



W.P.(MD)No.15008 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15008 of 2013
and
W.M.P(MD)No.14529 of 2021
and M.P(MD)Nos.1 & 2 of 2013

S. Ajay Justice
[Ex-Gentleman Cadet]

... Petitioner

vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Defence (Army),
No.101, South Block,
New Delhi – 110 101
2. The National Human Rights Commission,
Represented by its Chairman,
Faridkot House, Capernicus Marg,
New Delhi – 110 101.
3. The Chief of Army Staff,
Army Head Quarters,
Senabhavan, South Block,
New Delhi – 110 101.



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4. The Integrated Headquarters of
Ministry of Defence (Army),
Director General of Military Training/MT-10,
General Staff Branch,
New Delhi – 110 011.
5. The Additional Director General of Personnel Services,
Adjutant General's Branch,
Integrated Headquarters of Ministry of Defence (Army),
DHQ Post, New Delhi- 110 011.
6. The Major General,
DDMS Head Quarters,
ATNK & K Area (Andhrapradesh,
Tamil Nadu, Karnataka and Kerala)
Indian Army,
Fort St. George,
Chennai- 600 009.
7. The Invaliding Medical Board,
President by the Colonel,
Officiate Commandant,
Sainik Aspatal,
Military Hospital,
Secunderabad- 500 012.
8. The Military Hospital,
Rep by its Commandant,
Secunderabad- 500 012.
9. The Military Hospital,
Rep by its Commandant,
Kirkee.



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10. The Commandant,
Military College of Electrical and Mechanical Engineering,
Trimulgherry,
Secunderabad – 500 012.
11. The Commandant, Cadet Training Wing,
Military College of Electrical and
Mechanical Engineering,
Trimulgherry,
Secunderabad – 500 012.
12. The Commandant,
Army Training Command (ARTRAC),
Shimla. 171 003

... Respondents

[Respondent Nos-2, 7 to 10 and 12 were given up, as per Order of this Court, dated 11.09.2013]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus***, to call for the records pertaining to the Impugned Orders on the file of the Respondent No.4 in No. A/63319/RW/GS/MT-10, dated 20.05.2011, and the consequent impugned orders on the same file in No.A/63319/RW/GS/MT-10, dated 15.03.2012, B/41021/AG/PS-5, dated 24.05.2012 and A/63319/RW/GS/MT-10, dated 27.05.2013, and quash the same as illegal and consequently to direct the respondents to provide the petitioner with equivalent alternate employment with all benefits including seniority and grant compensation, or in the alternative, to confer Ex-serviceman status and benefits and award compensation.

(Prayer was amended vide Court order, dated 25.10.2021)



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For Petitioner : Mr.T.Lajapathi Roy
For R-1, 3 to 6 & 11 : M/s.L.Victoria Gowri,
Assistant Solicitor General

ORDER

This Writ Petition has been filed for issuance of *Certiorarified Mandamus*, to call for the records pertaining to the Impugned proceeding issued by the 4th respondent in No.A/63319/RW/GS/MT-10, dated 15.03.2012, the consequent proceedings issued by the 5th respondent in B/41021/AG/PS-5, dated 24.05.2012 and again the proceedings issued by the 4th respondent in A/63319/RW/ GS/MT-10, dated 27.05.2013 and quash the same as illegal and consequently to direct the respondents herein to provide the petitioner with alternate commission in the Indian Army in services with all attendant benefits including seniority and a fair compensation for the pain, agony and suffering, or in the alternative, to give adequate compensation to the petitioner and also the conferment of Ex-Serviceman status and privileges.

2. Subsequently, the Writ petitioner has filed an amendment petition to amend the prayer and the same was allowed, vide order, dated 25.10.2021, in



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W.M.P(MD)No.14528 of 2021, with the consequential prayer to grant alternative employment with all benefits with seniority etc.

3. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and M/s.L.Victoria Gowri, learned Assistant Solicitor General, appearing for the respondent Nos.1, 3 to 6 & 11. Perused the material documents available on record.

4. The petitioner after completing Board examination in the year April 2007, aspired to join in Indian Army. The petitioner has attended Technical Entry Scheme (TES) for five years, consisting of (i) Basic Military Training (one year) at the Indian Military Academy, Dehra Dun, (ii) Technical Training – a Pre Commission Training (3 years) at MCEME (Military College of Electrical and Mechanical Engineering), Secunderabad (b) Post Commission Training (1 year) at MCEME, Secunderabad. On successful completion of four years, the Cadet would be granted permanent commission in the Regular Army. The petitioner has attended interview process and was placed in 16th position in the merit list. As part of the Course fee, the petitioner has deposited a sum of



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Rs.8,200/-, towards AGIF (Army Group Insurance Fund) for admissibility of Insurance benefit of Rs.15 Lakhs. The petitioner had discontinued B.E. Decree course in Mechanical Engineering Course in the Karunya University, Coimbatore, in order to take up the admission in the TES, 18th Course in Indian Military Academy, Dehra Dun. The petitioner has joined Indian Military Academy, Dehra Dun and assigned Army No.TES-140. The petitioner has completed Basic Military Training of One year, in December 2008. On 05.01.2009, the petitioner has joined Pre-Commission Training cum B.Tech., studies in Cadet Training Wing cum Military College of Electrical and Mechanical Engineering, Secunderabad, in January 2009. While, participating in the “Cross Country Event” on 26.07.2009, the petitioner has sustained “Stress Fracture in the Neck and Femur” and was admitted in the 8th respondent Military Hospital. The petitioner underwent an operation after lapse of four days, subsequently, it was reported that the surgery was not effective and the petitioner underwent two more surgeries. After performing surgeries, the petitioner sent on sick-leave for a period of four weeks from 21.08.2009 to 16.09.2009. The petitioner finally discharged with the applicable monetary benefits, monthly stipend only. Therefore, the petitioner has filed this Writ Petition praying to reinstate him back into service.



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5. The learned Assistant Solicitor General appearing for the respondents vehemently opposed and submitted that the petitioner and his parents have executed an agreement and assured that they will not claim anything beyond the Rules and the agreement. The petitioner is being paid monetary benefits that is applicable to him and the petitioner is getting monthly stipend till today. But the petitioner is not entitled to be reinstate him back into service.

6. The learned counsel appearing for the petitioner submitted that this issue was considered in several cases, wherein, compensation was granted and also granted reinstatement. He has relied on the Judgment reported in **2012 SCC Online Del 1783 in the case of Lady Cadet Shivanjali Sharma Vs. Union of India and Others**. However, the learned Assistant Solicitor General, appearing for the respondents submitted that, in the case of **Lady Cadet Shivanjali Sharma**, the said candidate had already completed the Post-Commission course and therefore, she was granted reinstatement. However, in the present case the petitioner has completed one year course, which is Pre-Commission Course. Hence the case of **Lady Cadet Shivanjali Sharma** cannot be relied on since the facts in both the cases are different.



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7. The learned counsel appearing for the petitioner submitted that if the respondents cannot grant Pre-commissioned place, the respondent may be directed to consider any alternative remedy. The petitioner has completed Law Course during the period when the litigation was pending and had produced a copy of the Law Decree certificates. The petitioner is praying to direct the respondents to consider the petitioner for Judge Advocate General (JAG) post, based on the Law qualification.

8. The above plea indicates the petitioner's passion and the dream to service the Indian Army. India needs people who are dedicated with a dream to service our nation and to save our nation. At least for this passion and dedication, the plea of the petitioner ought to be considered.

9. By taking note of the facts and circumstance of the case and on hearing the rival submissions, this Court is passing the following order:

1. The respondents are directed to consider the petitioner's law decree and to permit in the JAG entry scheme.



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2. If need be, some of the conditions may be considered for relaxation.

3. The respondents are further directed to pay a sum of Rs.1 lakh to the petitioner, as compensation.

10. However this order shall not be followed as precedent and this order is passed based on the unique facts and circumstances of the case. This Court expects the respondents to consider the case of the petitioner, as an exceptional case and permit the petitioner in JAG entry scheme.

11. With the above directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

1. The Secretary, The Union of India,
Ministry of Defence (Army),
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New Delhi – 110 101.
2. The Chief of Army Staff,
Army Head Quarters,
Senabhavan, South Block,
New Delhi – 110 101.
3. The Integrated Headquarters of
Ministry of Defence (Army),
Director General of Military Training/MT-10,
General Staff Branch, New Delhi – 110 011.
4. The Additional Director General of Personnel Services,
Adjutant General's Branch,
Integrated Headquarters of Ministry of Defence (Army),
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Tamil Nadu, Karnataka and Kerala)
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6. The Commandant, Cadet Training Wing,
Military College of Electrical and Mechanical Engineering,
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S.SRIMATHY, J

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Order made in
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