

Court No.1

Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No.348 of 2019

Tuesday, this the 21st day of March, 2023

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

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Ex Cadet Rajeev RU (No. 4872), s/o Rajashekharan Nair,
(146688954Y CFN) Rajeev RU presently posted at 509 Army Base
Workshop, Cantt, Agra C/o 56 APO

..... **Applicant**

Ld. Counsel for the : **Shri SSL Srivastava, Advocate**
Applicant

Versus

1. Union of India, through the Chief Secretary, Ministry of Defence, Govt. of India, New Delhi -110011.
2. The Chief of Army Staff, Army Headquarters (AHQ), Defence Headquarters (DHQ), Integrated Headquarters (IHQ), New Delhi - 110011.
3. The Additional Director General Org/Org 8 (I of R), Adjutant General’s Branch, AHQs, West Block - III, RKPuram, New Delhi - 110066.
4. The Director General of Military Training / MT - 6, General Staff Branch, IHQ of MoD (Army), DHQ PO, New Delhi - 110011.
5. The Commandant (GS Branch), Indian Military Academy, Dehradun (UK) - 248007.

.....**Respondents**

Ld. Counsel for the
Respondents.

:**Shri Amit Jaiswal**
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 :-

“(i) Wherefore, it is most respectfully prayed that this Hon’ble Tribunal may kindly be pleased to call for records pertaining to passing of order dated 17.11.2017 passed by respondent No. 4 and the order dated 23.01.2013 passed by respondent No. 5 and quash the same consequently, and the opposite parties may be directed to treat the applicant as a Gentleman Cadet from the date he was enrolled as a Gentleman Cadet, notwithstanding the fact that he was reverted to the rank of Craftsman, electronics and Mechanical Engineering and the opposite parties may be directed to consider the applicant to give him rank of a Commissioner Officer w.e.f. the date the other course mates of the applicant got commissioned and give him all consequential benefits accordingly.

(ii) And, pass any other suitable order or direction, which the Hon’ble tribunal may deem fit and proper in the facts and circumstances of the case, in favour of the applicant.

(iii) And, allow the O.A. with cost.”

2. Brief facts giving rise to the present applicant are that the applicant was enrolled in the Indian Army and after serving for 3 years he cleared Service Selection Board and joined Army Cadet College (ACC), Indian Military Academy (IMA) Dehradun on 06.07.2011. He missed 36 days training due to suffering from 'Fissures'. He got last position in 2nd Semester with below average grade. He was found missing from morning parade. On 06.09.2012 an FIR was lodged about his missing. He attempted to commit suicide. A Court of Inquiry was held and the applicant was recommended for withdrawal from pre-commissioned training at ACC Wing, Dehradun. Applicant filed statutory complaint against withdrawal from the pre-commissioning Training which was rejected. Being aggrieved, the applicant has filed instant O.A. with the prayer to treat him Gentleman Cadet and give him rank of Commissioned officer.

3. Learned Counsel for the applicant submitted that applicant joined Army on 26.09.2008. The applicant cleared SSB and joined ACC Training at IMA. Dehradun. He successfully completed 1st semester test. The applicant was blamed for using mobile phone which was prohibited during 2nd semester training. Show cause notice dated 23.11.2012 was issued and applicant was found guilty of possessing of unauthorised items. Absconding Bn Lines for 02

days, assaulting senior officer and attempt to suicide. The applicant was recommended for punishment of withdrawal from pre-commissioned training at Siachen Bn, IMA, Dehradun. Applicant submitted his reply to show cause notice. He was withdrawn from ACC Training on disciplinary grounds after approval of General Staff Branch, Integrated Headquarters of Min of Def (Army) vide letter dated 23.01.2013 and he was returned to his unit. The applicant filed statutory complaint against withdrawal of pre-commissioned training stating that he was sent for training at IMA Dehradun for 48 months but after completion of only 18 months of Cadet Training he was returned back to his unit. Neither he was given proceedings of court of inquiry nor court of inquiry was conducted in conformity with the prescribed rules. Copy of letter dated 23.01.2013 was not made available to the applicant despite his request. Charges levelled against him are just to deprive him from getting commissioned. Second charge of possession of unauthorised item was not proved in the Honour Code Committees and third charge of absconding from Bn Line is also not proved and the alleged assault on the Senior officer is also not established in the inquiry. The next charge of attempt to suicide is wrong allegation and no such attempt was made by the applicant. He was given only show cause notice containing the above charges and no separate charge sheet was given before conducting the Honour Code Committee's inquiry. Such procedure is

highly improper and illegal. He was not provided opportunity to cross examine the witnesses and Honour Code Committee was not contemplated as per Army Rule 177. The applicant filed statutory complaint which was not decided by the respondents. He filed O.A. No. 174 of 2015 to consider and dispose of the statutory complaint dated 26.05.2014 on merits. Applicant submitted a fresh statutory complaint which was rejected. As per Administrative Instructions Apr 2004, Para 22 (b) the applicant was entitled for protection as per the Army Act and Rules. Learned counsel for the applicant pleaded that impugned order of withdrawal of the cadet by way of Honour Code Committee is totally illegal, hence respondents be directed to allow the applicant to continue the training as Cadet.

4. On the other hand, learned counsel for the respondents submitted that applicant after joining academy was not adequate to make him pass his mandatory tests. He was weak in running. He suffered from 'Fissures' during his first term due to which he missed 36 days of training and was warned for relegation by Deputy Commandant & Chief Instructor on medical grounds. Matter was informed to his mother through a letter as per policy in vogue. During 2nd term, in spring term 2012, he started off well and did not report of any kind of problem at home during the beginning of term interviews by his Platoon Commander and Company Commander. On

10.01.2012, he tried to abscond from the company lines. He was caught by the cadets and thus could not succeed in his attempt. After the incident of 10.01.2012, he had informed that he was unable to sustain the cold weather and subsequent training, so he tried to abscond from the Company lines. He was counselled again by his Platoon Commander and Company Commander and observation was recorded in his dossier. He was also awarded 3 restrictions for the same. His performance during 2nd term deteriorated and he ended up last in merit of his course with a below average performance. On 06.09.2012 Sergeant Pankaj Sharma heard a humming sound coming out of the cabin of the applicant while he was returning back from the toilet. Sergeant Pankaj Sharma went to cabin of applicant to investigate and caught him with a Sony Walkman music player (MP3) which was missing from the cabin of Cadet Ramesh Kumar Upadhyay on 02.09.2012. A thorough search of cabin of Cadet Rajeev RU was carried out and he confiscated two mobile handsets with chargers. Possession of mobile phones by cadets is banned as per policy in vogue. Applicant gave a written statement, wherein he willingly confessed that he was caught in possession of a stolen Sony Walkman music player (MP3) and two mobile handsets with chargers. In the morning the matter was reported. Applicant was found missing from the muster parade as well as from his cabin at that time. He was caught by Sergeant

Pankaj Sharma at night. He reported the matter of Officiating Company Commander, Kargil Company at approximately 0525 hrs. A detailed search was carried out and matter was reported to Colonel Satyajeet Ghoshal, Battalion Commander, ACC Wing and Major Sudhakar Thakur, Adjutant. The matter was also informed to the mother of the applicant and an FIR was lodged at Police Station, Panditwari, Dehradun at 1700 hrs on 06.09.2012. On 07.09.2012, Cadet Rajeev RU was caught by Cadet Nikhil Orokkandy. Applicant was brought before Captain Abhishek Gunjan Assistant Quartermaster where he snatched the phone of Captain Abhishek Gunjan while the officer was trying to speak to mother of the applicant to inform her that her son found. Cadet Rajeev RU attempted to commit suicide by slashing his left hand wrist with a shaving blade. He was treated in Hospital and referred to Military Hospital Dehradun for psychological and physical check up. The psychologist assessed that applicant was unlikely to benefit much from training and had marginal motivation. A court in inquiry was held and applicant was found lacking Officer Like Qualities of comradeship and trust worthiness. He was adequately warned and counselled but did not show any improvement. Applicant was recommended for withdrawal from training at ACC Wing IMA on disciplinary grounds and lacking officer like qualities as per para 2 (a) (i) & (iv) of Appendix A of Army Training Command Administrative instructions No 935036/PCT dated

29.04.2004. Offence report was prepared and applicant was withdrawn from Academy vide Indian Military Academy, Dehradun letter dated 23.01.2013. He was returned to Electronic and Mechanical Engineer Centre, Secunderabad vide Movement Order dated 24.11.2012. A Court of Inquiry was held and applicant was recommended for disciplinary action. Learned Counsel for the respondents submitted that applicant is not entitled to continue his Gentleman Cadet training and instant O.A. has no substance and liable to be dismissed.

5. We have heard learned counsel for the parties and perused the documents available on record.

6. In the instant case, applicant was enrolled in Army and after completion of three years of service he cleared SSB from 17 SSB Bangalore. During training at IMA Dehradun, he suffered from disease 'Fissures' and missed 36 days training. During training as a Cadet, his performance was not good. On perusal of result sheet, it transpires that he was recommended for relegation and penal deduction. In Court of Inquiry applicant was found guilty for theft of MP-3, absconding himself from Cadet's accommodation of his company, Physically assaulting Assistant Quartermaster, ACC Wing and attempt to commit suicide by slashing his left hand wrist. He was found lacking Officer Like Qualities and trustworthiness. He

completed 1st semester of 18 months of Cadet Training at IMA, Dehradun. He was adequately warned and counselled for his behaviour and performance in Academy but did not show any improvement. He was issued show cause notice dated 23.11.2012 after conducting detailed court of inquiry. After examining 10 witnesses court was of the opinion that applicant had stolen a Sony Walkman music player from the cabin of Cadet Ramesh Kumar Upadhyay on 02.09.2012 and was in possession of two mobile handsets with charger which was in contravention of the Academy standing Orders. Court was also of the opinion that applicant wilfully absconded from Company Cadets Accommodation with an aim to avoid punishment for his offences. The court was also of the opinion that act of snatching phone from Assistant Quartermaster and subsequently attempted to commit suicide by slashing of his left hand writ. The Court recommended disciplinary action against the applicant in terms of Para 2 (a) (i) and (vi) of ARTRACAdmInstrs letter dated 29.04.2004. He was withdrawn from Academy vide order dated 23.01.2013 duly approved by Deputy Chief of Army Staff. Respondents in their statement submitted that they have not received statutory complaint dated 26.05.2014 filed by the applicant. The applicant filed O.A. No. 174 of 2015 before AFT, Regional Bench Kochi, Circuit Bench at Bangalore with the prayer to direct the respondents to dispose of his complaint. O.A. was disposed of with

the direction to applicant to file fresh statutory complaint and respondents were directed to decide the same within thirty days from the date of receipt of a copy of order under intimation to applicant. Applicant was provided liberty to approach Tribunal if he was not satisfied with the reply of respondents. The applicant filed a fresh statutory complaint with the prayer to reinstate him to ACC Wing, IMA Dehradun and to allow him to complete his remaining training and grant him commission which was rejected by the competent authority vide a speaking and reasoned order dated 17.11.2017. He was withdrawn from ACC Wing, IMA Dehradun from pre-commission training on disciplinary ground in accordance with para 2 (a) of Appendix 'A' to HQ ARTRAC Administrative Instruction dated 29.04.2004. The policy is uniformly applicable to all similarly placed individuals and hence, no injustice was done to the applicant. The applicant was given full opportunity to cross examine the witnesses during court of inquiry as per Army Rule 180 and statements were read out in front of the applicant and signed by him. Applicant was asked to deposit his Identity Card issued by IMA, Dehradun to Adjutant QuarterMaster, Army Cadet College Wing which he refused. Applicant was asked to deposit cost of training in terms of Para 81 (c) of Administrative Instruction dated 29.04.2004.

7. Having given our considered thoughts, we are of the opinion that no injustice has been done to the applicant and the decision of withdrawal of applicant from Cadet Training was correctly taken based on extant rules. Army officers are role model for troops. Applicant displayed a conduct which cannot be expected from an Army officer. Allegations made by the applicant are baseless, misguiding and manipulative. The applicant is not entitled to the relief prayed in Original Application to quash order of withdrawal from Cadet Training and to allow him to continue his Cadet Training. His withdrawal from Cadet Training was as per extant rule position and no arbitrariness or malafide stands established. Consequently, O.A. being devoid of merit is liable to be dismissed. Resultantly, O.A. is **dismissed.**

8. No order as to costs.

9. Miscellaneous applications pending, if any, shall stand disposed off.

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

Dated :21March, 2023

Ukt/-