

Court No-1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 64 of 2021

Friday, this the 16th day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)

Rajput Anup Singh, son of Rajendra Singh, R/o A-165, Ankur Tenaments, New India Colony, Naroda-Nikol Road, Ahmedabad, Gujrat-382350.

..... Applicant

Learned counsel for the: **Shri Mukesh Kumar**, Advocate.
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi-110011.
3. Commandant ACC Wing Indian Military Academy, Dehradun.
4. Captain Sanjeev Kumar, Base Hospital, Delhi Cantt.

.....Respondents

Learned counsel for: **Ms Appoli Srivastava**, Advocate
the Respondents. Sr. Central Govt. Counsel

ORDER (Oral)

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

- (a) *To quash the impugned Record AMC letter No 15413913A/PASPS/SC-37/ER LGL/2019 dated 10.01.2020 by which decision of the opposite party on the statutory complaint of the applicant has been communicated.*
- (b) *To quash the impugned order dated 30.04.2017 (Annexure No 8) to the extent by which it has been hold that the Nk/DORA Sanjeev Kumar is entitled left ACC-12 course to join AMC (NT) SSC-2015.*
- (c) *To direct the respondent to allow the applicant to join the AMC (NT) SSC 2015 by creating additional vacancy.*
- (d) *To direct the respondents to consider the case by creating an additional vacancy or allot one surplus vacancy to the applicant in 2020.*
- (e) *To issue an order or direction that this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in Army Medical Corps (AMC) as Sepoy/Nursing Assistant. During the course of his service he was selected as Laboratory Assistant. In the year 2015, he appeared in Service Selection Board (SSB)-19 and got selected for Short Service Commission (SSC) in AMC (Non Technical) (NT). In the list of selected candidates his name figured at serial number 6 of the

qualified candidates. Respondent No. 4 (Sanjeev Kumar) appeared in SSB of Army Cadet College (ACC-112) and SSB-19 of AMC (NT) in the year 2015 and qualified in both SSBs. In the list of selected candidates for SSC (NT) his name figured at serial No 1. He joined Army Cadets College Wing, Indian Military Academy, Dehradun on 31.12.2015 and while undergoing training (which he undergone for three months) he opted for commission in AMC (NT) and withdrew himself from ACC after obtaining approval of the competent authority on 02.04.2016. He joined SSC (NT) course and is presently serving as Captain in Base Hospital, Delhi Cantt. Applicant has filed this O.A. for grant of SSC (NT) on the ground that respondent No 4 could not have been allowed to join SSC (NT) in terms of Para 57 of Headquarters Army Training Command Instructions-2014. In regard to this applicant had submitted statutory completed dated 27.02.2017 which was rejected vide order dated 22.10.2018. It is in this perspective that applicant has filed this O.A.

3. Learned counsel for the applicant submitted that during the course of his service he applied for SSC (NT) in the year 2015 and his name figured at serial number 6 of the selected candidates. He further submitted that there being five vacancies and respondent No 4 being proceeded to attend ACC course, his name reached to serial number 5, therefore

he should have been considered for grant of commission. His further submission is that respondent No 4 was permitted to discontinue his training at IMA Dehradun for joining AMC (NT) in violation of Para 57 of Headquarters Army Training Command Administrative Instructions dated 05.05.2014 as per which an ACC Cadet can only withdraw from training provided he gets higher civil services of Govt of India. He submitted that respondent No 4 was not called for an interview from higher civil services, he was not entitled to withdraw from ACC and join AMC (NT) in view of Para 57 of Headquarters Army Training Command Administrative Instructions dated 05.05.2015.

4. Learned counsel for the applicant further submitted that due to this illegal permission given by the respondents applicant has suffered great loss as he was deprived of getting commission in the Army. His further submission is that the Chief of the Army Staff has rejected his statutory complaint in mechanical manner without going into the merits of the case. He pleaded for grant of AMC (NT) commission to the applicant by creating an additional vacancy.

5. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army Medical Corps on 29.09.2001 and he is presently posted with Command Hospital, Lucknow Cantt. He further submitted that

the applicant had applied for grant of Short Service Commission in Army Medical Corps (NT) and he was recommended by SSB-19 for Short Service Commission in Army Medical Corps (NT). It was further submitted that total 15 candidates were recommended by SSB in which applicant's name figured at serial No 6 and respondent No 4 was placed at serial No 1. The Director General Medical Services allotted five vacancies, therefore, five candidates were selected and the applicant being placed at serial No 6 was not selected.

6. Learned counsel for the respondents further submitted that respondent No 4 appeared for SSB of Army Cadet College (ACC-112) in 2015 and also for AMC (NT) Short Service Commission 2015 on 03.12.2015 and qualified in both. He joined Army Cadet College Wing, Indian Military Academy, Dehradun on 31.12.2015 i.e. after attending the SSB of Army Medical Corps (NT) in which he had qualified but his joining instructions and final merit list were awaited at that time. It was further submitted that respondent No 4 joined ACC on 31.12.2015. It was further submitted that in terms of Para 54 (c) of Army Training Command Administrative Instructions 2014 respondent No 4 opted to withdraw ACC and joined AMC (Non Technical) on 02.04.2016 after getting approval of the commandant.

7. Respondents further contention is that in view of the Hon'ble Apex Court judgment in the case of **Ramchandra Shankar Deodhar vs State of Maharashtra**, (1974) 1 SCC 317 vacancy allotted for the ensuing year cannot be given to the applicant. His further submission is that the aforesaid decision was also re-iterated in the case of **Tilokch and Motichand vs HB Munshi**, (1969) 1 SCC 110.

8. Learned counsel for the respondents further submitted that the respondent No 4 was allowed to withdraw from ACC in terms of Para 54 (c) of Administrative Instructions-2014 issued by Headquarters Army Training Command, Dehradun. His further submission is that respondent No 4 was permitted to withdraw from ACC vide approval dated 02.04.2016 granted by the Commandant, IMA, Dehradun. His other submission is that Chief of the Army Staff, vide order dated 20.10.2018 has rightly rejected applicant's statutory complaint keeping in view the relevant rules and policy letters. He pleaded for dismissal of O.A.

9. Heard Shri Mukesh Kumar, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents and perused the record.

10. Commissioning in Army Medical Corps (NT) is open to serving JCOs/ORs of Army Medical Corps serving in different trades. The eligibility conditions and other criteria are

governed by Army Instruction 40/73 as amended for grant of Short Service Commission in AMC (NT). The eligible JCOs/ORs appear before Service Selection Board (SSB) and based on their performance, a comparative merit list of qualified candidates is prepared. The Short Service Commission in AMC (NT) is granted to number of candidates as per merit list and available vacancies for that year and then they undergo 09 months training as commissioned officers at Officers Training College, AMC Centre & School, Lucknow.

11. No. 15413913A Sepoy Rajput Anup Singh was enrolled in the Army Medical Corps on 29.09.2001 and during the course of his service he got himself remustered as Laboratory Assistant w.e.f. 20.08.2005. In the year 2015, applicant applied for SSC in AMC (NT) and respondent No 4 applied for ACC and SSC in AMC (NT). Both the persons were recommended by the SSB for grant of commission. In the list of selected candidates for AMC (NT) applicant was placed at serial No 6 whereas respondent No 4 was placed at serial No 1. Respondent No 4 being qualified for ACC joined Indian Military Academy, Dehradun as Cadet and started undergoing training. Meanwhile, result of AMC (NT) was received and respondent No 4 withdrew himself from ACC after getting approval from Commandant, IMA, Dehradun and opted for AMC (NT). The respondents' contention is that respondent No

4 was allowed to withdraw in terms of Para 54 (c) of Headquarters Army Training Command Instructions-2014, which for convenience sake, is reproduced as under:-

"54 (c). Change to Other Training Institutions of Army/Air Force/Navy. GCs/LCs opting to join any other Training Academy of Indian Army, Air Force or Navy will be permitted to do so. However, they will have to resign from the Academy and such resignation will be unconditional. No cost of training will be recovered from the GC/LC on such change, but the stipend paid, expenditure on clothing, travelling allowance, if paid and allied charges would have to be refunded before departure. Educational qualification documents in original, submitted at the previous Academy on joining will be retained by the Academy. These documents will be despatched to the new Academy only when confirmation of the GC/LC having joined the new Academy is received by the previous Academy.

12. Applicant's contention is that in view of Para 57 of aforesaid instructions, respondent No 4 could not have been allowed to withdraw from ACC and join AMC (NT) as Para 57 allows withdrawal from ACC only if a Cadet applies for a job interview for Civil Central Government. His contention is that withdrawal from ACC to join AMC (NT) is illegal. For convenience sake, Para 57 of aforesaid instructions is reproduced as under:-

"57. DE, TGC/UES, SSC (NT), SSC (T), TES, NCC Special Entry Scheme, JAG Entry and ACC Entry GCs/LCs/Service Cadets, in first term only, will be allowed to apply for a job interview for Civil Central Government job and also permitted to proceed for interview for Civil Central Government job."

13. From the aforesaid, we find that applicant's contention is tenable in view of Para 57 aforesaid and it is crystal clear that respondent No 4 could not have been permitted to withdraw from ACC as he had not applied for a Civil Central Government job but he opted to withdraw from ACC to join AMC (NT) which is not a Civil Central Government job. Thus, in view of Para 57 withdrawal of respondent No 4 from ACC to join AMC (NT) seems to be unlawful.

14. Applicant's main contention revolves around the point that had respondent No 4 was not allowed to withdraw from ACC in view of Para 57 of Headquarters Army Training Command Administrative Instructions-2014, he would have been called for AMC (NT) training being re-placed at serial number 5 and would have become an officer.

15. During the course of hearing, we were informed that respondent No 4 is serving as a Captain at Base Hospital, Delhi Cantt after completion of his training at AMC Centre & School, Lucknow. We have also perused order dated 20.10.2018 passed by Chief of the Army Staff rejecting applicant's statutory complaint and we find that his statutory complaint was rejected in a cavalier manner. In our considered opinion respondent No 4 was not eligible to withdraw from ACC and join AMC (NT). Further, it is also worthwhile to mention that rejection order dated 20.10.2018 of his statutory complaint

dated 27.02.2017 was conveyed to the applicant only on 20.01.2020 after an inordinate delay of one year and three months which seems to be unreasonable.

16. We also find that since respondent No 4 is serving in the Army as a Captain, it will be futile to revert him back to his previous rank, therefore respondents are directed to create an extra ordinary vacancy under special powers vested with Chief of the Army Staff and adjust respondent No 4 at the vacancy so created and grant AMC (NT) to the applicant from the vacancy of 2023 w.e.f. the date of this order to protect the interest of both the individuals as also to prevent further litigation in this regard.

17. We also feel that respondents have knowingly/unknowingly done wrong by according permission to respondent No 4 for his withdrawal from ACC and join AMC (NT) in contravention to Para 57 of the Instructions. Therefore, we direct the respondents to re-visit Headquarters Army Training Command Administrative Instructions-2014 issued on 05.05.2014 to evade future complications in this regard.

18. The O.A. is **allowed**. Order dated 22.10.2018 passed by the Chief of the Army staff rejecting applicant's statutory complaint dated 17.02.2017 is set aside.

19. In view of the above, respondents are directed to adjust respondent No 4 through the vacancy created under the special powers vested with Chief of the Army Staff and grant AMC (NT) commission to the applicant from the quota of 2023 w.e.f. the date of this order.

20. No order as to costs.

21. Miscellaneous application(s), pending if any, stand disposed of.

(Lt Gen Rakesh Kumar Anand)
Member (A)

Dated: 16.12.2022

rathore

(Justice Umesh Chandra Srivastava)
Member (J)