

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 588 of 2019**Thursday, this the 9<sup>th</sup> day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Sep/Lab Asst Satya Prakash (15447287N)  
S/o Shri Dinesh Prasad Singh  
C/o Krishna Mohan Kumar  
H. No. M/8/6 Parikalp Nagar Colony (West), Kanpur Road,  
Alambagh, Lucknow – 226023**.... Applicant**Ld. Counsel for the Applicant : **Col AK Srivastava (Retd)**, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), South Block, New Delhi – 110011.
3. OC AMC Centre & College, Lucknow.
4. The Cdr 118 (I) Bde, C/o 56 APO.
5. The CO 2118 Fd Hosp, C/o 56 APO.
6. OC, AMC Records, Lucknow.

**... Respondents**Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Central Govt Counsel**ORDER**

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

- “(a) issue/pass an order or direction of appropriate nature to quash/set aside respondents’ ‘AMC Records’ letter dated 13.06.2019, 22.07.2019 (Annexure No. A-1) rejecting the applicant’s representation dated 31.05.2019 against his discharge from service on 26.04.2019 and reinstate him in service.
- (b) Issue/pass an order or direction of appropriate nature to quash / set aside the respondents’ ‘AMC Records’ letter dated 21.12.2018 dismissing the applicant from service under AR 13 w.e.f. 26.04.2019 (Annexure No. A-1).
- (c) Issue/pass an order or direction of appropriate nature to quash / set aside the respondents’ ‘Cdr 118 (I) Inf Bde’ letter dated 13.06.2019 (Annexure No. A-1) rejecting continuing the services of the applicant even in trade of a NA/a Washerman leading to his dismissal on 26.04.2019 (Annexure No. A-15).
- (d) Issue/pass an order or direction of appropriate nature to quash / set aside the respondents’ Show Cause Notice, dated 25.04.2019 given to the applicant, contemplated to terminate his services since he had failed in three chances given to him to pass his Technical Trade Grade III cum Diploma exams by misquoting that he did not obtain 50% pass marks as stipulated in para 84 of AMC, ROI 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 were required for passing (Annexure No. A-3).
- (e) Issue/pass an order or direction of appropriate nature to respondents to pass the applicant in his 1<sup>st</sup> chance of his Tech Trade Grade III cum Diploma exam held in Dec 2016 since he had secured minimum 40% marks in every paper/subject with an overall aggregate of 50% as required to pass in terms of para 83 of ROI 1 of 2014 (Annexure No. A-3).

- (f) Issue/pass an order or direction of appropriate nature to respondents to pass the applicant in his Tech Trade Grade III cum Diploma by giving grace.
- (g) Issue/pass an order or direction of appropriate nature to respondents to give an additional chance, to pass his Tech Trade Grade III cum Diploma exams in terms of para 82 of ROI 1 of 2014 after reinstating him in service.
- (h) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (i) Allow this application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (AMC) on 28.04.2014 in the trade of Nursing Assistant and discharged from service on 27.04.2019 under Rule 13 (3) III (v) of Army Rules, 1954 before rendering 5 years of service. The applicant could not pass Technical Trade test Class-III in all three chances provided to him and therefore, he was also given option by the respondents for re-mustering in any lower grade but due to non availability of vacancy, he was not re-mustered in any lower trade and finally discharged from service under the provision of para 22 of ROI 1/2014. The applicant being not satisfied with his discharge, has filed this Original Application to quash his discharge order and to reinstate him in service.

3. Learned counsel for the applicant submitted that applicant has successfully completed his rigorous military training in AMC Centre and passed Technical Nursing Class IV trade exam. After successful completion of recruit training in AMC Centre, applicant was posted to Command Hospital, Pune from 26.06.2015 to 17.07.2017 in the trade

of Lab Assistant. As per para 24 of ROI 1 of 2014, posting order of failed candidates were not to be implemented whereas the applicant was illegally posted out from Command Hospital, Pune to a non designated training establishment/hospital 2118 Fd Hospital while he was left with 3<sup>rd</sup> chance to pass Class-III exam. The applicant was sent to Command Hospital, Udhampur in Nov. 2018 for one month training/classes for his 3<sup>rd</sup> chance exam to be held in Dec. 2018. The applicant after having been declared fail was discharged from service arbitrarily and illegally under the provision of AR 13 (3) iii (v) on 26.04.2019 (AN).

4. Learned counsel for the applicant further submitted that prior to termination of service a candidate who failed in all three chances, another option of re-mustering in lower grade trades is also available as per Army Order 4/2008/MP and para 512 of ROI 20/2014 but AMC Records rejected applicant's application for re-mustering into Chef vide letter dated 24.07.2018 and subsequently applicant's application for re-mustering into Washerman trade was also rejected vide letter dated 21.12.2018 stating there being no vacancy in Washerman.

5. Learned counsel for the applicant also submitted that a Sep/BTA Ansal AS has been declared pass in Dec. 2016 exam with only 40% marks in theory and aggregate of 50%. Hence, action of respondents to fail the applicant in said diploma exam is discriminatory since the applicant had also scored more than 40% marks in all papers and applicant should be declared pass in terms of para 83 of ROI 1 of 2014. He also submitted that applicant was

posted to 2118 Field Hospital which is deployed in CI Ops in J&K and hence could not achieved better marks being heavily committed in CI Ops in field area. The applicant was detailed on various duties including long guard/sentry duties which adversely affected his preparedness and concentration for the said exam and therefore, in such circumstances, respondents should have given an additional chance to the applicant to pass his Class-III cum Diploma exam which was recommended twice by the Commanding Officer of the unit vide letters dated 06.05.2018 and 20.02.2019. He pleaded that discharge order of the applicant has been issued in an illegal and arbitrary manner and therefore, his discharge order to be quashed and applicant should be reinstated into service.

6. Learned counsel for the respondents submitted that No. 2 Technical Training Wing imparts training to recruits Nursing Assistant after completion of their Basic Military Training from AMC Centre & College, Lucknow. These recruits undergo Class-IV Nursing Assistant training of 23 weeks at their wing before appearing in Class-IV final examination which is conducted by Institute of Paramedical Science (IPMS) under the aegis of No. 2 Technical Training Wing. The recruits who qualify in the CI-IV written exam undergo attestation and become Sepoys. After passing CI-IV exam, AMC Records issue posting order and accordingly, applicant was posted to Command Hospital, Pune w.e.f. 26.06.2015 for upgradation of Technical Trade Class i.e. Class-III. Thereafter, on reaching training hospitals, these Sep/Nursing Assistants undergo 52 weeks of Class-III training. After

completion of training, these Nursing Assistants (NAs) again have to appear in CI-III final examination conducted at the training hospitals. Question papers for conducting exam are sent by IPMS, No. 2 Technical Training Wing to respective training hospitals.

7. Learned counsel for the respondents further submitted that applicant passed his Laboratory Assistant Technical Trade Test Class-IV on 10.06.2015. On completion of training, the applicant appeared in his trade test Class-III final examination as first attempt in Dec. 2016 and scored aggregate 217 marks out of 400 but got 44 and 45.5 marks in Theory paper I & II and thus failed as the minimum marks required to pass the written examination i.e. theory is 50% of total marks of subject in both paper I & II separately. Thereafter, the applicant appeared in second attempt in June 2017 and scored 40 and 45 marks in Theory paper I & II and thus failed as the minimum marks required to pass the written examination i.e. theory is 50% of total marks of subject in both paper I & II separately. Thereafter, the applicant was posted with 2118 Field Hospital and appeared in his trade test Class-III as third and final attempt in Dec. 2017 at Command Hospital, Udhampur and scored 54 & 45 marks in Theory paper I & II respectively and was declared fail in third and last attempt of Class-III as the minimum marks required to pass the written examination i.e. theory is 50% of total marks of subject in both paper I & II separately.

8. Learned counsel for the respondents further submitted that it is specified in para 22 of ROI 1/2014 that “**Candidates who fail the**

***final technical trade Class-III cum diploma exam will not be posted out and will appear in final exam with subsequent batch. They will be given a maximum of three chances to pass the final exam. Candidates not able to pass the final technical trade Class-III cum diploma exam in three attempts will not be granted any further chances and will be discharged as per Army Rule 13 (3) III (v) by a show cause notice against contemplated discharge. Since Class-III Technical Trade test is the FIRST and Basic Exam for Nursing Assistant and other Technical Trades, a person who does not qualify class-III test for Nursing Assistant/other technical trades even after exhaustion of prescribed number of chances before completion of five year, should be discharged from service under provision of Army Rule 13. (Authority: Addl Dte Gen Manpower (P&P) MP 3 (PBOR) letter No B/10142/MP-3(PBOR) dated 18 Dec 2001). Individual will be re-mustered, if he is willing to remuster into another category, provided all Qualitative Requirements for said category is fulfilled'.***

9. Learned counsel for the respondents further submitted that in the instant case, the applicant could not pass diploma cum tech trade test Class-III exam in permissible three chances, AMC Records vide letter dated 06.04.2018 issued direction to the parent unit of the applicant i.e. 2118 Field hospital to take action as per para 22 of ROI 1 of 2014 and accordingly, a Show Cause Notice was issued to the applicant to discharge him under Rule 13 (3) III (v) of Army Rules,

1954. In reply to Show Cause Notice, the applicant requested for one more chance to appear for Class-III exam as a special case. Thereafter, CO 2118 Field Hospital recommended his case to AMC Records to give an additional chance for Class-III exam but it was denied by Records vide letter dated 22.05.2018 informing that if applicant is willing to re-muster into another category, he may apply for it. Accordingly, applicant applied to Chef trade vide 2118 Field Hospital letter dated 23.06.2018. The ibid application was returned unactioned intimating that only Washerman category is deficient in the Corps and if applicant is willing, he may apply for Washerman category. Then CO of the applicant again forwarded applicant's application duly recommended for re-mustering into Washerman trade vide letter dated 30.10.2018, however, CEE was not conducted during the recruitment year 2018-19 due to non availability of vacancy as per AMC Centre & College letter dated 04.12.2018, hence, applicant's CEE for re-mustering into Washerman trade could not be conducted and applicant was not re-mustered in any lower trade. Subsequently, under the provisions of para 22 of ROI 1/2014, applicant was discharged from service without any bias or prejudice.

10. Learned counsel for the respondents further submitted that applicant submitted a representation dated 31.05.2019 requesting for quashing his discharge and reinstate in service which was suitably replied by AMC Records vide letter dated 22.07.2019. Thereafter, applicant through his RTI application claimed that in Class-III exam held in Dec. 2016, Sep/BTA Ansal AS had scored 47 marks but he



was declared pass. So in this connection it was clarified that in Dec. 2016 exam, a large number of candidates had failed then Board of Officers was given a direction by Dean of Institute of Paramedical Sciences to re-evaluate the answer sheets of all candidates who scored between 40-49 marks and in re-evaluation Sep/BTA Ansal AS scored 52 marks and was declared pass. Hence, contention of applicant that Sep/BTA Ansal AS scored only 40% marks in Dec. 2016 Class-III exam is incorrect. It is made clear that for this Class III exam and result, applicant has not applied for re-evaluation of his marks.

Learned counsel for the respondents pleaded that applicant was discharged from service under the provision of para 22 of ROI 1/2014 without any bias or prejudice. The O.A. lacks merit and may be dismissed.

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

12. From perusal of records, we observe that applicant's request for grant of one additional chance to appear in Class-III exam after being failed in all three chances has rightly been rejected by the respondents there being no such provision as per ROI 1/2014. The applicant's request for re-mustering in lower trade of Chef and subsequently in Washerman was considered but due to non availability of vacancy during the period, he could not be re-mustered in lower trade. We also find that Sep/BTA Ansal AS scored 52 marks in re-evaluation of answer sheets of Class-III exam held in Dec. 2016

and accordingly, he was declared pass though in initial result of Dec. 2016 exam he scored 40% marks, hence, contention of applicant is not logical. Benefits of paras 82, 83 and 84 of ROI 1/2014, as claimed by the applicant, are not relevant in his case.

13. We are of the view that applicant was discharged from service under the provisions of para 22 of ROI 1/2014 as he could not pass Technical Trade test Class-III in all three chances provided to him but failed and therefore, he was also given option by the respondents for re-mustering in any lower grade but due to non availability of vacancy in Chef trade as applied by the applicant and non conduct of CEE of Washerman trade during the period, applicant could not be re-mustered in any lower trade and finally he was discharged from service as per rules. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

14. The Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

15. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated: Sept., 2021

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