

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Court No. 3

O.A. No. 151 of 2012

Monday, this the 24th day of August, 2015

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

**Sweety Dogra, Resident of A-221, Ashray, Udayan – II,
Eldeco, Raibarely Road, Lucknow - 226025**

.....Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence,
South Block, New Delhi.
2. Director General of Military Nursing Services, Integrated
Headquarters of Ministry of Defence (Army), Adjutant
General’s Branch, L Block, New Delhi
3. Commandant, Command Hospital (Air Force),
Bangalore - 560007

....Respondents

Ld. Counsel for the
Applicant

**- Shri Yash Pal Singh
Advocate**

Ld. Counsel for the
Respondents

**-Mrs Deepti Prasad Bajpai
Sr. Central Govt. Counsel
Assisted by Lt Col Subodh
Verma, Departmental
Representative**

ORDER
(PASSED IN COURT)

1. This Original Application has been filed under section 14 of the Armed Forces Tribunal Act, 2007, whereby the Applicant has prayed for the following reliefs:-

(a) Issuing/passing of an order or direction to the Respondents setting aside the order dated 05.12.2008 passed by the Director General of Military Nursing Services, Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch, 'L' Block, New Delhi (contained in Annexure No. 1 to this original Application) declaring the applicant unfit for commissioning in the Military Nursing Service on the ground of not meeting with requisite medical standards, after summoning the original records, and grant all consequential benefits.

(b) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) allowing this Application with cost.

2. From perusal of record, it transpires that the case is not admitted. It is a fit case for adjudication.

3. Admit.

4. Pleadings have been exchanged. The case is ripe for hearing. With the consent of Ld. Counsel for the parties, we decide the Original Application on merit.

5. This Original Application has been filed by the applicant against the order dated 05.12.2008 by which the applicant has been declared unfit for commissioning in the Military Nursing Service on the ground of not meeting with the requisite medical standards.

6. Ld. Counsel for the Applicant submitted that at the time of enrollment in the B.Sc. Nursing/General Nursing and Midwifery (GNM) Course, 2005, the applicant got qualified in the written test, interview and medical examination. After that she was sent to the School of Nursing, Command Hospital, Air Force, Bangalore. After completing three months preliminary training session, she was enrolled and allotted No PN22180. She successfully completed three years GNM Course. She underwent periodic medical examinations and every time she was found completely fit. She was issued GNM certificate dated 21.11.2008 by Armed Forces Medical Services Examination

Board. It is submitted that vide letter No R/690137/DGAFMS/MNS dated 05.08.2005, the applicant was informed that she has been provisionally selected in GNM Course, 2005 and she was directed to complete necessary formalities as per instructions and guide lines issued vide letter dated 29.08.2005. Before commissioning, medical examination of the applicant was again held in August 2008 in which she was informed that she was not found medically fit for service. The medical board diagnosed the applicant as suffering from *“restricted movement in left hand below the elbow”* and *‘murmuring in heard sounds’* due to which she was sent to home in December 2008. While sending home, she was neither furnished with the medical board proceedings and other relevant documents nor given an opportunity of re-examination/ reappraisal by some other independent and competent authority. On the contrary, it is alleged that she was made to sign on certain already prepared documents in haste without giving an opportunity to read and understand the contents of those documents. She was told that Medical Examination report will be sent at her home address. Thus, the Original Application is liable to be allowed by quashing order dated 05.12.2008 issued by the Respondents.

7. On the other hand, Departmental Representative for the Respondents submitted that as per provisions contained in Army Instruction 15-27/96, she was found unfit for commissioning as GNM on account of not meeting requisite medical standards. He tried to defend the impugned order dated 05.12.2008 on the ground that the applicant was suffering from "*restricted movement in left hand below the elbow*" and '*murmuring in heard sounds*' and found medically unfit for commissioning by the duly constituted medical board, probably from accident while she was on leave, hence she was not commissioned. Impugned order has rightly been passed by the Respondents. The instant Original Application is liable to dismiss due to lack of substance and devoid of merit.

8. Heard Shri Yash Pal Singh, Ld. Counsel for the Applicant and Lt Col Subodh Verma, Departmental Representative for the Respondents and perused the documents available on record.

9. From plain reading of the petition it shows that from the date of recruitment upto completion of three years of training, so many medical examinations have been held but any disease was not diagnosed but at the time to commissioning how it was diagnosed. The Supreme Court judgement in the case of Mohinder Singh Gill & others Vs The Chief Election

Commissioner, New Delhi & Others decided on 02.12.1977 is reproduced as under:-

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji.

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations, subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

Being not altogether certain of all the facts and circumstances that may be made available, in the appropriate forum, it may be a premature exercise by this Court even to lay down guidelines when there is no hide-board formula of rules of natural justice to operate in all cases and at all times when a decision has to be made. Justice and fair play have often to be harmonised with exigencies of situations in the light of accumulated totality of circumstances in a given case having regard to the question of prejudice.

10. From perusal of the impugned order dated 05.12.2008 it shows that the applicant has been found to be unfit for commissioning because of not meeting requisite medical

standard as accorded in Army Instruction 17 of 1996. The medical board proceedings was approved on 05.12.2008. The order does not disclose the ground under which provision and on what ground, the applicant has been declared unfit for commissioning. It was incumbent for the respondents to assign the reasons after referring the relevant provisions as well as opinion of the medical board. The impugned order neither disclose the ground for non grant of commission nor the relevant provisions which has been applied in declaring the applicant not suitable for commissioning. Departmental Representative for the Respondents tried to defend impugned order as contained in affidavit which seems not to be permissible in the case of Mahinder Singh Gill Vs The Chief Election Commissioner, New Delhi & Others decided on 02.12.1977. The reasons must be drawn from the impugned order itself. The order must stand on its own leg. The reasons being assigned must be born on the finding of the order itself. Accordingly the impugned order seems not to be sustainable hence the Original Application deserves to be allowed on this ground alone.

11. Thus in the result, the Original Application is allowed. Impugned order dated 05.12.2008 passed by the respondents is set aside with consequential benefit. Let a fresh decision be taken in the light of observation made in the body of present order within the period of three months from the date of service of order with due communication to the applicant.

12. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

ukt/-

(Justice D.P Singh)
Member (J)