

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 146 of 2021**Monday, this the 11th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Sep/N Asst Satya Prakash Tiwari
S/o Sri Ram Raj Tiwari
R/o Village – Khadahar, Post – Haripur, Tehsil – Hadia,
PS – Sarai Mamrej, Allahabad (Prayagraj) – 221503**.... Applicant**Ld. Counsel for the Applicant : **Shri Abhishek Dwivedi &**
Shri Amitav Singh, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi – 110011.
3. OIC Records, AMC Records, Lucknow.
4. PrCDA (P), PCDA (P), Draupadi Ghat, Allahabad -211014.

... RespondentsLd. Counsel for the Respondents : **Shri Yogesh Kesarwani,**
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’ Show Cause Notice No. 308/2/Coy/Discp/2020 dated 28 Sep 2020, contemplated

to discharge the applicant from service without giving opportunity of entitled additional chance to pass his Technical Trade Class III exam and remuster to tradesmen category. (Annexure No. A-1).

- (b) issue/pass an order or direction of appropriate nature to quash/set aside of the respondent's AMC Records, Lucknow letter dated 20 Sep 2020 including letter dated 01/09/2020 referred therein, directing applicant's unit to issue a show cause notice, contemplated to discharge him from service despite he being left with option of additional chance to pass his Technical Class III exams and / or to remuster in tradesmen category. (Annexure No. A-2).
- (c) Issue/pass an order or direction of appropriate nature to summon letters/noting/documents issued by the respondent leading to denial of additional chance to the applicant to pass his Technical Class III exams to enable him to continue in service.
- (d) issue/pass an order or direction of appropriate nature to summon letters/noting/documents issued by the respondents denying applicant to continue in Class IV grade passed on 07/12/2017 and thereby allow the applicant to continue in service in his present Nursing Assistant Class IV grade.
- (e) Issue/pass an order or direction of appropriate nature to summon letters/noting/documents issued by the respondent leading to denial of applicant's remuster in Tradesman category in the eventuality of his not passing his Technical Trade Class III exams in additional chance granted to him and thereby continue him in army service.
- (f) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (g) Allow this application with cost."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (AMC) on 03.11.2016 in the trade of Nursing Assistant. On completion of his Basic Military Training, applicant was posted to No. 2 Technical Training Wing, AMC Centre & College, Lucknow for technical training and passed his Nursing Assistant Technical Trade test Class-IV on 05.12.2017. Consequent to passing his Class – IV examination, applicant failed to qualify his Nursing Assistant Technical Trade test Class-III on three occasions and has also failed in the reumustering test for the trade of Tailor. Accordingly, being an inefficient for Nursing Assistant trade and unsuitable for remustering into lower trade i.e. Tailor, applicant is required to be discharged from service before completion of five years of service i.e. before 02.11.2021 in terms of existing policy, ROI 01/2014. Being aggrieved, the applicant has filed the present Original Application to grant him one additional chance to appear in Class-III examination.

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 test on 07.12.2017. After successful completion of recruit training in AMC Centre, applicant was posted to Command Hospital, Pune for technical trade test Class-III. Applicant appeared in Class-III examination in 1st attempt in June 2019 but could not pass. Thereafter, he was posted to GH Leh (J&K) not listed as a training unit in para 22 of ROI 2014. The applicant being detailed for performance of duties in COVID-19

ward for a long duration in addition to his guard and sentries duties, the applicant could not pass his Class-III test in 2nd and 3rd attempts.

4. Learned counsel for the applicant further submitted that ROI has deliberately provided a substantial period of 4 years to ensure regular classes/tutorials/refresher cadres besides extra classes for weak candidates to enable Sepoys/NA to pass the requisite Class-III cum Diploma examination in three chances interspersed annually over three years ie. before completion of their 5 years service, whereas the applicant has been given all the 3 chances within a period of 2 ½ years i.e. at an interval of 6 months instead of yearly time lag except for 1st chance. Due to other organizational commitments including day and night duties and his long derailment in COVID-19 ward, the said 2 to 3 months time was not effective period to prepare for Class-III exam even at personal level. In addition, applicant was also detailed to perform various duties including long guard/sentry duties which adversely affected his preparedness for Class-III examination.

5. On the direction of AMC Records, applicant's unit issued a Show Cause Notice dated 28.09.2020, contemplated to discharge him from service after he failed in all 3 chances given to him to pass Class-III was arbitrary, illegal, biased and without application of mind against natural justice, whereas he was still left with option of one additional chance to pass his Class-III examination or to remuster in tradesmen category.

6. Learned counsel for the applicant also submitted that applicant should be considered passed in the Class-III examination held in Jun 2019 i.e. in his 1st chance after giving him 4 marks as a grace in Theory paper-I since the applicant had scored more than the minimum 40% marks required in all subject/paper and had an overall requisite aggregate of 50% marks. He pleaded that applicant be given one additional chance to appear in Class-III examination keeping in view his busy schedule in performance of duties in COVID-19 ward in Leh (J&K) and also due to paucity of time for preparation between 2nd and 3rd chance examination.

7. Learned counsel for the respondents submitted that ROI 1/2014 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 other instructions issued time to time. They will be awarded Class-III of respective trade on passing of their final test”*. Accordingly, applicant was detailed to undergo Class-III examination at Command Hospital, Pune vide letter dated 05.12.2017. The applicant appeared in final examination in June 2019 as 1st attempt in which out of 400 marks, he earned 211.20 marks i.e. 52.80% but there being a condition that minimum pass percentage will be 50% in each paper, applicant secured 36 marks out of 100 in Theory Paper-1 and therefore, he was declared ‘Fail’. Being failed in Class-III, 1st attempt, applicant was

posted to 153 General Hospital for 2nd attempt. He was detailed to undergo for his 2nd attempt vide AMC Record letter dated 28.11.2019 and applicant appeared in Dec. 2019 as his 2nd attempt at Command Hospital, Chandimandir and secured 26 & 27 marks in Theory paper I and II respectively, thus he was declared 'Fail'. The applicant was detailed to undergo for 3rd attempt i.e. final attempt for Class-III vide AMC Records letter dated 01.06.2020 at Command Hospital, Chandimandir and secured 23 & 14 marks in Theory paper I and II respectively, thus he was declared 'Fail'.

8. Learned counsel for the respondents further submitted that a person who does not qualify Class-III test for Nursing Assistant even after exhaustion of prescribed number of chances before completion of five years, should be discharged from service under Army Rule 13. In this connection para 22 of AMC ROI No. 1/2014 amended vide DGMS letter dated 06.11.2017 states that, "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 in three attempts will not be granted any further chances and will be discharged as Army Rule 13 (3) III (v) by issuing a Show Cause Notice against contemplated discharge". Therefore, AMC Record directed 153 General Hospital to serve a Show Cause Notice to the applicant. Accordingly, applicant was served a Show Cause Notice dated 28.09.2020 asking that since he has been found ineligible to continue in service, why he should not be discharged from service under the provision of Army Rule 13 (3) III (v). In response, applicant submitted

his reply dated 03.10.2020 requesting to grant him one more additional chance for passing Class-III examination and his application for remustering in a tradesman category may also be processed. Under the provisions of para 512 and 515, AMC ROI 20/2014, applicant's willingness to remuster in Tailor was processed but applicant failed in Common Entrance Examination which held on 28.02.2021 thus he was not found suitable for remustering into Tailor trade.

9. Learned counsel for the respondents submitted that as per Para 23 of AMC ROI 1/2014, maximum number of attempts allowed for Class-III examination will be three and candidates who are not able to pass the final technical trade Class-III in three attempts will not be granted any further chance and will be discharged from service under Army Rule 13 (3) III (v). He submitted that applicant's request for grant of one additional chance to appear in Class-III examination was rejected by DGMS (Army) vide letter dated 10.12.2020. Accordingly, a Show Cause Notice dated 28.09.2020 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 but the same was rejected by DGMS (Army) vide letter dated 10.12.2020. However, applicant's request to remuster in Tailor trade was accepted but he could not pass CEE, hence, he could not be remustered in tradesman (Tailor) also. Therefore, under the provisions of para 22 of ROI

1/2014, applicant to be discharged from service before completion of 5 years of service. He pleaded for dismissal of O.A.

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

11. From perusal of records we observe that as per Statement of Case of 153 General Hospital filed alongwith Counter Affidavit at page 77 & 78, Offg Senior Registrar has recommended the case of the applicant for grant of one additional chance to pass Class-III since applicant was busy in Covid related duties and could not prepare adequately for his last attempt of Class-III examination held on 08.06.2020. Applicant's application for grant of one additional chances was also recommended by Commandant 153 General Hospital, Brig (Med) HQ 14 Corps and Offg MG (Med) of HQ Northern Command as annexed from page 78 to 80 of counter affidavit.

12. We are of the view that applicant was posted in Leh (J&K) and was busy in providing his excellent duties in COVID-19 wards and also performed other assigned tasks of guard and sentry duties, therefore, keeping in view the peculiar circumstances, applicant being not provided sufficient time/interval to appear particularly in 3rd chance of Class-III examination, he deserves to be granted one additional chance to appear in Class-III examination.

13. In the result, Original Application is disposed off with direction to the respondents to grant one additional chance to the applicant giving atleast 15 days notice/real time to the applicant for preparation to

appear in Class-III examination and thereafter, conduct the test before taking any final decision with regard to discharge of the applicant.

14. It is made clear that this judgment will not be treated as precedence in other cases.

15. No order as to costs.

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

Member (A)

Member (J)

Dated: October, 2021

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