

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 424 of 2019****Monday, this the 20th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Sep (NA) Gaurav Kumar Singh (No. 15457739Y) S/O RK Singh, R/O
Rathore Tola, P.O.-Gurukul Mehia, District-Chhapra, Bihar-841301.

.... Applicant

Ld. Counsel for the: **Col AK Srivastava (Retd)**, Advocate.
Applicant **Shri Dharam Raj Singh**, Advocate.

Versus

1. The Secretary, Govt of India (MoD), South Block, DHQ, P.O. New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, DHQ, PO-New Delhi-110011.
3. The Army Commander, Western Command, Chandigarh.
4. The Adjutant General, IHQ of MoD (Army), South Block, DHQ, PO-New Delhi-110011.
5. DGAFMS, IHQ of MoD (Army), DHQ, PO-New Delhi-110011.
6. Commandant, AMC Centre & College, Lucknow.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Govt Standing 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 applicants have sought following reliefs:-

(a) Issue/pass an order or direction of appropriate nature to quash/set-aside the respondents, GOC-in-C Western Command order dated 09.05.2019 (Annexure No A-1) rejecting applicant's statutory complaint dated 11.10.2018, claiming allotment of Dental Technician trade instead of Nursing Assistant trade arbitrarily and illegally allotted to him by the respondents.

(b) Issue/pass an order or direction of appropriate nature to the respondents to allot the trade of a Dental Technician to the applicant with due seniority amidst his batch mates who have been allotted trade/group of Dental Technician and are undergoing its training.

(c) Issue/pass an order or direction of appropriate nature as this Hon'ble Tribunal deems appropriate in favour of the accused.

2. Brief facts of the case are that applicant was enrolled in the Army Medical Corps (AMC) on 07.11.2016 and he is presently serving with 2023 Field Hospital (Fd Hosp) since 29.09.2019. Earlier, on completion of basic military training, he reported No. 2 Technical Training Wing for technical training class-IV which he passed on 05.12.2017. An aptitude test for allocation of trade was conducted on 16.10.2017 which the applicant cleared. Thereafter, a Board of Officers (BOO) was assembled on 03.11.2017, which, on the basis of marks scored in technical training, aptitude test and 12th standard exams, allotted trades as per merit list and applicant was allotted Nursing Assistant (NA) trade as per Standing Order Procedure (SOP) (Exhibit R-1). Applicant's father Sub RK Singh is serving in Army Medical Corps (Dental Department) and he wanted his

son (applicant) to be selected in Dental Trade. Since applicant was granted NA trade, he and his son submitted various representations to respondents and also preferred a non-statutory complaint dated 21.10.2018 which was rejected by GOC-in-C, Western Command vide order dated 09.05.2019. It is in this perspective that this O.A. has been filed.

3. Submission of learned counsel for the applicant is that applicant had preferred dental trade as his first choice but despite having obtained 91st position in merit list with 62.5% marks out of 381 candidates, he was denied his preferred trade arbitrarily. His contention is that earlier a fool proof system for allotment of various trades/groups was followed which was strictly in accordance with merit position secured by a recruit in an Aptitude Test conducted after technical training but the respondents have changed the system for allotment of trade w.e.f. his batch. His further submission is that some recruits who had scored lesser percentage and position in aptitude test and were much below in merit than the applicant and had not even opted dental technician trade as their 1st choice, have been allotted the trade of dental technician trade arbitrarily and illegally which is against natural justice. Applicant has cited an example in which Sep (NA) Gitte Prakash M was allotted the trade of dental hygienist being his first choice and Sep (NA) Deepak Tiwari was allotted the trade of dental technician which was his 3rd choice despite both of them having scored merely 41% marks and being in extremely low merit than the applicant who scored 62.5% marks. He pleaded for setting aside of order dated 09.05.2019 passed by GOC-in-C, Western Command and change of his trade from NA to dental technician.

4. On the other hand submission of learned counsel for the respondents is that on successful completion of basic military training and technical training, applicant was made to undergo aptitude test for allotment of trade which was held on 16.10.2017 and based on marks obtained by him, he was allotted NA trade by following due procedure i.e. ordering a Board of Officers and vide its approval dated 03.11.2017 he was allotted trade of NA. His further submission is that as per Standing Order Procedure (SOP) all trades are equally important for overall delivery of healthcare service by the Army Medical Corps. Thus, there is a need to ensure that, candidates with higher merit position in aptitude test are allotted equitably to all the trades in which vacancy is available. Therefore, to avoid skewed distribution of candidates with higher merit position getting to few trades based on candidate's preference and to ensure near equitable distribution of meritorious candidates in all trades a Block System was adopted for allotment of trades. Learned counsel for the respondents concluded saying that Nursing Assistant trade was allotted to applicant in strict adherence of Record Office Instruction No. 01 of 2014 and preference certificate dated 27.10.2017 submitted by the applicant and no injustice has been done to him. He pleaded for dismissal of O.A.

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

6. It is not disputed that applicant was enrolled on 07.11.2016. It is also not disputed that applicant got 91st position by scoring overall 62.5% marks to decide merit with regard to allocation of various trades. Both the parties are in agreement that 381 candidates appeared and passed

the aptitude test conducted on 16.10.2017. Thereafter, trades vacancies were equitably assigned into the four blocks based on performance in technical training and aptitude test which for convenience sake is tabulated as under:-

S.No.	Blocks	Merit Position		Distribution of Dental Technical vacancy	Distribution of Dental Hygienist Vacancy
		From	To		
(a)	I	01	98	02	02
(b)	II	99	191	01	01
(c)	III	192	283	01	01
(d)	IV	284	371	01	01

7. From the aforesaid, it may be noted that applicant's name figured in block-I and there being two vacancies of dental technician, persons placed higher in merit than applicant were selected for the post.

7. In accordance with Appendix 'B' to Army Instruction 01 of 2014 preference certificate dated 27.10.2017 was obtained from applicant which mentions as under (Exhibit R-2):-

"I fully understand that there will be no guarantee for allotment of trade as per my choice and I am fully aware that Corps requirements and my performance in aptitude test will be the sole criteria for final selection. My option is for all categories and not for any or few of the above categories. I will not seek for change of trade at a later date."

8. The above certificate specifies that applicant had mentioned that he will not seek change of trade allotted by the respondents as per aptitude test held on 16.10.2017 and merit list prepared in terms of Army Instruction 01 of 2014 and SOP on the subject.

9. We are also clear that merit list was prepared giving 75% weightage for the marks obtained in aptitude test, 15% weightage for the marks obtained in min-term test conducted after completion of 12 weeks technical training and 10% weightage for the marks obtained in 12th examination in Physics, Chemistry, Biology and English. Applicant secured 62.5% aggregate marks and was placed at 91st position in the merit list (Annexure R-3) and since there was no additional vacancy of dental technician in Block-I, he could not be allotted this trade as per his choice.

10. A non-statutory complaint dated 21.10.2018 submitted by the applicant was rejected by General Officer Commanding-in-Chief Western Command vide order dated 09.05.2019 which for convenience sake is reproduced as under:-

"1. I have perused the non statutory complaint dated 21 Oct 2018 submitted by Number 15457739Y Sepoy (Nursing Assistant) Gaurav Kumar of MH, Jalandhar against allotment of Nursing Assistant Trade instead of allotment of Dental Technician Trade along with recommendation of Commanders in chain.

2. Sepoy (Nursing Assistant) Gaurav Kumar has contended that despite scoring 62.5% marks in aptitude test and being at serial No 91 of the merit list, he has been allotted the group/trade of a Nursing Assistant which was his 9th preference and his 1st option of Dental Technician has been denied, whereas the persons lower in merit have been allotted Dental Technician trade though it was not their first choice. Hence feeling aggrieved he was represented through instant non statutory complaint requesting to review the case and allot him Dental Technician Trade.

3. On examination of the documents and SOP on the subject, it is evident all trades are equally important for overall delivery of healthcare service by the Army Medical Corps. Thus, there is a need to ensure that candidates with higher merit position in aptitude test are allotted equitably to all the trades in which vacancy is available. Therefore, to avoid skewed distribution of candidates with higher merit position

getting to few trades based on candidate's preference and to ensure near equitable distribution of meritorious candidates in all trades merit based block system is adopted for allotment of trade. As per marks obtained by the complainant, he was segregated in block-I (one), as per available vacancies and he was allotted Nursing Assistant trade as per laid down policy.

4. Moreover, the complainant was explained the trade allotment methodology and he has rendered a certificate to the effect that he fully understands that there is no guarantee for allotment of trade as per his choice and that he would not seek for change of trade.

5. After consideration of all aspects of the complaint and viewing it against the redress sought by the complainant, I direct that the non statutory complaint dated 21 Oct 2018 submitted by Number 15457739Y Sepoy (Nursing Assistant) Gaurav Kumar of MH Jalandhar be rejected being devoid of merit.

6. The individual be informed accordingly."

11. While rejecting non statutory complaint of applicant, the competent authority has clearly mentioned in para 4 of order dated 21.10.2018 that there is no guarantee for allotment of his choice trade which once allotted cannot be reverted.

12. During the course of hearing, a submission was made by applicant that previous selections were based on old pattern in which there was no block system but at the time of his selection, block system was introduced which debarred his selection for the post of dental technician and later, on receipt of various representations from environment, this system was abolished. His contention is that had there been no block system at the time of his selection, he would have been selected for dental technician which was his first choice.

13. The respondents while filing counter affidavit in para 21 have clearly mentioned that 24 persons who were above

in the merit list than applicant were allocated Nursing Assistant trade which as per our opinion shows complete lucidity.

14. In these circumstances when the selection was done as per criteria laid down in Army Instruction 01 of 2014 and SOP on the subject and full transparency being made during the selection process, no prejudice seems to have been done to the applicant.

15. In view of the above, O.A. having no merit is liable to be dismissed. It is accordingly **dismissed**.

16. No order as to costs.

17. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : September 20, 2021
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