



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: January 18, 2024

+ W.P.(C) 739/2024 & CM APPL. 3251/2024

(51) DHARMESH KUMAR

..... Petitioner

Through: Dr. J.R. Rana & Mr. Vinod Patidar,
Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Sushil Raaja, Sr. PC for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 3251/2024

Allowed, subject to just exceptions.

Application disposed of.

W.P.(C) 739/2024

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the foregoing premises, it is most respectfully prayed that this Hon’ble court may graciously be pleased to:-

A. Issue a writ in the nature of Certiorari and/or any other appropriate writ/s, order/s or direction/s to quash and set aside the order dated 28/08/2023 rendered in OA/13 10/2022



passed by Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi;

B. Direct the respondent to reinstate the petitioner in the Indian Navy being navy has failed to formulate the separate rule/order in specific category by way of opting in lower trade/branch as committed vide their own rule 10/2018.

C. Direct the respondent to regulate the option of the petitioner to transfer into the other trade if found fit, subject to willingness of the petitioner.

D. To pass any such and others orders as this Hon'ble Court may deem fit and proper in the interest of justice.

E. Award Costs."

2. The facts as noted from the record are that, in June, 2019, the Indian Navy issued a Notification inviting applications from unmarried male candidates for enrolment as Sailors for SSR February, 2020. The petitioner applied in terms of the Notification and was successful in the selection process. On February 08, 2020, the petitioner was directed to report for basic combat training at INS Chilka. After completion of basic combat training at INS Chilka, the petitioner was directed to report for technical training at INS, Valsura, Jamnagar, Gujarat.

3. It is the petitioner's case that, due to pandemic situation, theoretical classes were not conducted properly, and petitioner was directly deputed for examination on day-to-day basis. The petitioner was declared failed in the theoretical examination. In December, 2021, despite failing mid-term theoretical exam, the petitioner was allowed to write final In-term examination conducted in December, 2021. It is also the case of the petitioner that the final result of the Final term



theoretical examination has not been disclosed to the petitioner even after repeated requests.

4. On April 07, 2022, the respondent issued a show cause notice to the petitioner as to why the petitioner should not be withdrawn from training and discharged from Naval service. On April 22, 2022, the respondent vide letter No.221 dated April 22, 2022, discharged the petitioner from service.

5. The petitioner approached the Armed Forces Tribunal, Principal Bench ('Tribunal', for short) in Original Application No. 1310/2022 ('OA', for short) challenging the discharge letter dated April 22, 2022. The Tribunal in the impugned order has stated that, as per Regulation 278(4) of the Regs Navy Part III, which states any boy, Artificer Apprentice or man, during probationary service, shall be discharged as unsuitable under orders of the authority.

6. The Tribunal held that the petitioner was relegated for the first time, as they had failed to qualify the three subjects during MEAT-27, which was conducted from November 02, 2019 to May 09, 2020. The petitioner was also given an additional chance to appear in the next MEAT course i.e., MEAT-28. The petitioner being not successful in the written examination, was disqualified and discharged from the service in view of paragraph 7(f) of Navy Order 34/15 and Regulation 278(4) of Regs Navy Part III. The Tribunal has also held that the probationer has not passed the technical subjects during training despite repeated counseling at all levels of chain and at every instance, the petitioner failed, more so he was given extra time for studying during COVID period, did not meet the requirement of clearing the course. Therefore,



after perusing the details of policies as applicable and the petitioner having been given numerous opportunities to prove himself and qualify, the petitioner's contention alleging indifference in syllabus and discharge being unfair is without merit.

7. In so far as the plea of issue of change in trade, the Tribunal held that the petitioner was inducted into the trade of artificial apprentice based on the availability of vacancy in that trade as per the requirement of the organisation to fill certain operational manpower. Therefore, the petitioner having failed to qualify for the post and seeking change of trade has to be dependent upon the similar necessity of filling up vacancies. The Tribunal has also stated that, vacancies in another trade for disqualified applicants to change from one trade to another trade as a welfare measure, would dilute the operational readiness and efficiency of the Armed Forces as a whole and compromising overall standards of Defence Force merely to meet individual aspirants is not a desired tradeoff.

8. Dr. J.R. Rana, learned counsel appearing for the petitioner states that the Navy, in view of Navy order 10/18, has not formulated the order which specifically mention that there will be a separate order to govern the transfer of Artificer. The discharge of the petitioner, in view of the paragraph 7(f) of Navy Order 34/15 and Regulation 278(4) of Regs Navy Part III, was in a very mechanical manner and did not give a fair opportunity to trade option to the lower trade / branch. He relies on the Navy order 10/18, as reproduced hereunder:-

“This order lays down the procedure for change of branch of sailors under the provision of Regulation 273 of Regs Navy



Part III and chapter II of NI 2/96. Transfer to Artificer, Mechanician, Provost and diving Entry / branch / specialization will be governed by separate orders. "

9. He states that the theoretical classes were not conducted properly and the petitioner was directly deputed for examination, which was conducted in English language, whereas the petitioner studied in Hindi medium, which caused prejudice to the petitioner. More so, as the petitioner was deputed to COVID-19 duties and the theoretical classes not being conducted has resulted in lack of proper training. He also states that the petitioner was discharged without the respondent disclosing the result of the final In-term theoretical examination.

10. According to him, after being successful in all the criteria of selection like physical, written and medical examination, the petitioner was directed to report on February 08, 2020, for Basic Combat Training at INS Chilka which he had cleared securing 73.11% marks. He submits that the candidates who had failed in the Technical examination are very outstanding Sportsmen and without giving them any opportunity to opt for other trades is demoralising and the petitioner could have been retained in the service. In this regard, he has relied upon Navy order 10/18 (as reproduced above) which according to Dr. Rana talks about the change of branch of Sailors.

11. He states, the Navy order 10/18 specifically mentions that there will be a separate order to govern the transfer of Artificer but the Navy has not formulated such an order till date.

12. We are not impressed by the submissions made by Dr. Rana for the reason as stated by the Tribunal, inasmuch as, Regulation 278(4) of



Regs Navy Part III, that, any boy Artificer, Apprentice or man, during probationary service, shall be liable to be discharged as unsuitable. The said provision reads as under:-

“(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.”

13. The Tribunal also refers to paragraph 7 of the Navy order dated 34/15, as 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 the 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. (emphasis supplied)

14. In the present case, the trainees including the petitioner were relegated for the first time as they failed to qualify in three subjects during MEAT-27, ‘A’ term, which was conducted on November 02, 2019 to May 09, 2020. Accordingly, they/petitioner were/was given an additional chance and they/petitioner appeared in the next MEAT



course i.e., MEAT-28 and again disqualified and accordingly, they were discharged in view of the aforesaid provisions. The only submission which has been advanced by Dr. Rana is of transferring the petitioner to a lower trade. In this regard, it may be stated here that the challenge made by Dr. Rana to finding in paragraph 23 of the impugned order which we reproduced as under, is misconceived:-

“23. Since, the applicant had failed to clear technical training several times, therefore, he was not retained in the service and the respondents were justified in discharging the applicant from service after following the due process. It is also our considered opinion that the applicants had been inducted into the trade of Artificer Apprentice (AA) based on the availability of vacancies in that trade as per the requirement of the organisation to fill certain operational manpower voids. Since, the applicants have failed to qualify for the post, the change of trade as claimed for also has to be dependent upon the similar necessity of filling up vacancies. If there are no such vacancies in an alternative trade, providing the disqualified applicants from one trade to another trade merely as a welfare measure would dilute desired operational readiness and efficiency of the defence forces as a whole, in the instant case Indian Navy. Therefore, compromising overall standards of defence forces merely to meet individual aspirations is not a desired tradeoff. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents.”

(emphasis supplied)

15. In any case, it is the case of the petitioner himself as urged by Dr. Rana by relying upon Navy Order 10/18, that it presupposes that such a transfer shall be governed by separate orders. In other words, for transfer to other trade, an order has to be issued by Navy and it is



conceded by Dr. Rana that no such order has been formulated / issued by the Navy. So, in the absence of any such order, the plea that the trainees including the petitioner should have been transferred to a different Trade/Branch is clearly unsustainable.

16. In view of our discussion above, we do not see any merit in the petition, the same is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 18, 2024/jg