

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 263 of 2021**

Tuesday, this the 27th day of July, 2021

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

Sep/ORA Bipul Kumar Chaudhary, S/o Sri Mahendra
Pratap Chaudhary, Village – Kajri Jamalpur,
Tehsil – Akbarpur, PS- Samanpur, Ambedkar Nagar – 224186.

.... **Applicant**

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. The Commandant, AMC Centre and College, Lucknow.
4. The Commanding Officer, 454 Fd Hospital, Secunderabad.
5. OC Records, AMC Records, Lucknow.

... **Respondents**

Ld. Counsel for the: **Shri Kaushik Chatterjee,**
Respondents. **Central Govt Counsel**

ORDER

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

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

“(a) Issue/ pass an order or direction of appropriate nature to quash/set aside respondent’s AMC Records, Lucknow letter dated 16/04/2021 directing initiation of immediate action to discharge the applicant from service under AR 13 (3) (III) (v) (Annexure No A-1).

(b) Issue/pass an order or of appropriate nature to summon and quash/set aside respondent’s impugned orders leading to discharge of the applicant in terms of para 22 of ROI and under AR 13 (3) (III) (v) since neither the applicant was subjected to any training/ classes for his 2nd and 3rd Technical Trade Class III exams held in Nov/Dec 2019 and Jun 2020 respectively due to being on Fmn Exercise in Pokhran for almost 6 months w.e.f. Jul/Aug 2019 followed by adversities due to COVID-19.

(c) Issue/pass an order or direction of appropriate nature to the respondents to grant 2nd and 3rd chance again to the applicant to pass his Technical Trade Class III exams since they could not ensure training/ classes for him before conduct of said exams in Nov/Dec 2019 and Jun 2020 respectively due to his unit being on Fmn Exercise in Pokhran for almost 6 months w.e.f. Jul/Aug 2019 followed by adversities due to CVID-19.

(d) Issue/ pass an order or direction of appropriate nature to the respondents to grant an additional chance, in terms of para 28 and 82, to the applicant to pass his Technical Trade Class III cum Diploma exams.

(e) Issue/ pass an order or direction of appropriate nature to the respondents to reevaluate applicant’s result of his Technical Trade Class III cum Diploma exams held in Jun 2019 and Remuster test held on 28.02.2021.

(f) Issue/ pass an order or direction of appropriate nature to the respondents to not to discharge the applicant from service in his Trade Class IV or in absorb him in any trade/class in any Arm/service.

(g) Issue/ pass any other order or direction as this Hon'ble Tribunal deem fit in the circumstances of the case.

(h) Allow this application with costs.

2. Brief facts of the case are that the applicant enrolled in the army on 09.11.2016 in Army Medical Corps (AMC). He passed his Tech Class IV grade test on 12.03.2018 and was allotted trade of ORA. The applicant attended 2nd chance of his Tech Trade Class-III cum Diploma Exams in Dec 2019 and was declared fail. In June 2020, the applicant attended 3rd chance of his Tech Trade Class- III cum Diploma Exams and was declared failed. A show cause notice dated 12.09.2020 was served to applicant to contemplate to discharge him from service under AR 13 (3) (III) (v) III (iv). The applicant submitted application for additional chance as well as for re-mustering in lower category trade. The applicant appeared in re-mustering test but was failed. A letter dated 16.04.2021 was issued to discharge him from service. Aggrieved, the applicant has filed the instant Original Application to quash the discharge order and grant additional chance for attending Tech Trade Class-III cum Diploma Examination.

3. Learned counsel for the applicant submitted that applicant after enrolment in the army completed his Basic Military training and passed Nursing Class- IV Trade Test. All Nursing Assistants (NA) have to give order of preference of all 13 different trades of

Nursing Assistants in AMC. Thereafter they are subjected to an aptitude test. Finally these trainees are allotted various trades of NA based on their preference/ choice and their merit in said aptitude test. Applicant was allotted Operation Room Assistant (ORA) trade being low in merit. All NAs are posted to various MHs listed as training establishments/ hospitals in para 16 of AMC ROI of 2014 for training them to pass their respective Tech Trade Class- III cum Diploma exams in a maximum of three chances as provided in para 22 and 24 of ROI 2014. Further personnel who are posted to non training hospitals are required to be attached to a training hospital at least for a duration of 1 and ½ months for a crash training/ revision of syllabus of respective Tech Trade Class- III cum Diploma Exam. The applicant was posted to MH Secunderabad after his training. He appeared in Tech Trade Class- III cum Diploma exam held in Jun 2019 and was failed. Learned counsel for the applicant submitted that as per para 24 of AMC ROI 2014, the applicant was supposed to be posted to a designated training establishment for at least 6 weeks crash training/ revision of syllabus of respective Tech Trade Class- III cum Diploma Exams in three chances contrary to this, applicant was posted to 454 Fd Hospital which is not a designated Training Establishment/ Hospital listed in para 16 of the AMC ROI, 2014, hence he could not pass Tech Trade Class- III cum Diploma

exam. The applicant was declared failed in 1st chance since he had scored 35% marks (failed by 5 marks) in one of the papers instead of minimum requirement of 40% marks stipulated in terms of Para 22 of AMC ROI 1 of 2014. He should have been given 5 grace marks to pass the exam. Learned counsel for the applicant further submitted that the applicant was sent on temporary duty to MH Secunderabad from 454 Fd Hospital, exercise location in Pokharan, Rajasthan for availing 2nd and 3rd chance to pass Technical Class- III cum Diploma exams in Dec 2019 and Jun 2020 wherein he again failed and secured very less marks due to lack of training program and lack of time for study owing to heavy commitments of his unit deployed in Fmn level exercise in Pokhran, Rajasthan for 6 months due to COVID-19.

4. Learned counsel for the applicant further submitted that the applicant was served a show cause notice dated 04.09.2020 to contemplate to discharge him from service under AR 13 (3) (III) (v) III (iv). The applicant submitted his reply to show cause notice vide letter dated 12.09.2020 and prayed for additional chance to pass Tech Class- III test as well as for re-mustering in lower category trade. The applicant along with two other candidates was directed to appear in re-mustering exam at AMC Training Centre, Lucknow on 28.02.2021 but was failed. Army Medical Corps Record Office, Lucknow has issued letter dated 16.04.2021 to

discharge him from service. The applicant was never given any performance counselling during his service. He has worked satisfactorily with an unblemished record as an ORA. The applicant has completed about 4½ years of service and is a trained soldier and a huge Govt exchequer has been invested on his training. He contended that Indian Army is working with hardly 75-80% of authorised strength and has sufficient number of vacancies to absorb a trained soldier with almost 5 years of service which will help the applicant as well as Government. Hence respondents must give him an additional chance to pass said diploma exam since the applicant was not imparted any training before availing 2nd and 3rd chance or to consider him to adjust him in any alternate grade/ trade in any Arms/ Service of the Army to avoid his discharge in the interest of individual as well as organization.

5. Per contra, learned counsel for the respondents submitted that the applicant based on aptitude test, preference and availability of vacancies was allotted ORA trade on 16.10.2017. After completion of Class –IV technical trade test, he was detailed for ORA Class III final exam in Jun 2019 along with his batch mates at Military Hospital Secunderabad. In his 1st attempt, out of 400 marks the applicant earned 222 marks i.e. 55.5%. In terms of paragraph 25 of Standing Operating Procedure of Institute of

Paramedical Sciences, ***“there will be two papers of 100 marks each for all the diploma exams. The minimum pass percentage will be 50% in each paper”***. However, in Theory Paper- 1, the applicant could earn only 45 marks out of 100 marks and thus declared failed in his trade test Class- III final exam. Details of overall marks obtained by the applicant in his 1st attempt for his trade test Class- III are as under:-

Ser No	Subject	Maximum Marks	Marks Obtained
(a)	Inter Assessment	100	66
(b)	Practical & Oral	100	55
(c)	Theory Paper-1	100	45
(d)	Theory Paper – II	100	56

6. As per paragraph 22 of AMC, ROI 01/2014 amended vide Directorate General of Medical Services (Army) letter dated 06.11.2017, ***“The candidates who fail in the final technical trade class II cum diploma exam will be dispatched to their respective units as per posting order. Thereafter, they will be called back on temporary duty from their units to Training Institutes, one month prior to the date of the next exam”***.

7. Accordingly, applicant was posted to 454 Fd Hospital which is located at Secunderabad.

8. As per paragraph 23 (b) of AMC, ROI 1/2014 **“maximum number of attempts allowed for final technical trade test Class III/final diploma examination will be three”**. The applicant appeared in exam in Dec 2019 as 2nd attempt at MH, Secunderabad. The applicant could earn 140 marks out of 400 marks i.e. 35% and thus again declared failed. Details of overall marks obtained by the applicant in his 2nd attempt for his trade test Class III are as under:-

Ser No	Subject	Maximum Marks	Marks Obtained
(a)	Inter Assessment	100	60
(b)	Practical & Oral	100	52
(c)	Theory Paper-1	100	12
(d)	Theory Paper – II	100	16

9. Thereafter the applicant underwent for his 3rd attempt and final attempt for Class- III exam and earned 198.50 marks out of 400 marks i.e. 49.63% and in theory paper-1, earned only 20 marks and again declared failed. Details of overall marks obtained by the applicant in his 3rd attempt for his trade test Class III are as under:-

Ser No	Subject	Maximum Marks	Marks Obtained
(a)	Inter Assessment	100	60
(b)	Practical & Oral	100	58

(c)	Theory Paper-1	100	20
(d)	Theory Paper – II	100	60.5

10. Additional Directorate General of Manpower letter dated 18.12.2001 states that ***“It is clarified that training for Class III and Class IV is continuous and only one test for Class III is held after combined duration of Class III and IV Training. Since Class III technical trade test is the first and basic examination for Nursing Assistant trade, therefore, a person who does not qualify class III test for Nursing Assistant even after exhaustion of prescribed number of chances before completion of vie years, should be discharged from service under provisions of AR 13”.***

11. In this connection as per Paragraph 22 of AMC, ROI 1/2014 amended vide Directorate General of Medical Services (Army) letter dated 06.11.2017, ***“They will be given a maximum of three chances to pass the final examination. Candidates not able to pass the final technical trade class III cum diploma exam in three attempts will not be granted any further chance and will be discharged as per Army Rule 13 (3) III (v) by issuing a show cause notice. Since Class III technical trade is the first and basic exam for NA and other technical trades, a person who does not qualify class III test for NA/ other***

technical trade even after exhaustion prescribe number of chances before completion of five year, should be discharged from service under provisions of Army Rule 13”.

12. Learned counsel for the respondents submitted that in terms of paragraph 22 of AMC, ROI, 01/2014 amended vide Directorate General of Medical service (Army) letter dated 06.11.2017, ***“candidates not able to pass the final technical trade class- III cum diploma exam in three attempts will not be granted any further chance and will be discharged from service in terms of Army Rule 13 (3) (III) (v) issued by show cause notice against discharge”.*** Applicant was served show cause notice for discharge from service. In reply, applicant prayed for re-mustering. Applicant gave his willingness for re-mustered in House Keeping trade. A statement of case was prepared and question paper was demanded. The applicant was allowed to undergo re-mustering test for House Keeper category. He scored only 28.5 marks and was declared failed for re-mustering to the category of House Keeper. The applicant was well aware about the consequences of not passing the requisite tests. As per paragraph 515 (g) of AMC, ROI 20/2014, ***“only one chance will be given to the trainees to qualify for the re-mustered category”.*** As the applicant failed to qualify his ORA Class III trade test in three maximum prescribed chances and has also

failed in the re-mustering test for the trade of House Keeper, in terms of existing policy, he was required to be discharged from service before completion of five years of service i.e. before 08.11.2021 for which necessary instructions have been issued to the unit concerned. All efforts have been made to retain the applicant in service, but since he could not clear Class- III trade test as well as re-mustering test, he is liable to be discharged from service. In support of his contention, learned counsel for the respondents has drawn our attention in case of ***Union of India & Ors. vs. Dipak Kumar Santra*** (2009) 7 SCC 370, a recruit was failed twice in clerks' proficiency and aptitude test, was discharged under Rule 13(3) of the Army Rules. The said discharge was maintained by the Apex Court. Learned counsel for the respondents submitted that this Original Application is misconceived and devoid of merit and is liable to be dismissed with cost.

13. We have heard learned counsel for the parties and perused the record.

14. Paragraph 7 of Army Medical Corps Record Office Instructions 01/2014 states that ***"after completion of 18 weeks of technical training, all class IV trainees will undergo an aptitude test for allotment of technical trades as per***

guidelines contained in the Standing Operating Procedure issued by Commandant Army Medical corps Centre and College, Lucknow". Further Paragraph 10 of AMC Record Office Instruction 01/2014 stipulates that **"trades will be allotted by Board of Officers from amongst the following, based on the merit in aptitude test, preference exercised by the individual and availability of vacancies then, as intimated by Army Medical Corps Records"**. The applicant secured only 32.64 marks out of 100 and cleared his Class IV technical trade test on 26.02.2018 and was allotted ORA trade.

15. Paragraph 16 of AMC, ROI 01/2014 stipulates that **"On successful completion of Class –IV technical training, all the candidates will move to the designated training establishment for 75 weeks of training as per detailment order issued by AMC records Training hospitals/ Institute are responsible to impart training strictly as per schedule, laid down syllabus and others instructions issued from time to time. They will be awarded Class- III of respective trade on passing of their final test."**

16. Considering the rival submissions and after perusal record, it is clear that the applicant was given ample opportunities to pass Class- III trade test but he failed in Trade Test Class- III as well

as re-mustering test for House Keeper. As per Paragraph 22 of AMC, ROI 1/2014 amended vide Directorate General of Medical Services (Army) letter dated 06.11.2017, ***“They will be given a maximum of three chances to pass the final examination. Candidates not able to pass the final technical trade class- III cum diploma exam in three attempts will not be granted any further chance and will be discharged as per Army Rule 13 (3) III (v) by issuing a show cause notice. Since Class- III technical trade is the first and basic exam for NA and other technical trades, a person who does not qualify class- III test for NA/ other technical trade even after exhaustion prescribe number of chances before completion of five year, should be discharged from service under provisions of Army Rule 13”.***

17. Contention of the applicant that similarly placed Sepoy Dilip Singh and Sepoy Jaipal were allowed to serve beyond 5 years despite having failed in all three attempts is misconceived. Firstly, they are not party in the instant O.A. and without examining them, nothing can be said. Moreover the applicant has not completed 5 years of service and in spite of giving three chances to pass Trade Test Grade- III and even giving chance for re-mustering, he could not pass any test. Hence there is no violation of law in discharging the applicant.

18. Contention of the applicant that Indian Army is working with hardly 75-80% of authorised strength and has sufficient number of vacancies to absorb a trained soldier with almost 5 years of service which will help the applicant as well as Government is correct but there are some rules which any organisation has to follow to retain such candidates in service, hence respondents have not retained him in service and issued warning order for discharge as per rule position.

19. A conceptuous of our observations made hereinabove is that the applicant has failed to make out a case in his favour for granting him additional chance for appearing in Trade Test Grade-III. Hence we don't find anything wrong or illegal in issuing warning order of discharge.

20. In view of above observation and legal position, the Original Application is devoid of any merit and it is **dismissed**.

21. No order as to costs.

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

Dated: 27 July, 2021
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