

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 209 of 2017**

Friday, this the 12th day of November, 2021

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

Rect Clk No. 13631149A Upendra Singh S/o Shri Rajendra Singh R/o Village Rooppur Bharatpur, Post office-Anjani, P.S & District- Mainpuri, U.P.

..... Applicant

Ld. Counsel for the : Shri Virendra Prasad, Advocate.
Applicant Col AK Srivastava (Retd), Advocate
Shri Dharam Raj Singh, Advocate.
Dr. Ashish Asthana, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of the Army Staff, Army Head Quarters at New Delhi.
3. Adjutant General Army Staff Head Quarter recruiting B (A), South Block New Delhi.
4. Officer incharge Record Para Regimental Training Centre Bangalore.
5. Training Battallian, Commander selatong company, Prashikshan, Paltan, Parachute Regiment Prashikhan Centre, Bangalore, C/o 56 APO.
6. Commandant the Maratha LIRC Regimental Clerks Training School Belgaum, C/o 56 APO.
7. Rect Clk No 2814649X Purishottam Prajapati, Maratha Light Infantry Regimental Centre, Belgaum.

.....Respondents

Ld. Counsel for the **Dr. Chet Narayan Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

(i) That this Hon'ble Tribunal may kindly be pleased and directed to the opp. Parties to quash the dismissal/discharge order dated 7-3-2017 and letter No. 62518/Rangroot B(A) dated 10.01.2017 or any adverse order which was passed by the opposite parties after summoning the same during the pendency of the case & pay salary with consequential benefits etc. to the petitioner.

(ii) That this Hon'ble Court/Tribunal may kindly be pleased to pass any other order or directions which is deem just & proper in favour of the petitioner.

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 19.06.2014 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 relegation 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 (house keeper). Accordingly, a case was taken up with Integrated Headquarters of Ministry of Defence, Army (Infantry-6) and his case was turned down on the ground that his height was 05 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 remustering into other trade was turned down by Integrated Headquarters of Ministry of Defence, Army (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 another recruit viz 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 but 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 05 cms less in height than that permissible. 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 Upendra Singh 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 (house keeper) 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 (house keeper) but Ministry of Defence had rejected it on 10.01.2017 as his height was 05 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. Contention of applicant that Rect Clk Purushottam Prajapati belonging to Uttar Pradesh State was granted 02 cms height dispensation vide order dated 29.06.2016 is sustainable but the fact remains that applicant's height is 05 cms less than the required height of 170 cms which fact is on record and cannot be denied.

9. It is further observed 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 discontinuance of discretion for dispensation in height by letter 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 any, disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 12.11.2021
rathore