

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No.140 of 2022

Friday, this the 14th day of July, 2023

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

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Sep / NA Asst. Satya Parakash Tiwari S/o Sri Ram Raj Tiwari, R/o
Village: Khadhara, Post: Haripur, Tehsil: Hadia, P. S. : Sarai
Mamrej, Prayagraj - 221503

..... **Applicant**

Ld. Counsel for the Applicant : Shri Abhishek Dwivedi, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. The Chief of Army Staff, Army Headquarters, Integrated Headquarters of MoD (Army) New Delhi - 110011.
3. Officer - in charge, Records, AMC Record, Lucknow
4. General Officer in Commanding, 36 RAPID (S), C/o 56 APO

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Shailendra Sharma Atal, holding brief of Mrs. Deepti P Bajpai, Central Government Counsel.**

ORDER (ORAL)

“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:-

“(i) Quash the purported Discharge Order dated 24.12.2021 passed on behalf of the Officiating Commanding Officer of 336 Field Hospital, (Annexure No. 1)

(ii) Quash the purported Speaking Order dated 16.12.2021 passed by General Officer Commanding, HQ 36 Rapid (S) directing the discharge of the Applicant (Annexure No.2)

(iii) Direct the Respondents to reinstate the Applicant at his status as Sep / NA with effect from 24.12.2021 i.e. the date of his illegal discharge, along with all the benefits and arrears, as applicable.

(iv) Direct the Respondents to hold an independent Technical Trade Class III cum Diploma Exam for the Applicant by another arm of the Indian armed forces - Indian Air Force, Indian Navy or the Indian Coast Guard.

(v) Direct the Respondents to pay costs incurred by the Applicant in instituting the present proceedings; and / or.

(vi) Grant any other relief that the Hon'ble Tribunal may think to be just and proper and in interest of justice."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 03.11.2016. He completed his basic military training but he could not pass Technical Trade Test Class III. He was given second and third chance to clear technical trade test but he could not clear the test. A statement of case was prepared for an additional attempt to clear Technical Trade Test but the applicant again failed. Applicant filed Original Application No 146 of 2021 in this Tribunal with the prayer to grant him additional chance to pass his technical trade test examination and to re-muster him in tradesmen category. His application was allowed and applicant was granted additional chance to clear Technical Trade Test Class III but he still could not clear the test. A show cause notice was issued and the applicant was discharged from service on 24.12.2021. Being aggrieved, applicant has filed instant O.A. with the prayer to quash discharge order and to re-instant him in service.

3. Learned counsel for the applicant submitted that on joining Army, the applicant completed his basic military training and qualified his Technical Grade IV examination on 07.12.2017. He was sworn as Sepoy. He was posted to Command Hospital Southern Command Pune for his Technical Trade Class III cum Diploma Examination training for the period of 04.01.2018 to 14.07.2019.

The applicant was employed in routine work of hospital and there was no time to study. The applicant appeared for his Technical Trade Class III but he could not clear the exam despite scoring high in the practical and internal assessment sections of exam.

4. Thereafter, the applicant was posted out to Garrison Hospital Leh (J&K) which was not a Training Hospital. Applicant was directed to appear for his second attempt for the Technical Trade Class III cum Diploma Exam from 16.12.2019 to 19.12.2019 and was sent to Command Hospital, Chandigarh on Temporary Duty to appear in the exam. But again due to lack of time to study, he could not clear the said exam.

5. Ld. Counsel for the applicant further submitted that the applicant was directed to appear in his third attempt in the midst of the Covid-19 pandemic in the year 2020 at Chandigarh from 08.06.2020 to 11.06.2020. The applicant was pressed into Covid-19 pandemic related duties in the Hospital, he failed to clear the third attempt exam due to his overburdened and exhaustive duties during Covid-19 pandemic. Ld. Counsel for the applicant urged that applicant failed to clear the theoretical part of the exam in all three attempts, scored more than 50% in the internal assessment and practical exams indicating that the applicant was efficient and well-acquainted to the actual implementable aspects of his duties. Applicant never received any training, counselling or guidance and

adequate time to self study to succeed in the exams. He was issued a show cause notice dated 28.09.2020 seeking to discharge the applicant which was replied on 10.10.2020 requesting an additional attempt for exam. He also requested for re-mustering in a lower trade. Statement of case for granting an additional attempt for the Technical Trade Class III cum Diploma exam was initiated to grant one additional chance. However, the application was returned unactioned by the Director General of Military Service (DGMS) without any adequate reasons. Applicant filed an application for re-mustering on 23.10.2020 which was rejected by the respondents vide letter dated 10.11.2020 stating that there were no vacancies at the Corps level. However, on 11.01.2021, AMC Records directed the applicant to submit his application for Re-mustering with recommendation of the Commanding Officer. Accordingly, the applicant submitted his application dated 13.01.2021 and the exam for re-mustering was held on 28.02.2021 but the applicant could not clear the Re-mustering exam due to denial of time to either study or any guidance. The applicant was eligible for one more chance for re-mustering as Para 3 of the AMC Record letter dated 06.09.2016. He was not provided the copy of this letter despite many requests. Respondents issued direction to 153 General Hospital, Leh to take appropriate steps to discharge the applicant from service under AR-13 (3)(iii)(v).

6. Ld. Counsel for the applicant submitted that aggrieved by the unfair and illegal conduct, the applicant filed an O.A No. 146/2021 before this Tribunal for ceasing the discharge proceedings which was allowed with direction to respondents to afford an additional attempt for the Technical Trade Class III cum Diploma Exam. Accordingly, additional attempt was granted to the applicant and the exam was scheduled on 22.11.2021. Letter dated 01.11.2021 specifically directed the Unit to arrange for adequate opportunities and facilities for the applicant to study and prepare for the exam. Applicant's counsel pleaded that as per Amended Paragraph 22 of the AMC ROI 01/2024 (Rev. Ed.), the applicant was required to be sent to the Training Institute one month prior to the exam date. Hence, applicant requested to be sent to the Training Institute immediately and postpone the exam for the corresponding period so that he had one complete month to prepare. Neither the applicant was sent to the Training Institute nor was he provided any opportunity to either study or prepare for the exam at 336 Fief Hospital, Sagaur which was not a Training Institute. He was engaged in day and night duty even on the day prior to his exam. He was directed to report AMC Centre Lucknow for the exam only one day prior to the exam date. Applicant boarded train from Sagaur Rly Stn. on 20.11.2021 and reached Lucknow on 21.11.2021. The exam was scheduled on 22.11.2021. He was informed that he again failed in the exam. He

was not provided a copy of the result sheet despite repeated requests. Learned counsel for the applicant pleaded that applicant was forcibly discharged from service on 24.12.2021 in an arbitrary manner without adhering the principle of natural justice and without issuance of a fresh show cause notice. His request for interview was rejected vide letter dated 19.12.2021. Learned counsel for the applicant pleaded that direction be given to respondents to quash the impugned order dated 16.12.2021 and to reinstate the applicant in service from the date of discharge and hold independent technical trade test class III.

7. Learned counsel for the respondents has not filed counter affidavit. He submitted that applicant is not entitled for any relief as he has been granted ample opportunities to clear technical Trade Test Class III but in spite of availing three opportunities he could not clear the Technical Trade Test. He filed O.A. No 146 of 2021 with the prayer to grant additional opportunity to clear the test. His application was allowed vide order dated 11.10.2021 and the applicant was granted additional opportunity to clear Technical Trade Test Class III, but he could not clear. Instant O.A. has no substance and is liable to be dismissed.

8. We have heard learned counsel of both the parties and perused the documents available on record. The moot question

before us to decide is whether the applicant is entitled to be reinstated in service?

9. Paragraph 16 of AMC, ROI01/2014 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.”***

10. Considering the rival submissions and after perusal of record, it is clear that the applicant was given ample opportunities to pass Class- III Technical Trade Test but he failed in Trade Test Class- III as well as re-mustering test. The allegations levelled against respondents are afterthought and baseless. The applicant was well aware about the consequences of not passing the Technical Trade Tests. 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”.

11. 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 order for discharge as per rule position.

12. Contention of the applicant that similarly placed jawans 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 Technical Trade Test Grade- III and even after giving additional chance, he could not clear Technical Trade Test. He was given chance for re-mustering and exam was

held on 28.02.2021 but he could not pass the re-mustering exam. Hence there is no violation of law in discharging the applicant from service on 24.12.2021.

13. A conceptuous of our observations made hereinabove is that the applicant was provided three chances as per rule to pass Technical Trade Test -III and further on the direction of Court, he was granted one additional chance but he could not pass the test. He was considered for re-mustering. He appeared in the examination but failed in re-mustering test also. There is no substance to grant further chance. Hence, we don't find anything illegal and applicant has been correctly discharged from service.

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

15. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 14th July, 2023

ukt/-