01.2006 in his service record instead of 19.02.2014 as recorded in the other incumbents of RRT-49 course.

(iii) The Hon'ble Tribunal may kindly be pleased to direct the respondents to grant all consequential service benefits including seniority and other benefits of RRT-49 Course as has been made admissible to the other incumbents of RRT-49 Course.

(iv) The Hon'ble Tribunal may kindly be pleased to pass any other order or direction in favour of applicant which is deemed just and proper in the circumstances of the case.

2. Brief facts of the case are that the applicant had applied for Junior Commissioned Officer Religious Teacher (JCO RT) course Serial No. RRT-49 based on relationship certificate issued by Army Ordnance Corps Records (AOC Records) and he cleared physical test. In the said certificate his date of birth was recorded as 25.12.1972 which on verification was found to be tampered. Accordingly, his candidature was cancelled by Additional Director General Recruiting (ADG Rtg) vide letter dated 30.11.2005 which was informed to the applicant vide letter dated 28.12.2005. Being aggrieved, the applicant filed writ petition No. 5703

(S/S/) of 2009 before the Hon'ble High Court of Judicature at Lucknow which was decided on 07.05.2012 in favour of the applicant and respondents were directed to reconsider the candidature of the applicant. In pursuance to aforesaid order dated 07.05.2012 passed by the Hon'ble High Court, respondents reconsidered candidature of the applicant and issued order dated 14.08.2012 rejecting applicant's candidature for appointment on the post of JCO RT which was again challenged by filing writ petition No. 4406 (S/S/) of 2012. During pendency of the writ petition order dated 14.08.2012 was withdrawn and writ petition was decided vide order dated 08.07.2013 directing the respondents to re-consider applicant's candidature on the post of JCO RT. When no action was taken by the respondents on orders dated 07.05.2012 and 08.07.2013, applicant filed contempt petition No. 2233 of 2013 before the Hon'ble High Court. Subsequently applicant was called vide letter dated 21.12.2013 (Annexure 13) to report to Recruiting Office at Lucknow along with requisite documents for consideration of his candidature. Accordingly, he was enrolled as Junior Commissioned Officer Religious Teacher (JCO RT) w.e.f. 18/19.02.2014 in compliance of orders passed by the Hon'ble High Court dated 07.05.2012 and 08.07.2013, and he is presently serving in the Army. An application dated 17.01.2016 was preferred by the applicant for change of date of his enrolment from 19.02.2014 to 14.01.2006 which being rejected vide order dated 20.02.2020, this O.A. has been filed.

3. Learned counsel for the applicant submitted that based on an advertisement in May 2005, applicant applied for the post of Junior

Commissioned Officer (Religious Teacher). He applied for the said post based on relationship certificate and qualified all the tests. It was further submitted that on getting no information with regard to his joining, he submitted representations dated 10.03.2006 and 10.11.2006. It was further submitted that being aggrieved with non receipt of any information with regard to his enrolment, he filed writ petition before the Hon'ble High Court in which a notice was issued to Army Ordnance Corps Records (AOC Records) who intimated that the relationship certificate was found tampered and consequently his candidature was cancelled.

4. Learned counsel for the applicant further submitted that pursuant to order dated 07.05.2012 passed by the Hon'ble High Court, respondents had again rejected his candidature vide order dated 14.08.2012 (Annexure-10). It was further submitted that being aggrieved with rejection of his candidature even after passing of order dated 07.05.2012, applicant filed writ petition No 4406 (S/S/) of 2012. During pendency of the said writ petition, order dated 14.08.2012 was cancelled by the competent authority by issuing order dated 04.07.2013. The writ petition was decided on 08.07.2013 directing the respondents to consider his candidature. Accordingly, he was taken on strength as JCO RT w.e.f. 19.02.2014. It was further submitted that during the course of his service the applicant preferred representation dated 16.06.2015 for consideration of his date of enrolment as 14.01.2006 instead of 19.02.2014, which when not decided he filed O.A. No. 429 of 2017 wherein order was passed on 13.09.2018 to decide his pending representation within four months. It was submitted that pursuant to order of this Tribunal his representation

was rejected vide order dated 12.02.2020 (Annexure-1) which is under challenge. He pleaded for recording of his enrolment date as 14.01.2006 instead of 19.02.2014.

5. Per contra, learned counsel for the respondents submitted that the applicant was selected for the post of JCO RT and on verification of relationship certificate his candidature was cancelled on account of tampering of the said certificate. It was further submitted that vide order dated 07.05.2012 and 08.07.2013 passed by the Hon'ble High Court, he was taken into service w.e.f. 19.02.2014. His representation submitted for change of date of enrolment w.e.f. 14.01.2006 was rejected vide order dated 12.02.2020 explaining reasons as to why his date of enrolment should not be 14.01.2006.

6. Learned counsel for the respondents further submitted that correct publication of Part-II Order with regard to name and date of birth was the responsibility of late Subedar Awadh Raj Mishra (father of the applicant) and during his life time he failed to get it corrected which caused hindrance in recruitment of the applicant. It was further submitted that the Hon'ble High Court had only directed to reconsider the case of the applicant and no order was passed with respect to giving seniority or fixing date of enrolment similar to other candidates of RRT-49 in which the applicant was initially recruited. It was thus, submitted that while accepting the enrolment of applicant his performance in screening test of RRT-49 was only considered and no additional test was conducted. He pleaded for dismissal of O.A. stating that order dated 12.02.2020 was rightly passed on the ground that since the applicant was recruited on the

direction of the Hon'ble High Court vide orders dated 07.05.2012 and 08.07.2013 wherein no order was passed to fix applicant's seniority w.e.f. 14.01.2006.

7. Heard Shri Ashutosh Shahi, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents and perused the records.

8. The applicant had applied for Junior Commissioned Officer Religious Teacher (JCO RT) course serial No 49. On 03.08.2005 his physical test was conducted which he qualified. He submitted relationship certificate issued by Army Ordnance Corps Records (AOC Records) as per which his date of birth was 25.12.1972. This relationship certificate was sent for verification to AOC Records on 10.10.2005 who by letter dated 21.10.2005 intimated that the relationship certificate had been tampered with. Consequently, a case was taken up with higher authority and his candidature was cancelled vide letter dated 30.11.2005. Being aggrieved with cancellation of his candidature, the applicant filed writ petition before the Hon'ble High Court on 06.12.2006. By the order of the Hon'ble High Court, police verification was done but no tangible result was achieved. Meanwhile, AOC Records by letter dated 31.10.2007 intimated that 'child named Pushkar Mishra whose date of birth is 25.12.1972 has not been notified in the family details given by late JCO on 11.11.1986 at the time of retirement'.

9. The controversy involved in this case was that the applicant's candidature was rejected on the ground that he submitted a forged relationship certificate at the time of enrolment. The writ petition was

allowed vide order dated 07.05.2012. In pursuance to order dated 07.05.2012, respondents issued order dated 14.08.2012 rejecting applicant's candidature for appointment which was again challenged by filing writ petition No. 4406 (S/S/) of 2012 which was decided vide order dated 08.07.2013 directing respondents to enroll the applicant on the post of JCO RT. During the pendency of writ petition, order dated 14.08.2012 was cancelled vide order dated 04.07.2013 and this was placed before the Hon'ble High Court. The Hon'ble High Court considered the matter and directed the respondents to take further action in respect of applicant's candidature taking into account that order dated 14.08.2012 has been withdrawn by means of order dated 04.07.2013. When no action was taken by the respondents on orders dated 07.05.2012 and 08.07.2013 applicant filed contempt petition No. 2233 of 2013 before the Hon'ble High Court. Subsequently applicant was called vide letter dated 21.12.2013 (Annexure 13) to report to Recruiting Office at Lucknow along with requisite documents for consideration of his candidature. Accordingly, he was enrolled as Junior Commissioned Officer Religious Teacher (JCO RT) w.e.f. 18/19.02.2014 in compliance of orders passed by the Hon'ble High Court dated 07.05.2012 and 08.07.2013, and he is presently serving in the Army. An application dated 17.01.2016 was preferred by the applicant for change of date of his enrolment from 19.02.2014 to 14.01.2006 but the same was rejected and speaking order was passed on 12.02.2020, which for convenience sake, is reproduced as under:-

“1. WHEREAS, JC-422554M Nb Sub (RT) Pushkar Mishra, hereinafter referred to as the applicant was enrolled in MECH INF Regt on 19 Feb 2014. Earlier the applicant had cleared the mandatory test for recruitment as RT JCO in RRT-49 course in 2005 at HQ Rtg Office, Lucknow, however, Presiding Officer cancelled his candidature due to additions/tempering in the relationship cert dated 21 Apr 2004 furnished by him. Later Army Ordnance Corps Records vide letter dated 04 Sep 2007 and 03 Oct 2007 requested the Superintendent of Police, Azamgarh to verify the Applicant’s date of birth.

2. AND WHEREAS, being aggrieved a writ petition No 5703 of 2009 was filed by the applicant in High court of Allahabad, Lucknow Bench. Hon’ble High Court vide order dated 07 May 2012 allowed the petition in favour of the applicant, quashed the rejection of the applicant’s candidature and directed “HQ Rtg Office to re-consider the case of RRT-49 Course within a period of 03 months”.

3. AND WHEREAS, in pursuance of the ibid order, HQ Rtg Office, Lucknow vide letter No R/RRT-49/Pushkar/CF dated 27 Jan 2014 issued the applicant with a call letter for pre commissioning training in RRT-73 (Pandit) course which was scheduled wef 22 Feb 2014 at Mech Inf Regt Cente. On completion of training, he was posted with 15 Mech Inf with effect from 24 Jul 2014. While serving with 15 MECH INF, he preferred Personal Application dated 16 Jun 2015 to CO, 15 MECH INF for grant of seniority of RRT-49 Course and change of date of his enrolment as 14 Jan 2006.

4. AND WHEREAS, on not being given the relief, the applicant filed Original Application NO Nil/2017 with MA 1922/2017 before the Hon’ble AFT (RB) Lucknow, for grant of seniority with candidates of RRT-49 course.

5. AND WHEREAS, the Hon’ble AFT (RB), Lucknow vide Order dated 13 Sep 2018 in CA No Nil/2017 has directed the authorities concerned “to decide personal application dt 16 Jun 2015 and reminder dated 15 Apr 2017 preferred by the applicant by a reasoned Speaking Order, in accordance with law, within a period of four months from the date of receipt of a certified copy of the order”.

6. AND WHEREAS, though Nb Sub Pushkar Mishra the petitioner had applied for RRT-49 course, his candidature was cancelled since relationship certificate dated 21 Apr 2004 produced to the recruiting authorities at the time, pertained to his deceased elder brother. The casualty

of his birth was not published by his father JC-109647 Late Sub (Hony Lt) Avadh Raj Mishra even till he retired. The auth thus were not responsible for the wrong documentation as the onus for publishing correct casualty of birth was on Sub (Hony Lt) Avadh Raj Mishra, and cancellation of candidature of the applicant during RRT-49 Course was as per procedure.

7. AND WHEREAS, the Hon'ble Court of Allahabad, Lucknow bench had only directed to re-consider the case of the applicant for recruitment on the post of JCO (RT) for RRT-49 course. The Hon'ble Court has not passed any directions with respect to giving seniority or fixing date of enrolment similar to other candidates of RRT-49. While accepting the enrolment of Nb Sub Pushkar Mishra, his performance in the screening test of RRT-49 was only considered and no additional test was taken and accordingly the judgment dated 07 May 2012 of Hon'ble High Court of Allahabad was fully complied with.

8. AND WHEREAS, based on the Hon'ble AFT (RB) Lucknow order dated 07 May 2012 case was examined by HQ Recruiting Directorate at New Delhi and Competent Authority found that:-

- (a) The RRT-49 was for Aug 2005. The candidature of indl was rejected since the candidate had **fictitiously produced tempered docus.** These docus could be rectified by his mother through Ord Corps Records only on 10 Apr 2008. Thus a delay was caused.
- (b) Having produced the docus, the Court decision on the WP No 5703(ss)/2009 was given on 07 May 2012.
- (c) Eight yrs and Five Months had passed since the rect process of RRT-49 hence indl could not be accommodated with RRT-49. However, he was allowed to be enrolled with RRT-73.
- (d) The indl after due rect process based on the Hon'ble Court's order was enrolled with RRT-73 on 14 Feb 2014.
- (e) Based on the above facts the indl has been given due justice & the delays in the rect process is due to delay in producing the docus by the indl.
- (f) The Hon'ble Court's judgment has not mentioned anything related to granting him seniority as per RRT-49.

9. In this connection, as above, a copy of Integrated HQ of MoD (Army), DG Rtg/RTG B (E) letter No 64714/CC/CEN/Rtg B (E) dt 18 Oct 2019 is encl herewith.

10. *In the light of the above facts, the representation dated 16 Jun 2015 and reminder dt 15 Apr 2017 submitted by you have been hereby rejected by Recruiting Directorate, IHQ of MoD (Army) New Delhi, as it lacks merit.*

11. *AND NOW THEREFORE, Hon'ble AFT (RB) Lucknow order dated 13 Sep 2008 passed in Original Application No Nil/2017 with MA 1922/2017 filed stands fully complied with."*

10. The applicant appeared in JCO RRT-49 but before final result of selection, his candidature was cancelled. Later on in compliance of order of Hon'ble High Court Allahabad his candidature was reconsidered and he was declared selected and on 27.01.2014 call letter was issued for pre-documentation check and further dispatch to training centre on 18/19 February 2014. Thus, after declaring him successful he was enrolled on 19.02.2014. His entry in the service is on 19.02.2014 after being declared as selected.

10. Perusal of orders dated 07.05.2012 and 08.07.2013 clearly indicate that the Hon'ble High Court has passed no direction with regard to fixing of his seniority with RRT-49, rather the direction was only passed to reconsider case of the applicant for enrolment in the Army.

11. In view of the fact that the applicant was re-considered and enrolled as RT JCO on the direction of the Hon'ble High Court and no order being passed with regard to fixing of his seniority with RRT-49, applicant does not deserve grant of seniority w.e.f. 14.01.2006. Therefore, the O.A. is **dismissed** being devoid of merit.

12. No order as to costs.

13. Miscellaneous application(s), if any, stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated :08.02.2023

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(Justice Anil Kumar)
Member (J)