

Court No. - 2

Case :- WRIT - A No. - 6548 of 2024

Petitioner :- Sep. Rishav Dubey

Respondent :- Union Of India Thru. Secy. Ministry Of Defense , New Delhi And 4 Others

Counsel for Petitioner :- Abhishek Dwivedi

Counsel for Respondent :- A.S.G.I.

Hon'ble Rajan Roy,J.

Hon'ble Subhash Vidyarthi,J.

1. Supplementary affidavit filed by the petitioner today in Court is taken on record.

2. By means of the instant writ petition, the petitioner has challenged the orders dated 31.01.2022, 09.03.2022 and 07.07.2022 passed by the Armed Forces Tribunal, Lucknow.

3. The facts of the case in brief are that the petitioner appeared in Technical Trade Test Grade III cum Diploma Examination in December, 2017. In his first attempt, he secured 50 marks out of 100 in theory paper-I and 47 marks out of 100 in theory paper-II. Apart from it, he secured 56 marks out of 100 marks in internal assessment and 50 marks out of 100 in practical and oral. Thus, he secured an aggregate of 53 marks in internal assessment and practical and oral and 48.5 marks in the two theory papers. He was accordingly declared 'Fail' in his first attempt. He, then appeared in the second attempt for the same grade wherein he secured 39 marks out of 100 in theory paper-I and 72 marks out of 100 in theory paper-II whereas he secured 67 out of 100 marks in internal assessment and 61.50 out of 100 marks in practical and oral. He was again declared 'Fail'. He, then appeared in the third attempt in December, 2018. In this third attempt, he secured 36 marks out of 100 in theory paper-I and 47.5 marks out of 100 in theory paper-II whereas he secured 59 marks in practical and oral out of 100. Again, the petitioner was declared 'Fail'.

4. Being aggrieved, the petitioner filed O.A. bearing No.518 of 2019 before the Tribunal, which has been dismissed. It is this judgment of the Tribunal dated 31.01.2022 which has been challenged by the petitioner in this petition. Prior to raising this challenge in this writ petition, the petitioner had filed an Appeal before the Hon'ble Supreme Court of India. However, the Hon'ble Supreme Court relegated the petitioner for availing the remedy before us vide its order dated 10.05.2024.

5. The contention of the petitioner's counsel is that the petitioner had qualified the Technical Trade Test Grade III cum Diploma Examination in the first attempt which took in December, 2017 in terms of para 83 of the Record Office Instructions issued by the AMC in 2014. It was also his contention that para 84 thereof did not apply. As regards the application of para 25 of another set of instructions namely, Standing Operating Procedure of Institutes of Paramedical Sciences on which reliance has been placed by the opposite parties, his contention was that the said Standing Operating Procedure was of the year 2013 and stood superceded by the subsequent Record Office Instructions of 2014 referred earlier. Although on being asked to show the specific provision by which the former was superceded by the latter, he could not do so.

6. In response, Shri Pandey, learned D.S.G.I. opposed the writ petition and submitted that in view of the provisions cited by the Tribunal especially para 84 of the Record Office Instructions and Para 25 of the Standing Operating Procedures, the petitioner had not qualified the diploma examination and, therefore, the judgment of the Tribunal does not require any interference.

7. We have heard the learned counsel for the parties and have perused the record.

8. The relevant para 25 of the Standing Operating Procedure reads as under:-

"25. Question Paper:- There will two papers of 100 marks each for all the diploma exams. The minimum pass percentage will be

50% in each paper. The following type of questions will be asked:-

S.No.	Question Type	No. of Questions	Marks per Question	Total
(a)	MCQ	20	1	20
(b)	Fill in the blanks	10	1	10
(c)	True or False	10	1	10
(d)	Short Notes	10	3	30
(e)	Long Questions	2	15	30
(f)	Total			100

9. As per the said provision, there will be two papers of 100 marks each for all the diploma exam. The minimum pass percentage will be 50% in each paper. Base on the aforesaid, apparently the petitioner has not qualified the exam. However, it is his contention that this provision stands superceded by the subsequent Record Office Instructions of 2014.

10. Although, we do not find any specific provision in this regard but even if we assume for a moment that it is so and it is the Record Office Instructions of 2014 which are applicable, we find that relevant paras 81 to 84 thereof read as under:-

"81. Technical Trade Tests in respect of all classes of Group 'X' and 'Y' in nursing technical categories will be arranged by course conducting units and establishments as per directions in the detailing orders.

82. No one will be given more than "Three Chance" (incl the initial chance) for appearing in any technical trade test. Name of the indls who in spite of three failure are still considered suitable and recommended to avail additional chance, will be reported to this office in detail for obtaining a decision from IHQ of MoD (Army) (Med Dte).

83. A minimum of 40% in each subject and an aggregate of 50% of total marks must be obtained to qualify in a test. Qualified indls will be graded as under:-

- (a) 50 to 59 per cent - Pass*
- (b) 60 to 74 per cent - Credit*
- (c) 75 per cent and above - Distinction*

84. The above grading are however not applicable for the specified standards like typing speed or taking dictations at laid down speeds with permissible errors. The minimum marks

required to pass the examination in the following trades are 50% in each two test separately in:-

(a) Written

(b) Oral and practical"

11. In view of the first line of para 84, para 83 would certainly apply to the Diploma Exam in which the petitioner had appeared as it pertained to Nursing Assistant which form part of nursing technical categories and if para 83 alone is applied then he has passed the examination in his first attempt which he took in December, 2017 but there is a catch which is in the last line of para 84 which says- "The minimum marks required to pass the examination in the following trades are 50% in each two test separately in: (a) Written; (b) Oral and practical". This last line as per our understanding means that the petitioner should have secured 50% marks each in written and oral and practical separately. Now in the light of this, when we peruse the marks obtained by the petitioner we find that he has not secured 50% marks in the two theory papers which are written examinations in the first attempt which took in December, 2017. We have already noted the numbers secured by him in the earlier part of this judgment.

12. At this point, the learned counsel for the petitioner submitted that in that case he has qualified in the second attempt. We have perused the marks obtained by him once again in the second attempt also and we find that though he secured more than 50% marks in written and practical and oral but he has failed to secure 40% marks in theory paper-I and, therefore, he had not qualified the exam in view of para 83, meaning thereby, as far as the first attempt is concerned, para 84 has not been satisfied, as far as second attempt is concerned, para 83 is not satisfied. It is not in dispute that in the third attempt the petitioner has not qualified and no arguments have been raised to the effect that it is otherwise. In view of this, after going through the judgment of the Tribunal, we cannot fault it for having dismissed the Original Application of the petitioner herein. As regards the contention of the petitioner's counsel that the Armed Forces Tribunal, Kolkata Bench has allowed a similar matter, we have perused the said judgment and we do

not find any consideration of para 84 of the Record Office Instructions therein in spite of a plea having been raised.

13. At this stage, the learned counsel for the petitioner says that the Tribunal has not considered para 84 but this makes no difference as we have done it now.

14. We appreciate the efforts made by the young counsel appearing for the petitioner but for the reasons aforesaid, are unable to accept his contentions.

15. Therefore, the writ petition is hereby *dismissed*.

(Subhash Vidyarthi,J.) (Rajan Roy,J.)

Order Date :- 22.8.2024

-Amit K-