

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 521 of 2021****Monday, this the 16<sup>th</sup> day of October, 2023****“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 7014217-F, Ex - AC (U/T) Aditya Kashyap, Son of Jitendra Kashyap, Resident of House No: 1572, Village & Post: Radhapuram, Kalyanpur, Tehsil: Kanpur, District: Kanpur Nagar, (UP).

-----Applicant

Ld. Counsel for the Applicant: **Shri Vinay Pandey, Advocate**

Versus

1. Union of India, through, Secretary Ministry of Defence (Air), DHQ PO - New Delhi-11.
2. The Chief of the Air Staff, Air Headquarters, Sena Bhawan, New Delhi.
3. The Officer - in - Charge, Records, AFRO, Subrato Park New Delhi, C/o 56 APO.
4. Commanding Officer, Mechanical Training Institute, Air Force, Chennai.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh,  
Central Govt. Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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

- “(a) Issue / Pass an order or direction of appropriate nature to quash the discharge order dated 17 March 2021 untenable in the eyes of law.*
- (b) Issue/ Pass an order or direction of appropriate nature directing the respondents to reinstate the applicant with all service and monetary benefits will full back-wages.*
- (c) Issue / Pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) Allow this application with costs.”*

2. The factual matrix of the case is that applicant was enrolled in Indian Air Force as Air Craftsman on 26.06.2019. He failed in mid term test of Joint Basic Training. Warning letter and show cause notice was issued and applicant was dismissed from service vide letter dated 17.03.2021. Applicant prayed for reinstatement as well as for re-mustering in lower trade which was denied. Being aggrieved, applicant has filed this O.A. with the prayer to re-muster him in lower trade.

3. The applicant was enrolled in the Indian Air Force on 26.06.2019. On completion of Basic Training he was allotted Technical Trade of Propulsion Fitter. He attended JBPT, Mid Term and Final Tests. He scored 61% marks in all tests but in Mid Term Test, he could not score 50% marks in GSK. A show cause notice dated 19.02.2021 was issued to show cause as to why his services should not be terminated on the ground of failing in examination twice with direction to reply within seven days. Applicant submitted reply to show cause notice vide letter dated 25.02.2021. As he failed in Mid Term Test, a warning letter dated 10 09.2021 was issued to him to improve his academic performance. Chairman of URB has issued letter dated 19.02.2021 stating that the applicant is required to present before Station Review Board (SRB) but he was never informed about date and time of conduct of SRB. Show cause notice was issued and on 19.02.2021 and on the same day in utter violation of principles of natural justice applicant was discharged from service in utter violations of Article 14, 16 and 21 of Constitution of India. He prayed for re- mustering/ adjustment in some other lower category/trade such as musician, barbar, mochi, bandsman or cook etc.

4. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in Air Force in Group X and

had undergone Joint Basic Phase Training (JBPT) at Belagavi wef 01.07.2019 to 13.12.2019. During training he failed in Mid Term Test (MTT) in GSK, accordingly, a warning letter was issued to him under intimation to his parents. On completion of JBPT, he was allotted Propulsion Fitter trade and accordingly reported at MTI, AF on 29.12.2019 to undergo Trade Phase Training. During training he could not score required 50% pass marks twice in **“Along with IPT Intake 02/19 ( MCKT Pt-1 & Pt II and Along with IPT Intake 01/20 (MCKT Pt- 1 & Pt-II”**. As per policy only one back phasing on Poor Academic Ground is permissible during Trade Phase Training. His case was presented before Unit Review Board on 19.02.2021 in accordance with Para 3 (c) of TCASI/PT-II/Airman Training/02/20 for review. He was recommended for cease Training and discharge from service on Poor Academic Grounds as stipulated in Para 8 (f) and 16 (a) (i) of TCASI/PT-II/Airman Training/02/20. A show cause notice dated 19.02.2021 was issued and applicant submitted his reply vide letter dated 25.02.2021. His reply was not found satisfactory by the Commanding Officer and applicant was discharged from service on 19.02.2021.

5. We have heard Ld. Counsel for the parties and perused the documents available on record.

6. On perusal of document, it reveals that applicant was given

ample opportunity to improve his academic performance but he could not achieve required pass marks. He was relegated and in second chance also he could not achieve required pass marks. Accordingly, he was discharged from service in terms of Para 8 (f) and 16 (a) (i) of TCASI/PT-II/Airman Training/02/20. It is matter of great concern that applicant was issued show cause notice dated 19.02.2021 to show cause as to why his services should not be terminated due to failure in examination with direction to submit reply within 7 days. Applicant submitted his reply on 25.02.2021. In his reply to show cause notice applicant submitted that due to COVID-19, classes were not conducted regularly, hence he could not achieve required marks in written examination. Further, in para 4 of reply to show cause notice he prayed for re-mustering in lower grade trade to enable him to continue in service. Without waiting for reply of show cause notice, applicant was discharged from service on 19.02.2021 itself.

7. As far as re-mustering is concerned, Paras 251, 254 and 255 of Air Force Regulations (Reprint Edition 2000) deal with re-mustering. An airman may be re-mustered to another trade in few circumstances. Relevant paras of said Regulation are reproduced as under:-

**CH VI : AIRMEN**

**Section 2 - Mustering, Remustering and Reclassification**

**251 . Trade Groups.**

*The trades in the air force are grouped as under*

**Group X**

*AF Fit*

*Elect Fit*

*Eng Fit*

*Inst Fit*

*Rad Fit*

*Rdo Fit*

*Wpn Fit*

*MS Fit (E)*

*MS Fit (M)*

*MS Fit (L)*

*Carp Rig*

*MT Fit*

*Photo Fit*

*W/S Fit (M)*

*PMF (E)*

*PMF (M)*

*W/S Fit (B)*

*W/S Fit (C)*

*Edn Inst*

**Group Y**

*ADSO*

*Carpenter II*

*AFSO*

*Met Asst*

*SEW*

*Machinist*

*MT Tech*

*Photo Tech*

*Rdo Tech*

*Crypto*

*Med Asst*

*Clk PA*

*Clk EA*

Clk GD  
 IAF Police  
 Eqpt Asst  
 Telst RTO  
 GTI (S)  
 GTI  
 Clk Accts  
 ACH GD  
 Cat Asst  
 MTD

**Group Z**

Musician

(Appendix C to Special Air Force Instruction 1/S/98)

(Based on GOI, Min of Def letter No.1(3)/97/D(Pay/Services) dated 21 Nov 1997, applicable w.e.f. 10 Oct 97).

**CH VI : AIRMEN**

**Section 2 - Mustering, Remustering and Reclassification**

**254. Remustering - General.**

(a) An airman may be remustered to another trade in the under-mentioned circumstances .—

(i) To an allied trade in the same or a higher group in the normal course of career.

(ii) Voluntarily to another trade, normally of a higher group (other than aircrew category), if and when establishment vacancies exist.

(iii) Voluntarily to an aircrew category.

(iv) Voluntarily because of redundancy of the trade.

(v) Voluntarily because of medical unfitness for duties of his trade (as an alternative to discharge).

(vi) Because of inefficiency or general unsuitability for the duties of his trade.

*(b) The authority of the Air Headquarters is to be invariably obtained before an airman is remustered to another trade. The remustering is subject to the passing of the prescribed trade test.*

**CH VI : AIRMEN**

**Section 2 - Mustering, Remustering and Reclassification**

**255. Remustering in the Normal Course of Career.**

*(a) Remustering to an allied trade in a higher or the same group in the normal course of career will be carried out on the successful completion of the prescribed conversion course. Airmen will be detailed for the course on the basis of seniority and suitability*

*(b) (i) The examination at the completion of a conversion course, if not involving change of trade group will be treated as a qualifying examination and the results thereof will be recorded on form IAFF(AT) 1378. Airmen who attain grade B1 and above will be certified on form IAFF(AT)1378 as having attained the standard of leading aircraftman.*

*(ii) However, if a change of trade group is involved, the examination at the completion of a conversion course will be treated as classification examination for the remustered trade, and the results there of will be recorded on form IAFF(T) 791. Successful airmen will be classified as AC2, AC1 or LAC in the re-mustered trade according to the marks obtained by them, as laid down in Air Force Orders and current Trade Testing Regulations.*

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*(c) Those airmen who fail in the trade test will be given three successive chances to qualify without further training at the training school. If they still do not make the grade they will continue to be employed in their basic trade.*

*(d) Airmen detailed for conversion course will be required to sign an undertaking, in the form appended below, to the effect that they will continue to serve in the air force for a minimum period of six years on completion of their present term of engagement. The Form of undertaking, which will be signed by the airmen in the presence of their commanding officer or his representative, is to be completed in*

*duplicate. one copy of which is to be forwarded to Air Headquarters (Directorate of Personnel (Airmen) ) and the other copy retained at the unit. Airmen unwilling to sign the undertaking will not be detailed to proceed for the course.*

8. In the instant case the applicant had completed basic military training and as per policy he was eligible for re-mustering in lower trade. In reply to show cause notice applicant has prayed for re-mustering in low trade but his prayer for re-mustering was not considered. Contention of respondents stated in para 19 of counter affidavit that there is no provision under the rules regulations and policies in vogue wherein any other lower trade can be allocated to a trainee because of poor academic grounds in his allocate trade is not sustainable. Mechanical decision without application of mind should not have been taken by respondents. Once the provision has been made for re-mustering or change of trade for soldiers under training, then that should be given effect by competent authority with due application of mind keeping in view the policy dealing with the subject matter. Needless to say that retention in service and the change of trade or re-mustering are meant to provide source of livelihood to the members of Armed Forces. Right to dignity and livelihood are fundamental rights guaranteed by Article 21 of the Constitution of India. While dealing with re-mustering or change of trade in pursuance to policy decision it is not open for the authorities of the

Air Force to take a mechanical decision or pass cryptic or unreasoned order. The denial of change of trade must be based on due application of mind and decision should be taken by a speaking and reasoned order.

9. In the present case, it is not borne out under what ground the applicant was discharged from service on the same day when he was issued show cause notice i.e. 19.02.2021 without waiting reply of show cause notice for which seven days time was given. Statutory provision for issuance of a show cause notice seems to be in compliance of nature justice. Hon'ble Supreme Court in catena of judgments held that whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, its design, and consequences which would follow from construing it in the one way or the other way (vide **State of U.P. vs. Manbodhan Lal Shrivastava**, AIR 1957 SC 912, **State of U.P. vs. Babu Ram Upadhya**, AIR 1961 SC 751, **"Vali Pero" vs. Fernandes Lopez**, AIR 1989 SC 2206 and **State of M.P. vs. Pradeep Kumar** (2000) 7 SCC 372). What cannot be done directly, it cannot be done indirectly. It shall be appropriate for the competent authority to give a fresh look in accordance with

policy decision for re-mustering or change of trade of the applicant as per rule.

10. In view of the above, we are of the view that O.A. deserves to be allowed hence **allowed**.

11. We remit the matter back to respondents for considering the applicant's case for re-mustering or change of trade in accordance with policy decision. It shall be open to the applicant to move a fresh representation to competent authority along with a certified copy of present order. In case he submits a fresh representation within one month from today along with copy of this order, the competent authority shall look into the matter and dispose of his representation expeditiously, say, within four months by passing a reasoned and speaking order and communicate the decision to the applicant. Applicant's restoration in service shall be subject to outcome of the decision of the respondents. O.A. is **disposed of** accordingly.

12. No order as to cost.

**(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)**  
**Member (A) Member (J)**

Dated: 16 October, 2023  
Ukt/