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Reserved

COURT No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 404 of 2021

Tuesday, this the 05th day of April, 2022

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

Ex. Gentleman Cadet (GC) Anshuman Rawat (TES 3486)
Son of Shri Netra Singh Rawat, Lane No. 15, Bithoriya No.1
Gaurdara, Po-Haldwani, Dist –Nainital (Uttarkahand)-Pin-
263139.

..... Applicant

Learned counsel for the Applicant : **Shri Lalit Kumar and
Dr. Ashish Asthana, Advocate**

Versus

1. Union of India through, Secretary Ministry of Defence, South Block, New Delhi.
2. Director of Recruiting RTG-6,AG's Branch West Block-III RK Puram New Delhi Pin-1100066
3. General Officer, Commanding-in-Chief Army Training Command (ARTRAC) SIMLA, Himachal Pradesh - 171003.
4. Commandant College of military Engineering (CME) Pune (Maharashtra) Pin 411031.

5. Commander Cadet Training Wing (CTW) College of Military Engineering (CME) Pune-411031.

.....Respondents

Learned counsel for the Respondents. : **Shri Rajesh Shukla,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- (1) *To quash the impugned Order dated 12th March 2021.*
- (2) *To direct the respondents to take PPT/IPET tests of the applicant if the rules so require.*
- (3) *To direct the respondents to give re-joining to the applicant in the Second Term of the CTW/CME in order to let him complete the remaining terms of his engineering course.*
- (4) *To award the cost of this litigation to the applicant as against the respondents and*
- (5) *To pass any other order/orders or direction/directions which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.*

2. Brief facts of the case giving rise to this application are that Ex GC Anshuman Rawat was selected for TES-39 Course under 10+2 Technical Entry Scheme (TES). He failed to attain the requisite minimum standards in Outdoor Training in 1st

Term. He was relegated twice in the same training term on outdoor training grounds as well as on medical grounds. He failed in Physical Efficiency Tests(PET). His candidature was withdrawn from the cadets training Wing, College of Military Engineering Pune vide Army Training Command letter dated 12 March 2021 on Out Door Training grounds. Applicant submitted application to allow him to appear in PET tests and to continue his training which was denied. Being aggrieved, applicant has filed instant O.A. to allow him to join training.

3. Learned counsel for the applicant submitted that on 31.10.2017, Recruiting Directorate Army Headquarters published an advertisement in the national dailies for grant of permanent commission to the eligible candidates in the army under 10+2 Technical Entry Scheme (TES) Course- 39. Ex GC Anshuman Rawat submitted his application. He was informed vide letter dated 08.06.2018 that he had been selected for the said TES-39 Course and was instructed to report to Adjutant Officers Training Academy (OTA) at Gaya. On 30.06.2018 applicant reported to Adjutant OTA at Gaya. On 08.06.2019 the applicant successfully completed his Basic Military Training (BMT) at OTA Gaya after which he was instructed to report to Adjutant CTW/CME at Pune on 29.06.2019. On 05.09.2019 an

organized game of football was being played in which the applicant was playing as 'goal keeper' for his team. A player of the opposite team, while attempting to score a goal, violently crashed into the applicant and applicant's left knee sustained serious injury. Applicant was operated upon his left knee on 28.11.2019 and he was placed in low medical category P3. He was granted sick leave from time to time. The applicant was relegated and joined TES-41 Course. He was found Corona Positive and admitted to Corona Isolation Ward in Military Hospital (MH) Pune. On 05 September 2020 applicant was discharged from MH Pune and he was kept in quarantine from 05 September to 3 October 2020 as per Covid Protocol. On 25.10.2020 he was asked to appear in PPT tests including 2.4 km running. The applicant failed in all the tests due to suffering from after effect of Corona. On 12.11.2020, he was asked to appear in PPT tests again as a last chance. He passed in two tests but failed in other two tests including 2.4 km run. On 4 January 2021 applicant received a show cause notice for his proposed withdrawal. Applicant submitted his reply. The applicant was served with impugned order dated 12 March 2021 for withdrawal from training. Learned counsel for the applicant prayed that applicant had already passed all the PPT/IPET tests while undergoing BMT at OTA Gaya with excellent timings

which indicates that he did not suffer from any physical deficiency. In the advertisement it was clearly spelt out that relegation and withdrawal of Gentlemen Cadets (GCs) from their pre-commission training, could be done only if they were relegated twice on academic grounds. Respondents in the letter dated 16.03.2021 had clearly stated that “after completing his basic military training at Gaya, the applicant had joined the Cadet Training Wing **to undergo Engineering Degree Course alongwith service specific training.**” Learned counsel for the applicant prayed that impugned order dated 12.03.2021 be quashed and respondents be directed to take PPT/IPET tests of the applicant and allow him to re-join in the second term of CTW/CME in order to let him complete the remaining terms of his engineering course.

4. On the other hand, learned counsel for the respondents submitted that Ex GC Anshuman Rawat applied for TES- 39 Course. He was recommended in Service Selection Board (SSB). He was sent to OTA Gaya for training. Ex GC Anshuman Rawat was withdrawn from pre-commission training on Outdoor Training grounds vide Army Training Command letter dated 12.03.2021 in accordance with laid down instructions on the subject. Applicant was granted ample opportunities to improve

his performance in physical training and to pass required mandatory tests. However, the cadet was withdrawn from training only after the cadet was repeatedly unable to attain the required minimum standards. The Gentlemen Cadets under 10 + 2 Technical Entry Scheme are commissioned in army. The advertisement for the course broadly lays down the phases of training of 10 + 2 Technical Entry Scheme as one year of Basic Military Training at Officers Training Academy, Gaya and four years of Technical Training at College of Military Engineering (CME). A cadet before being commissioned into any arm or service of the Indian Army is required to meet the laid down basic minimum physical fitness standards of a trained soldier. The applicant joined OTA, Gaya with TES- 39 Course on 30.06.2018. His performance at OTA was below average. Out of 62 GCs who passed out from OTA, Gaya and moved to Cadet Training Wings (CTW) the applicant stood at 55 in merit. After completing basic military training at OTA, Gaya, the applicant joined CTW TES-39 Course on 29.06.2019 to undergo balance three years of pre-commission training. In the first term at CTW, the applicant reported sick on 05 Sep 2019 with pain in his left knee. There is no record of physical injury to the knee to the cadet while playing football.

5. Learned counsel for the respondents submitted that before the applicant reported sick due to pain in his knee, he appeared in PPT tests but he could not attain the minimum standards. He was granted sick leave for three weeks from 09 to 29 Sep 2019. On returning from leave, he was found physically fit. He rejoined training on 03.10.2019 but he was unable to pass PPT tests in that term, conducted on 03 Oct 2019, 24 Oct 2019 and 27 Nov 2019. On 13.11.2019, when the applicant again reported sick for knee pain, he was operated on 28.11.2019 for '**Osgood Schlatter**' (Left leg), and he was placed in medical category A4 and advised to do strengthening exercises. He proceeded on another sick leave of four weeks duration from 06 Dec 2019 to 02 Jan 2020. He had failed to pass his PT tests more than two months prior to him developing knee pain in Autumn Term 2019. He continued to underperform even after being declared medically fit and finally could not attain the requisite minimum physical training standards in the term. He was relegated from TES-39 to TES-40 Course on outdoor training grounds. Para 4 of advertisement clearly states that "**on successful completion of 4 years of the course, cadets will be granted permanent Commission in the army in the rank of Lieutenant**". In the advertisement only relevant details are included and detailed modalities are never covered in

advertisement for any Officer Entry Scheme. These are amplified in Training Directives issued by Headquarters Army Training Command and include minimum standards in training required to be achieved, including physical training.

6. Physical training standards achieved at OTA, Gaya after one year of completion of Basic Military Training are well below those required to be achieved by a trained soldier, on completion of four years of training of a TES GC. The balance three years of training at CTW which follows, is aimed at progressively enhancing the physical standards of GC to the level of a trained soldier, before he gets commissioned as an officer. In this manner, a GC is brought up to physical capacity of an officer, who is capable of commanding troops and leading them, both in combat as well as in support of combat operations, in varied terrain conditions found in India and abroad. Physical fitness is not only vital for an officer's personal fitness but also vital for ensuring that the men being led do not suffer casualties in operations and otherwise. Only a physically fit officer can perform his duties, related both with combat as well as combat support, efficiently.

7. After availing sick leave, the GC reported back on 02 Jan 2020 to Military Hospital, Kirkee. He was discharged from Military Hospital on 22 Jan 20 in Low Medical Category A3 (T-12) and was medically excused all physical activities. He complained of pain and reported sick again on 28.01.2020. This time, he was diagnosed with disease Medial Tibial Stress Syndrome in the right leg and not of the earlier operated left leg. He was again placed in medical category A4 and was sent on four weeks sick leave from 26.02.2020. His sick leave coincided with nationwide spread of COVID-19 and the GC returned on 15 Jun 2020 after about four months. Since the GC could not appear in any of his mandatory training and was absent from training for more than 42 days, he was relegated on medical grounds from TES-40 to TES- 41 Course, as per Headquarters Army Training Command Administrative instructions. After return of the applicant ex sick leave, it was assumed that he would have recovered and recouped well. He appeared in five attempts towards clearing of mandatory Out Door Tests. The applicant was afforded adequate opportunity throughout the term to improve. Performance of applicant in physical training in one and half years at CTW, from Jul 2019 to Dec 2020, (**while remaining in the same semester**) did not improve. Despite his medical setbacks, the GC was not determined enough to

overcome them and utilize the opportunities afforded to him to achieve the mandatory standards. The PPT and Individual Physical Efficiency Tests (IPEF) are an integral part of pre-commission training.

8. Learned counsel for the respondents submitted that applicant was withdrawn from Pre-Commission Training in accordance with Para 70 (a) (i) which clearly states that GC is liable to be withdrawn if he gets relegated twice in the same term other than on medical grounds. Attainment of minimum required physical training standards is vital for every trained soldier, including officers. Learned counsel for the respondents prayed that applicant failed in mandatory tests, hence he is not entitled to get any relief and the O.A. filed by the applicant is liable to be dismissed.

9. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the policy letter and rules relating to GCs.

10. The question before us to decide is 'whether GC Anshuman had been relegated twice in the same term on grounds other than medical and whether he is liable for withdrawal on that count?.'

11. In the instant case, GC Anshuman joined Officers Training Academy, Gaya TES-39 Course on 30.06.2018 under 10 + 2 Technical Entry Scheme. Candidates selected under this scheme are commissioned after one year training at Officers Training Academy, Gaya plus three years training at Cadets Training Wings at CME, MCEME and MCTE. These officers complete balance one year of degree at parent institutions after commissioning. Para 61 of HQ ARTRAC Administrative Instructions for Pre-Commission Training Academies and Cadets Training Wings clearly state that a GC can be relegated thrice on medical grounds for missing more than 42 days of training during entire stay in the Academy. Para 60 (b) of HQ Army Training Command Administrative Instructions states that **“If a GC misses more than 42 days of training in any term at IMA/OTA Chennai/ OTA Gaya/ CME/MCTE/MCEME, owing to medical or any other reasons he will be relegated to lower Course”**. Further Para 61 (e) states that **“if he fails to achieve the required pass marks in academics and service subjects, fails to achieve minimum standards in outdoor training, including physical training and any other aspect/sphere of training, including Officer Quotient and the required standard in overall performance, he will be relegated.”** The

applicant was relegated only once on medical grounds and twice on outdoor training grounds, in the same semester, that is, First Term at Cadet Training Wing. Physical Efficiency Tests (PET) are conducted to gauge the standard of physical and Battle Physical Efficiency among trainees and soldiers and encourage these young men to improve through self effort and by installing a spirit of achievement when they clear these tests. These tests provide a metric in assessing the physical efficiency standards of the unit as a whole. PET comprises of Physical Proficiency Tests (PPT), Battle Physical Efficiency Tests (BPET), Instructor's Physical Efficiency Tests (IFET) and Gymnastic Tests. Overall grading is worked out in accordance with the marks obtained in tests. The applicant could not clear PPT Test and he was relegated twice following the guidelines of Headquarters Army Training Command Administrative Instructions. In Autumn term 2019 due to pain in his knee he was granted sick leave and he thus missed 49 days of military training and 38 days of academic training (excluding Sunday/Holidays). He appeared for PPT on 29 July 2019 and 07 Aug 2019 but could not clear the tests. After return from sick leave he again could not pass the PPT on 03 Oct 2019, 29 Oct 2019 and 27 Nov 2019. As such he was relegated in his 1st term

from TES 39 to TES 40 Course at CTW/CME, Pune for ODT as he could not meet the minimum standards of PPT in that term.

12. After return ex sick leave on 02 Jan 2020, to MH Kirkee he was discharged and rejoined training on 22 Jan 2020. On 28 Jan 2020 he complained of pain in the right leg and was diagnosed as Tibial Stress syndrome and was sent on sick leave again and he returned to the CTW only in June 2020. Thus due to such a long absence (more than 42 days) from training he was relegated second time on medical grounds, from TES 40 to TES 41 Course in accordance with Instructions/Rules on matter of relegation. As such he had to repeat his 1st term again. Thereafter the GC was given several chances to clear his long overdue Course. Para 70 (a) (ii) of the Administrative Instructions clearly specify that 'Second relegation in the same training term excluding any relegation on medical grounds was tantamount to withdrawal. For ready reference Para 70 (a) (i) of Headquarters Army Training Command Administrative Instructions are reproduced below:-

"Grounds for Withdrawal

70. *The following cases will tantamount to withdrawal:-*

(a). *Failing to attain requisite minimum standards in Officer Quotient, Physical Training, Outdoor Training and Service/Academics subjects, within the stipulated period, under following circumstances:-*

- (i) *Second relegation in the same training term excluding any relegation on medical grounds.*
- (ii) *Third relegation during complete stay at IMA/ OTA, Chennai/ OTA Gaya/ CME/MCTE/MCEME excluding any relegation on medical grounds.*
- (b) *Fourth relegation for missing more than 42 days of training at PCTAs & CTWs during the entire stay in the Academy as per Paragraph 60 (b) above.*
- (c) *Disciplinary grounds, depending on merit of the case.*
- (d) *Medical grounds, including permanent HIV positive cases, based on the recommendations of a medical board.*
- (e) *On adverse security verification.”*

13. Thus the applicant having failed to attain the minimum standards in Physical Training in the same training term (i.e. 1st term) for a second time, he became liable for withdrawal in accordance with the above rule at Para 70 (a). PPT was held on 30.07.2020, 19.08.2020, 07.09.2020, 28.09.2020, 23.10.2020, 09.11.2020, 18.11.2020 and 15.12.2020. He could not clear the PPT despite luxury of several opportunities. He was accordingly relegated again in Autumn Term 2020 on grounds of ODT. Not only that but a cadet is required to attain gradually increasing standards of physical training in every term of six months, till he is commissioned at the end of four years. These standards cannot be waived or diluted and are an important component of training. Physical fitness is an essential facet of training for every cadet undergoing pre-commission training, and of equal

importance to all arms and services. The applicant failed to pass his tests more than two months prior to developing the knee condition, in Autumn term 2019. He continued to underperform even after being declared medically fit and finally he could not attain the requisite minimum physical training standards in the 1st term despite being given more than adequate number of attempts to pass. Hence, he was relegated twice on outdoor training grounds in the same term in accordance with instructions. The applicant was relegated only once on medical grounds in accordance with approved by HQ ARTRAC policy vide letter dated 28 July 2020. The relegation in Autumn Term 2020 was the second relegation of the GC in 1st term for ODT. The GC was relegated on medical grounds once in Spring Term 2020 which was owing to his prolonged absence due to his sick leave. The applicant was SHAPE-1 on 05 September 2020 and continued in same category throughout this term i.e. Autumn term 2020 and appeared in five (05) attempts of PPT and IPET. The attempts for mandatory tests missed out owing to quarantine in 2020 were compensated and additional attempts were provided to the GC throughout the Autumn Term 2020. Summary of tests conducted & results are produced as under:-

S.NO	Attempt	Date	2.4km	Toe Touch	Shuttle	Chin up	Sit up	Sprint	Dive Roll	Chest Touch
(a)	I	13.07.20	Not attempted (Quarantine)							
(b)	2 nd	30.07.20	Fail	Fail	Fail	Fail	Fail	Fail	Fail	Fail
(c)	III	19.08.20	Not attempted (Quarantine)							
(d)	IV	07.09.20	Not attempted (Quarantine)							
(e)	V	28.09.20	Not attempted (Quarantine)							
(f)	Vi	23.10.20	Fail	Fail	Sat	Fail	Sat	Sat	Pass	Fail
(g)	Vii	09.11.20	Fail	Fail	Good	Fail	Ex	Sat	Pass	Fail
(h)	VIII	18.11.20	Fail	Sat	Good	Fail	Ex	Sat	Pass	Fail
(j)	IV	15.12.21	Fail	Sat	Good	Sat	Ex	Sat	Pass	Fail

14. The applicant after availing number of opportunities could not pass PPT and IPET test which is integral part of pre-commission training. Since applicant could not achieve required standard in spite of providing ample opportunities, and as he was not fulfilling criteria prescribed under the rules his candidature was withdrawn and applicant was returned to home after he was handed over his original documents. On the request of father of the applicant, Col Rohit Gupta, Commander of Cadet Training Wing provided a letter to the father to help Ex GC Anshuman Rawat to get admission in a civilian college on the basis of his academic subjects at CTW so that he could have a chance to resume his studies. We also find that rulings relied upon by the applicant being either based on different facts or overruled are of no help to him.

15. We, therefore, do not find any merit in the application, to interfere with the impugned order dated 12.03.2021 passed by the respondent authority in terminating the services of the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**.

16. Accordingly, Original Application is **dismissed**.

17. No order as to cost.

18. Pending applications, if any, stand disposed off.

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

Dated: 05 April, 2022

UKT/-