

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 878 of 2021**Friday, this the 11^h day of November, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex DEEM (P) Ravi Kumar (257213-A)
S/o Sh. Devendra Singh
R/o Garhi Surkha, Post – Magna, Teh – Mahavan,
Distt – Mathura (UP) – 281301.... **Applicant**Ld. Counsel for the Applicant : **Wg Cdr Ajit Kakkar (Retd)**, Advocate
(Not Present)

Versus

1. Union of India through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Naval Staff, IHQ of MoD (Navy), 108, Talkatora Stadium Avenue, New Delhi – 110001.
3. Directorate of Manpower Planning and Recruitment, C Wing, IHQ MoD (Navy), Sena Bhawan, New Delhi – 110010.
4. The Commanding Officer, INS Valsura, Jamnagar, Gujrat – 361150.

... **Respondents**Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
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) To direct the respondents to produce all relevant records of the applicant, his enrolment forms, declaration the recruitment rules, examination results etc.
- b) To direct the respondents to bring on record the data of the entire batch of trainees along with those who were given a second opportunity to improve their performance.
- c) To set aside the impugned order dated 28.07.2021 and reinstate the applicant in technical training.
- d) To direct the respondents to allow the applicant to continue in training with additional chance.
- e) Alternatively, grant the applicant an opportunity to switch to Non Tech trade.
- f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 08.08.2019 under the Senior Secondary Recruit Scheme in Technical Trade. Applicant successfully completed his basic training (new entry training) at INS Chilka from 19.08.2019 to 11.01.2020. The applicant during technical training at INS Valsura, Direct Entry Electrical Mechanic (DEEM) course 02/19 was conducted from 16.03.2019 to 08.09.2020. The applicant failed in nine subjects, hence, he was relegated and conjoined with next course 01/20 from 05.10.2020 to 03.04.2021. During training in DEEM course 01/20, applicant once again failed in five subjects and therefore, he was liable to be relegated in terms of Training Directive DPS 02/19 dated

31.07.2019. Since it was his second relegation, the applicant was withdrawn from service in terms of Para 11 of Appendix VII of NI 02/S/96 and para (c) of Regulation 278 (4) of Regulations of Navy Part III (Statutory). After availing repeated chances, he could not clear technical trade test. He was discharged from service on 28.07.2021 on academic ground. It is in this perspective that this O.A. has been filed by the applicant for re-instatement in service.

3. Learned counsel for the applicant submitted that applicant was enrolled in Indian Navy in August 2019 as a Sailor in Tech Trade. The applicant underwent his basic training at INS Chilka from August 2019 to February 2020. After completion of basic training, the applicant underwent Ship training successfully. He reported at INS Valsura in March 2020 for his professional training, Merged Electrical Artificer Training (MEAT-27) which was conducted from 14.03.2020 to 14.09.2020. The applicant was informed that he had qualified examination pertaining to MEAT-27, however, when he reported back from leave at INS Valsura on 14.10.2020, the respondents declared him as 'Failed' in the said examination. He further submitted that a large number of trainees were declared failed by the respondents, however, the respondents portrayed a partisan attitude towards some trainees and promoted them despite their failure while the applicant was relegated and directed to join MEAT-28 with the next batch. The

applicant's examination papers were extracted by the respondents on the insistence of some trainees with malafide motive of harming his career and his result was unlawfully changed from 'Passed' to 'Failed'. The trainers were also frequently changed on the order of Commodore Ajay Patney, respondent No. 4. The question papers during MEAT-28 were beyond the syllabus and while some candidates were given complete freedom to cheat during the examination but applicant did well in the examination on his own merit but he was declared failed. The applicant was relegated and sent for Covid-19 duty before he was wrongfully discharged from Naval service w.e.f. 28.07.2021 on academic grounds. Before discharge from service, the applicant was served a Show Cause Notice dated 07.05.2021 which he replied and requested to change his entry to a non technical trade, however, the respondents paid no heed to the request of the applicant and processed his discharge.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **D.K. Yadav v. J.M.A. Industries Ltd.** (1993) SCR 3 930 and judgment of the Hon'ble Delhi High Court in **Ex. Recruit Manoj Deswal v. Union of India & Ors**, (2007) SCC Online Del 1095 and pleaded to set aside impugned order dated 28.07.2021 and applicant be reinstated in the

service to complete his technical training or alternatively he category be changed to a non technical trade.

5. On the other hand, learned Counsel for the respondents submitted that applicant was enrolled in the Indian Navy on 08.08.2019 under the Senior Secondary Recruit Scheme in Technical Trade. Applicant successfully completed his basic training (new entry training) at INS Chilka from 19.08.2019 to 11.01.2020. The applicant's technical training at INS Valsura, Direct Entry Electrical Mechanic (DEEM) course 02/19 was conducted from 16.03.2019 to 08.09.2020. The applicant failed in nine subjects, hence, he was relegated and conjoined with next course 01/20 scheduled from 05.10.2020 to 03.04.2021. During training in DEEM course 01/20, applicant once again failed in five subjects and therefore, he was liable to be relegated in terms of Training Directive DPS 02/19 dated 31.07.2019. Since it was his second relegation, the applicant was withdrawn from service in terms of Para 11 of Appendix VII of NI 02/S/96 and para (c) of Regulation 278 (4) of Regulations of Navy Part III (Statutory).

6. Learned counsel for the respondents further submitted that applicant has been repeatedly counselled at all levels after every instance of failing in the subjects. He was provided additional time and opportunity to improve in the weak subjects but he was unable to

secure minimum qualifying marks in the tests/subjects. He further submitted that training structure of Direct Entry Electrical Mechanic (DEEM) (Power/Radio) course and Merged Electrical Artificer Training (MEAT) course are different course and training curriculum and pattern of both the courses are completely different. The DEEM course is designed for direct entry/senior secondary recruits whereas MEAT course is designed for artificer apprentice sailors. The applicant as stated in the O.A. that he was part of MEAT course is incorrect.

7. Learned counsel for the respondents further submitted that it is pertinent to mention that during DEEM 02/19, 13 trainees out of 362 had failed to qualify three or more subjects (Pass percentage 96.4%) and during DEEM 01/20, 74 trainees out of 398 had failed to qualify three or more subjects (Pass percentage 81.4%). Therefore, submission of the applicant that almost a quarter of batch was declared as 'Fail' at Valsura is malafide and incorrect. The procedure for conduct of tests and its evaluation is fair and therefore, applicant claim of helping certain trainees is incorrect and misrepresentation of facts. The applicant was shown answer sheets of tests and he has signed on the failure/counselling cards and he was aware of the subjects he failed. Cmde Ajay Patney, Ex Commanding Officer of INS Valsura has unblemished service record, hence applicant's comments

against Cmde Ajay Patney are malicious and malafide. He also submitted that in accordance with Navy Order 10/18, change of branch can only be accorded within the same entry type to sailors while undergoing new entry training at Chilka only. Therefore, there is no provision in Navy Order for change of branch whilst undergoing training at Valsura.

8. Learned counsel for the respondents further submitted that in terms of Para 11(E) of Appendix VII of NI 02/S/96, a direct entry Electrical Mechanic (Power/Radio) will be on probation for two years and subject to discharge any time during that period by the Commanding Officer of the Training Establishment concerned, if under training and by the Commodore, Bureau of Sailors, thereafter. As per Regulations 271 of Navy Regulations Part III, total service rendered by a boy or artificer apprentice is on probation and Regulation 278 (4) states that any boy, artificer apprentice or man, during probationary service, shall be liable to be discharged as 'Unsuitable' under order of the competent authorities. The applicant refused to sign the undertaking/documents of discharge, hence, two witnesses signed the undertaking and documents and his discharge was processed.

9. Learned counsel for the respondents further submitted that judgment relied by the applicant in the case of **Anuj Kumar Dey** (supra) is not applicable in the instant case being based on different facts. The applicant was discharged from Naval service on 28.07.2021 due to his poor academic performance. Therefore, O.A. filed by the applicant is based on entirely false submissions and thus Original application is liable to be dismissed being misconceived.

10. We have heard learned counsel of both sides and perused the record. We find that question involved in this case is whether the applicant can be reinstated in service and whether he may be allowed to continue his training by re-mustering him in Non Technical Trade?

11. Regulation 278 (4) of Regs Navy Part III states that, any boy, Artificer Apprentice or man, during probationary service, shall be liable to be discharged as 'Unsuitable' under orders of the authorities herein stated, if his progress or conduct is unsatisfactory:-

(a) Boys at the Naval Training Establishments- by the Captain of the Training Establishment. In the case of Boys afloat, by the Captain Naval Barracks on the recommendation of the Captain of the ship in which the boy is borne.

(b) Artificer Apprentices- by the Captain of the Training Establishment concerned, unless he can be absorbed in any other branch.

(c) Direct Entry Sailors- By the Captain of the Training Establishment concerned during the period of training and thereafter by the Captain Naval Barracks.

12. Further in accordance with Para 7 of Provision of Navy Order 34/15, following points being relevant are reproduced as under:-

(aa) Trainee will be given second chance (reappear to clear the exams) after two weeks of additional training if failed up to two subjects in a term.

(ab) If trainee fails in three or more subjects in a term he is liable for relegation as first warning and will be conjoined with subsequent/ following course.

(ac) Second relegation on academic grounds during the training he is liable for withdrawal from course or discharge from service under Regulation 278 (4) of Regs Navy Part- III.

13. In the instant case, the trainee was relegated first time as he had failed to qualify in nine subjects in DEEM 02/19. He was officially counselled at all levels of the by divisional chain in accordance with Navy Order 34/15. Thereafter, he was conjoined with DEEM 01/20 and was given adequate opportunity to improve his performance but he failed in five subjects and this being second relegation, he was liable to be withdrawn from service on academic grounds as 'Unsuitable'.

14. NO 10/18 deals with change of branch/trade for sailors does not have any provision for change of branch of trainee from technical to non technical trade. Para 11 (E) (v) of Appendix VII of NI 02/96, states that, if a trainee is found unsuitable during initial training, he may be transferred to another branch by CABS on the basis of recommendation made by the training, establishment. This provision

has been suitably amplified in para 4 of NO 10/18, which states that CABS, on recommendation of Commanding Officer, INS Chilka is authorised to accord approval for change of branch within the same entry type to sailors whilst undergoing new entry course. Hence, there is no provision for change of branch for a sailor when he is already at INS Valsura (Professional Training), after they have completed their initial training phase at INS Chilka. In absence of any provision for re-considering the ground of 'unsuitability', on which the applicant was discharged, the applicant cannot claim a vested right to be retained in service, based on a legitimate expectation. All actions were taken as per rules and the trainee was given adequate opportunity to improve. Basic training and professional training is deemed successful only on successful completion of ab-initio training. Until and unless a trainee completes both basic training and technical/professional training he is considered a probationer. Before discharge from service a Board was convened and the Board concluded that the markings of the trainee were fair. The performance of the applicant was poor, and not up to the desired standards.

15. In the instant case, applicant was relegated and was given additional chance to clear subjects in which he was fail but he could not pass the same. We find that judgment relied upon by the applicant is based on different facts and is of no help to him. It is an admitted

fact that Navy is a combatant force and technical competence for handling sophisticated equipment is necessary for the security of the nation. It cannot afford to have probationers who cannot pass technical subjects during training. The applicant was repeatedly counselled by all levels of the chain, after every instance of his failure and consequences thereof were reiterated during each counselling session. He was provided additional time and study period in order to provide ample opportunity for improvement in weak subjects. The direct entry/senior secondary recruits in the Navy are the backbone for maintenance of sophisticated combat systems in operational state at all times. Even a minor mistake during the maintenance or lack of adequate technical knowledge in maintenance of combat systems could cause severe damage to the multi crore systems on warships and in turn put the life of other men onboard at risk.

16. In this background and after perusing the details of policies as applicable, we are of the considered opinion that the respondents have been very fair and have given numerous opportunities to the applicant to improve himself at all stages of technical training. Therefore, we do not find any merit in the contention of the learned counsel for the applicant that the applicant's discharge should be set aside and he should be reinstated into service.

17. In this context, we would also like to clarify that the status of a trainee in Navy is like a probationer and therefore, if the individual fails to meet the organisational requirements during training, the respondents have every right to discharge him from service. This aspect of law has been clearly established by the Hon'ble Supreme Court in its judgment in the case of **Union of India & Others vs. Manoj Deswal & Others**, reported in (2016) 15 SCC 511.

18. Since the applicant had failed to clear technical training in DEEM 02/19 and 01/20, therefore, he was not retained in the service and the respondents were justified in discharging the applicant from service after following the due process. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents.

19. In view of the above facts, Original Application is devoid of merit, deserves to be dismissed and is accordingly dismissed.

20. No order as to costs.

21. Pending Misc. Applications, if any, shall stand disposed off.

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

Member (A)

Member (J)

Dated: November, 2022

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