

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 518 of 2019

Sep Rishav Dubey
By Legal Practitioner for the Petitioner

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>31.01.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Col AK Srivastava (Retd), Shri Dharam Raj Singh and Dr. Ashish Asthana, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p>2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-</p> <p>(i) <i>Issue/pass an order or direction of appropriate nature to quash/set aside respondent's CO MH Bhuj letter dated 21.05.2019 rejecting applicant's reply dated 23.05.2019 to show cause notice (Annexure A-1).</i></p> <p>(ii) <i>Issue/pass an order or direction of appropriate nature to quash/set aside respondent show cause notice dated 13.05.2019, contemplated to terminate the services of the applicant since he failed in three chances given to him to pass his Technical Trade Test III cum Diploma exams (Annexure No A-2).</i></p> <p>(iii) <i>Issue/pass an order or direction of appropriate nature to quash/set aside respondent AMC Records Lucknow letter dated 21.05.2019, misquoting that as per para 84 of AMC ROI, minimum 50% pass marks were required in each subject; whereas in the applicant's case para 83 of AMC ROI was applicable and only 40% marks in each subject with an overall aggregate of 50% marks required for passing (Annexure No A-3).</i></p> <p>(iv) <i>Issue/pass an order or direction of appropriate nature to quash/set aside respondent MH Bhuj letter dated 21.06.2019 informing the applicant that as per remuster of personnel who failed in all the three chances for passing their Technical Grade III cum diploma exams, liable for termination of their service, could be considered for remustering in various trades listed in para 3(c) to (n) (tradesmen category) but not for the trades listed at 3(a) to (c) due to age criteria and instead allow him to remuster in any of the trades without restriction of age criteria and increasing upper age by length of service of the applicant (Annexure No A-3).</i></p> <p>(v) <i>Issue/pass an order or direction of appropriate nature to respondents to pass the applicant in his 1st chance of his Tech Trade Grade III cum Diploma exam held in Dec 2017 since he had secured minimum 40% marks in every subject with an overall aggregate of 50% as required to pass in terms of para 83 of ROI I</i></p>

of 2014 (Annexure No A-4).

(vi) Issue/pass an order or direction of appropriate nature to respondent to pass the applicant in his Tech Trade Grade III cum Diploma held in Jun 2018 (2nd chance) after giving him 1% grace marks in one of the papers in which he scored 30% marks (Annexure No A-8).

(vii) Issue/pass an order or direction of appropriate nature to respondents to give an additional/special chance to the applicant to pass his Tech Trade Grade III cum Diploma exam in terms of para 82 of ROI I of 2014.

(viii) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(ix) Allow this application with costs.

3. A preliminary objection has been raised by the respondents stating that this Tribunal does not have the territorial jurisdiction to entertain the present petition in view of Rule 6 of AFT (Procedure) Rules, 2008. He submitted that though the applicant has undergone Basic Military Training at AMC Centre and College, Lucknow, yet cause of action did not arise in the territorial jurisdiction of this Tribunal for the reason that he was posted at Bhuj (MP) which does not fall in the territorial jurisdiction of this Tribunal. He pleaded for dismissal of O.A.

4. On the other hand, submission of learned counsel for the applicant is that the applicant has undergone basic military training at Lucknow and since cause of action arose in Lucknow, this O.A. is maintainable. His other submission is that AMC Centre and College and AMC Records, which are primary and main respondents, are located under the jurisdiction of this Tribunal. He further submitted that continuity of the applicant in AMC was subject to qualifying/acquiring Technical Trade Test Grade IV and III examinations for which AMC Centre, Lucknow was responsible to conduct training in terms of para 22 of the ROI after he completed his basic military training of initial 6 months. His other submission is that after having passed his Technical Grade IV his training was continued in Military Hospital, Meerut till he availed his 1st chance but was declared failed by AMC Centre and College and Records despite having scored the requisite criteria of minimum pass marks and aggregate marks and then he was sent to Military Hospital, Bhuj (MP) wherefrom he was sent to Command Hospital, Southern Command, Pune just before the examinations to avail 2nd and 3rd chance to pass the said Technical Grade III examinations but he was

declared failed by AMC Centre and College, Lucknow and AMC Records. His further submission is that the applicant was despatched to AMC Centre and College, Lucknow on permanent posting vide movement order dated 18.06.2020. Thus, he submitted that since cause of action arose at AMC Centre and College, Lucknow, this application is maintainable.

5. Having heard the submission made by both the parties we find that the applicant failed in first attempt while posted at Meerut and failed in second and third attempts while posted at Bhuj (MP) which is not in the territorial jurisdiction of this Tribunal. Applicant's contention is that since he has been permanently posted at Lucknow vide movement order dated 18.06.2020, this Tribunal has jurisdiction to decide the O.A.

6. While perusing the aforesaid movement order we find that the applicant was not permanently posted at AMC Centre and College, Lucknow but he was sent to AMC Centre and College, Lucknow for onward despatch to ASC Centre, Bangalore to undergo Steward Class-III Course commencing from 02.07.2020. This submission of applicant is not sustainable as according to movement order he was required to undergo Class-III Course at Bangalore which commenced in the month of July, 2020.

7. Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 restricts to file the O.A. in this Tribunal being not under the territorial jurisdiction of this Tribunal. The aforesaid Rule, for convenience sake is reproduced as under:-

"6. Place of filing application. (1) An application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction-

(i) the applicant is posted for the time being, or was last posted or attached.

(ii) where the cause of action, wholly or in part has arisen."

8. In view of the aforesaid, since the applicant was not posted in the territorial jurisdiction of this Tribunal when cause of action arose, this O.A. being not maintainable is liable to be dismissed.

9. During the course of hearing, the applicant present in the Tribunal made a request to decide the O.A. on its merit. We have

given thoughtful consideration to the request made by the applicant to decide the O.A.

10. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) as soldier technical (Nursing Assistant) on 23.06.2015. After basic military training he was allotted Laboratory Assistant Trade. While posted with No 2 Technical Training Wing, AMC Centre and College, Lucknow, he passed Laboratory Assistant Technical Trade Test Class IV (four) on 09.06.2016. Accordingly, after passing Technical Trade Test Class IV the applicant was posted to Military Hospital, Meerut w.e.f. 21.02.2018 for upgradation of Class III. After completion of 75 weeks in December, 2017 the applicant appeared in his trade test Class III final examination as first attempt in which he scored 47% marks (exhibit R-4) and failed. Thereafter, the applicant was posted to Military Hospital, Bhuj and subsequently he appeared in trade test Class III final examination as second attempt in Jun 2018 held at Command Hospital (Southern Command) Pune. In this examination the applicant could earn 39% marks in theory paper I and failed (exhibit R-6). The applicant appeared in trade test class III final examination as third and last attempt in December, 2018 and could earn only 36% in theory paper I and 47.5% in theory paper II and failed (exhibit R-7). The applicant did not qualify his trade test Class III examination after availing all the three chances before completion of five years of service in terms of para 22 of AMC Records Instructions No 01/2014. As per policy in vogue the candidates not able to pass the final tech trade Class III cum diploma examination in three attempts are not granted any further chance and discharged under Rule 13 (3) III (v) of Army Rules, 1954. Accordingly, a Show Cause Notice (SCN) dated 13.05.2019 (exhibit R-8) was issued to the applicant which he replied on 23.05.2019 (exhibit R-9). The applicant applied for remustering from Laboratory Assistant trade to Nursing Assistant trade. His application was submitted to AMC Records, Lucknow on 16.05.2019 (exhibit R-11) which was turned down vide letter dated 04.06.2019 (exhibit R-12) as he became overage for remustering to lower trade. Thereafter, the applicant again applied for remustering into lower trade i.e. Steward which was submitted to AMC Records,

Lucknow vide letter dated 10.07.2019 (exhibit R-13) and the same was accepted and common entrance examination of Steward trade was conducted on 26.10.2019 at AMC Centre and College, Lucknow which the applicant passed and he is presently in service. The grievance of the applicant is that he should have been passed in terms of para 83 of ROI 1 of 2014 as per which only 40% marks are required to qualify the test. This O.A. has been filed to issue directions to the respondents to declare the applicant as passed by giving 1% grace marks in one of the papers in which he scored 39% marks in the month of Jun 2018 or alternatively allow applicant to remuster in lower trade ignoring age criteria.

11. Applicant's version is that respondents ought to have considered him as passed on scoring 47% marks as per para 83 of ROI 2014 and by giving him 1% grace marks in the subject in which he scored 39 marks as he has availed all the chances as per rules.

12. Per contra, respondents' submission is that the applicant could not pass class III test even after availing three chances. His further submission is that while availing third chance he scored only 39% marks in theory subject and failed. He submitted that a Show Cause Notice was issued to the applicant for his contemplated discharge and in reply to that he requested for change of trade. His request was turned down being overage for trades in Ambulance Assistant and Driver (MT) which he opted. Thereafter, he made a request for change of trade in Steward category which was accepted and the applicant was sent to ASC Centre, Bangalore to undergo training commencing from 02.07.2020. Learned counsel for the respondents pleaded for dismissal of O.A. on the ground that since the applicant availed all the three chances to pass class III test but failed.

13. We have heard learned counsel for both sides and perused the material placed on record.

14. It is not disputed that applicant was given three chances to pass class III test in which he failed. Contention of applicant that he scored more than 40% marks in the test is not tenable as he did not score 40% marks in theory I paper as required vide para 83 of the ROI 03/2014 which for convenience sake is reproduced as under:-

"83. A minimum of 40% in each subject and an aggregate of 50% of total marks must be obtained to

qualify in a test. Qualified individuals will be graded as under:-

- | | | |
|-----|-------------------|---------------|
| (a) | 50 to 59 per cent | -pass |
| (b) | 60 to 74 per cent | -Credit |
| (c) | 75 per cent | -Distinction" |

15. From the aforesaid we find that applicant ought to have scored 40% marks in each subject separately and 50% marks aggregately and he being scored 39% marks in theory I paper has failed in third attempt, cannot be given grace marks as in the aforementioned ROI nothing has been mentioned with regard to grant of grace marks.

16. In view of the above, the O.A. is devoid of merit and liable to be dismissed.

17. Further, the applicant's second request for change of trade has been accepted by the respondents and he is serving in his changed trade (Steward) category.

18. In view of the above the O.A. is **dismissed** on merit as also on territorial jurisdiction.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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