

(Court No. 3)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 09 of 2021

Friday, this the 11th day of January, 2023

“Hon’ble Mr. Justice Anil Kumar, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Vipin Kumar S/o Shri Vijaya Pal, R/o Village Parsipur (Salhipur), Post Benipur, District-Faizabad UP.

..... Applicant

Ld. Counsel for the Applicant : **Shri Dharmendra Awasthi**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of the Army Staff, Army Headquarters, New Delhi.
3. The Senior Record Officer, Records Office, Army Supply Corps, Bangaluru, Karnatka.
4. The Army Recruiting Officer, (ARO), Camp-A.R.O., Amethi, District Amethi 227405.

.....Respondents

Ld. Counsel for the Respondents. : **Shri RKS Chauhan**, Advocate
Central Govt. Counsel

ORDER

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

- (a) *issue an order, direction in the nature of certiorari quashing the order dated 27.03.2013 passed by the responded no. 4, contained in **Annexure no.1** with all service benefits.*
- (b) *issue an order, direction of command to the respondents to send the applicant for training for the post of Trade Man (ASC) Recruitment in SOL-TDN 8th through the ARO, District Amethi in pursuance to Call letter dispatch Reference no. CEE-24-April, 2011 with a further command to allow the applicant to participate in the training for the post of Trade Man (ASC) in pursuance to Call letter aforesaid with a further prayer to provide all the prescribed facilities to the applicant which are provided to the similar Trade Man (ASC).*
- (c) *issue such other order/direction which may be deemed just and proper in the circumstance of the case.*
- (d) *allow the Original Application with cost against the respondents in view of the facts and circumstance, legal provisions and Grounds raised in the Application.*

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 24.06.2014 and he underwent basic military training at The Parachute Regimental Training Centre w.e.f. 04.08.2014. On completion of basic military training, he was sent to Maratha Light Regimental Centre for technical training of Clerk (Staff Duties) which commenced on 22.12.2014. However, he failed in midterm test and was relegated thrice in terms of policy letter dated 06.01.1995 and 10.04.1996. According to aforesaid policy, a recruit who could not pass even after relegating and three months detention,

should be re-mustered or discharged from service. The applicant failed in final test on 09.02.2016 and was returned to The Parachute Regimental Centre. Applicant made a request for change of his trade from Clerk (Staff Duties) to Soldier Tradesman (Dresser) vide personal application dated 31.03.2016. Accordingly, a case was taken up with Ministry of Defence (Infantry-6) and his case was turned down on the ground that his height was 06 cms short to become a soldier tradesman. A Show Cause Notice (SCN) dated 25.01.2017 was served upon applicant to which he replied on 13.02.2017 and after receipt of reply he was discharged from service w.e.f. 07.03.2017 under Rule 13 (3) (iv) of Army Rules, 1954 on the ground of 'Unlikely to become an efficient soldier'. This O.A. has been filed to quash discharge order dated 07.03.2017 and letter dated 10.01.2017 by which applicant's case for re-mustering into other trade was turned down by Ministry of Defence (Recruiting Directorate).

3. Learned counsel for the applicant pleaded that though applicant had failed in three tests in technical training, his trade ought to have been changed in terms of policy letter on the subject. His further submission is that No. 2814649X Rect

Clk Purushottam Prajapati had also failed three times in technical test but he was retained in service by changing his trade from Rect Clk to Rect Tradesman and sanction for height dispensation of 02 cms was accorded vide order dated 29.06.2016, but he was denied height dispensation. His submission is that applicant be also granted sanction of dispensation in height so that he could serve in the Army in tradesman.

4. Per contra, learned counsel for the respondents submitted that after detaining applicant for three months on account of relegation, he could not pass the technical test for Rect Clk, therefore there was no option left with the respondents to discharge applicant by issuing Show Cause Notice. His further submission is that all measures were taken to retain applicant in Army and to get his trade changed but the competent authority has rejected his case being 06 cms less than permissible height. He concluded for dismissal of O.A. making a submission that applicant was not meeting physical standard criteria required for a tradesman.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Applicant Sandeep Yadav after completion of basic military training was sent for technical trade training at Maratha Light Regimental Centre, Belgaum. He failed in the final test and was relegated three times but even after relegation he could not pass the test and was returned to The Parachute Regimental Centre. Thereafter, applicant requested for change of trade. The Parachute Regiment took all measures to keep applicant in service and approached authority concerned for change of his trade but applicant was found unfit for soldier tradesman (dresser) due to physical standard criteria as per Ministry of Defence letter dated 10.01.2017. Accordingly, applicant was issued Show Cause Notice dated 25.01.2017 and after receipt of reply dated 13.02.2017 he was discharged from service being 'Unlikely to become an efficient soldier' w.e.f. 07.03.2017.

7. A case was taken up with Army Headquarters, Ministry of Defence for change of his trade from Rect Clk to Tradesman (dresser) but Ministry of Defence had rejected it on 10.01.2017 as his height was 06 cms short of the desired height in Tradesman. Applicant's height is 164 cms whereas the minimum height requirement is of 170 cms for a recruit

tradesman belonging to Uttar Pradesh State as per para 121 of Part-II, Section II (D) of Recruitment Directive for Recruitment of Junior Commissioned Officers and other ranks, 2014 (Annexure CA-XI).

8. In para 4.9 of O.A. applicant has taken a stand that Rect/Clk Purushotam Prajapati was retained in service by granting 2 cms height dispensation for change of trade from Rect/Clk to Tradesman (house keeper), therefore applicant also deserves to be granted height dispensation so that he could be remustered in other trade. In this regard we find that there exists minimum physical standard for Army aspirants for the various regions of the country. We find that sanction in respect of Rect/Clk Purushottam Prajapati was accorded by competent authority vide order dated 29.06.2016 on the ground that he was short by 02 cms of the required height and height dispensation provisions were existed at that time but in case of the applicant he was 06 cms short than the required height of 170 cms. Additionally, height dispensation provisions were existing when Rect/Clk Purushottam Prajapati was granted 02 cms height dispensation but when applicant's case for height dispensation was taken up, the policy was changed and

applicant could not be granted height dispensation resulting in his discharge from service.

9. It is further submitted that policy letter dated 19.06.2015 for granting height dispensation was amended vide letter dated 29.12.2016 which prohibited any height dispensation. For convenience sake relevant portion of the aforesaid policy letter is reproduced as under:-

"1. X x x x

2. *The following amdt may please be carried out in para 6 (h) of this HQ letter No. 62512/Rtg (9A) dt 19 Jun 2015:-*

For

(h) Dispensation in ht and age for change to Tdn trade will be under the powers of AG under the provisions of Ministry of Defence D(AG) order No. 7(60)/2001/D(AG) dt 14 Aug 2001.

Read

(h) Change of trade for Sol GD and Sol Tdn will be allowed, if the recruit meets the criteria for age and ht as per existing policy. No dispensation in ht, age for change to Sol (GD) and Sol Tdn trade will be accorded under the provisions of Ministry of Defence D(AG) order No 7(60)/2001/D(AG) dated 14 Aug 2001.

3. The above policy will be implemented with immediate effect. All previous policy letters on the subject will be amended accordingly incl amendments in policy directive 2014."

10. Thus, it is crystal clear that applicant could not be retained in service being short of the required height of 170

cms and stoppage of dispensation in height by order dated 29.12.2016.

11. With the aforesaid observations, we feel that applicant has not been able to make out a case and the O.A. is liable to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending applications, if and disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 06 January, 2023

rsp/-