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

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Date of Decision : 09.01.2026

+ W.P.(C) 290/2026 & CM APPL. 1391/2026
EX SEA II UW RAHUL KUMAR SARASWATPetitioner
Through: Mr. Ajit Kakkar and Mr. Tejas
Bhonge, Advs.
versus
UNION OF INDIA & ORS.Respondents
Through: Mr. Brijesh Kr. Tamber, CGSC with
Ms. Arani Mukherjee, Mr. Prateek
Kushwaha, Mr. Vinay Singh Bist and
Mr. Aryan Data, Advs.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****V. KAMESWAR RAO, J. (ORAL)****CM APPL. 1391/2026**

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 290/2026

3. This petition lays a challenge to an order dated 12.09.2025 passed by the Armed Forces Tribunal at New Delhi (Principal Bench) in O.A. 3999/2023 filed by the petitioner, whereby the Tribunal has dismissed the O.A. by stating in paragraph 6 onwards as under:

“6. As reproduced hereinabove Regulation 278(1) of the Regulations for the Navy permits the Commanding Officer to discharge a sailor who is mentally or physically unfit or who is incompetent to perform duties. On account of physical condition, inefficiency or professional incompetency such a sailor can be



discharged if found unsuitable. Admittedly from the material available on record it is clear that the applicant after joining duties in February 2016 was not able to clear the swimming test. It was only on 31.08.2021 i.e. after five years of joining service and more than a year and a half after the issuance of the show cause notice Annexure A3 dated 27.03.2020 that he cleared the examination.

7. From the counter affidavit and the documents filed by the respondents particularly Annexure R11 dated 14.05.2018 it is evident that the applicant was counselled for failing to clear the swimming test. He was repeatedly counselled with regard to his fear of water and inability to swim. Annexures R11 to R20 are communications relating to counselling and advice given to the applicant on his swimming ability, non-passing of the swimming test, suicidal tendencies and acts of self-harm, casual attitude towards work, absence from place of duty on various occasions, unauthorized use of mobile phone during working hours, reluctance in discharging duties, lack of organisational or professional knowledge and below-average conduct in performance of duties. With specific reference to non-clearance of the swimming test counselling was given not only in 2018 but also in 2019 (Annexure R15), 2020 (Annexure R17) and again in March 2020 (Annexure R20). The overwhelming documentary evidence adduced by the respondents indicates that the applicant was not performing his duties and that his conduct was unbecoming of a member of the Armed Forces. He did not clear the swimming test for nearly five years and even the PQ test was cleared only after the show cause notice was issued.

8. Taking note of all these factors the documents clearly indicate that after affording him repeated opportunities, including counselling and advice for more than 4 ½ years and when no improvement was shown the respondents treated him as an unsuitable sailor and proceeded to take action under Regulation 278. In our considered view the applicant being a member of a disciplined Force such as the Indian Navy was required to perform duties onboard ships where clearing the swimming test is



of paramount importance. Not only did the applicant fail to clear the test for early five years after entry into service but he also consistently exhibited reluctance, inability and fear of entering the water. These are factors of critical importance and a sailor cannot be permitted to be retained in service with such shortcomings. The applicant's conduct also clearly indicates reluctance in performing duties while citing physical ailments and family problems as excuses to remain absent from duty on various occasions. In this background the respondents analysed the applicant's work and shortcomings for a period of about five years, repeatedly counselled and advised him and when no improvement was forthcoming discharged him from service upon being satisfied that he was unfit to serve as a sailor in the Navy.

9. The subjective satisfaction arrived at by the competent authority in assessing the applicant's work and thereafter discharging him in accordance with Regulation 278(1) in our considered view is a fair, reasonable and justifiable action based on the facts and circumstances. A member of the Armed Forces is expected to be fit in all respects both mentally and physically and to be capable of performing the onerous duties attached to service conditions. If the competent authority finds a person unsuitable for retention in the Force the subjective satisfaction so arrived at in the absence of bias, mala fides, ill motive or violation of statutory rules cannot be interfered with by this Tribunal on sympathetic considerations. In the present case based on the material on record and the analysis as detailed hereinabove we find that the competent authority has taken the decision after due evaluation of all relevant material. The assessment being in accordance with law we cannot sit in appeal over the same and take a different view.

10. As far as the ground that the show cause notice was issued by an incompetent authority is concerned it is of no consequence. This is because the entire material on the basis of which the show cause notice was issued along with the reply to it and all other relevant records was placed before the competent authority viz. the Commanding Officer, the statutory authority empowered to take action in the matter. That authority after evaluating each and



every aspect has taken a conscious decision as demonstrated by the respondents through their counter affidavit and the overwhelming documents filed.

11. Furthermore in his rejoinder (Paragraphs 2 to 5) the applicant himself admits to the shortcomings but attempts to explain them on the ground of personal health issues and family problems. In our considered view in the totality of the facts and circumstances and for the reasons discussed hereinabove the action taken against the applicant is in accordance with law. The respondents have adopted a fair and reasonable approach in dealing with his case and there is no reason for this Tribunal to interfere, particularly in a case involving the discharge of a man in uniform who has been found unfit for retention on account of the numerous shortcomings detailed in this order.

12. Accordingly, finding no merit, we dismiss the application, 12. without any order as to costs.”

4. The facts to be noted from the petition are that the petitioner was enrolled in the Indian Navy on 16.02.2016 as a Senior Secondary Recruit (SSR) with the basic date of engagement as 22.02.2016 for a period of 16 years, which was to end on 28.06.2031. He was discharged from service vide order dated 22.04.2022.

5. The case of the respondents is that the same is in accordance with the provisions of regulation 278 of the Regulations for the Navy Part III (Statutory). The record shows that a show cause notice dated 27.03.2020 was issued to the petitioner, wherein the following was alleged:

“4(a) You have not passed your mandatory swimming test since your induction into Indian Navy on 22 Feb 2016. Despite adequate opportunities provided by the ship towards improving your swimming skill, you have not passed your basic swimming test in four years of service and, therefore, failed to be promoted



to the next rank to date.

(b) Your professional competency has been observed to be poor and have failed repeatedly in all ASW Department POS tests conducted at regular interval by the ship and also by CITs.

(c) You have been found habitual of feigning sickness and projecting personal issues with an intention to avoid operational commitments of the ship. Further, on several occasions, you have displayed conduct unbecoming of a uniformed person, insisting upon disembarkation from long sailings while breaking the authorized channel”

6. There is no dispute that the petitioner had submitted a reply dated 03.04.2020 to the aforesaid show cause notice. The case set up by the petitioner before the Tribunal was that he had certain difficulties, and as such, he could not clear the swimming test. It was contended on behalf of the petitioner, as canvassed by learned counsel before this Court, that since the petitioner had cleared the test on 31.08.2021 and the PQ examination on 01.09.2021, he could not have been discharged and was entitled to be promoted.

7. His case was also that the allegations of habitual sickness and absence from duty have been properly explained by him, and also from time to time requesting leave from the Divisional Officer, which was ultimately denied. In substance, it was contended on behalf of the petitioner, as argued by learned counsel, that the petitioner had duly explained all the relevant circumstances; however, despite the explanations and justifications furnished, the authority, without considering the reply to the show-cause notice in its proper perspective and without affording him an opportunity to demonstrate his merit in service, declared him unsuitable under Regulation 278(1) of the Regulations, rendering the action taken by the respondents



illegal.

8. We find that the respondents in their stand before the Tribunal have stated the following:

“3.

It is the case of the respondents that despite being given adequate opportunity to improve his conduct and character and come up to the Naval standard required the applicant was setting a bad example to other sailors and the respondents had no option but to discharge the applicant on being satisfied that he is unsuitable and lacks professional competency for discharging the duties in the Navy. The respondents in the detailed counter affidavit filed stated that the applicant's performance on board was just average or below average. On numerous occasions, he was found to be either missing from his duty place or absent on the ground that he was feeling ill, with complaints such as fever, backache, and chest pain, and he would cite family problems as an excuse for shirking duties and avoiding departmental responsibilities and work. It is the case of the respondents that the professional competency of the applicant was observed to be very poor, he repeatedly failed in all the swimming tests and the PQ tests conducted by the ship at regular intervals. He was counselled to improve himself, in spite of that, he exhibited work-shyyness, had a very reluctant attitude towards service, and was not showing any progress in his work. The respondents have brought on record the following details with regard to his professional capabilities, conduct, disciplinary actions, and attitude towards work while on board various Naval ships from time to time. The details are as follows:

- (a) Counselling on 14 May 2018 (Annexure R/11) for clearing his swimming test as the same will affect his date of promotion.*
- (b) Counselling by Executive Officer on 01 August 2018 (Annexure R/12) with respect to discharge of duties, act of self harm/suicidal misbehavior/bad conduct towards ladies and act of stealing onboard act,*
- (c) Counselling by ASWO 11 (Annexure R/13) for his casual attitude towards work, missing from place of duty and using*



mobile phone during working hours.

- (d) Counselling by Department Officer (Annexure/14) for his misconduct and reluctant attitude towards service.*
- (e) Counselling and warned by Executive Officer on 13 December 2019 (Annexure R/15) for his reluctance towards the organisation, professional knowledge below average and not clearing mandatory swimming test.*
- (f) Counselling by Divisional Officer (Annexure R/16) to clear his PET and swimming test at an early date.*
- (g) Counselling by Divisional Officer on 24 February 2020 (Annexure R/17) to improve his professional standards and pass swimming test at the earliest.*
- (h) Counselling and warned by Divisional Officer on 27 February 2020 (Annexure R/18) to improve his professional knowledge and pass his swimming test at the earliest.*
- (i) Advised and counselling by Divisional Officer on 06 March 2020 (Annexure R/19) to channelize his efforts towards improving professional knowledge and clearing swimming test.*
- (j) Counselling and warned by Divisional Officer on 16 March 2020 (Annexure R/20) for his professional incompetence and failure on swimming.*

It is the case of the respondents that the applicant was motivated, counselling and informed about the activities. He was found to be a non-swimmer since joining the service, he took many attempts to pass the swimming test, he lacked skills and had fear of water. Even though he was enrolled on 16.02.2016 and started discharging duties immediately it took him five years to clear the swimming test on 31.08.2021, ie. much after the issuance of the show cause notice itself on 27.03.2020. The respondents further submit that on the excuse of facing several family problems and personal issues the applicant was away from duty. He would take leave and be away from duty and sometimes not available in the place of duty on the excuse of suffering from backache or chest pain and not being able to sit properly. He took leave in 2019 for various periods on account of his mother's ailment and operation for kidney stone. He got married in January 2019 and thereafter started taking leave on account of his wife's health problems and



various other issues. It is the case of the respondents that because of his absence and his continued habit of breaking the rules he was punished on various occasions. On 12.06.2018 he ran away from INS Mysore and was subsequently awarded "Warning Punishment" by the Commanding Officer of the ship for remaining absent without leave for 206 hours. He was awarded solitary confinement in the cell for seven days, stoppage of leave for 41 days and deduction of pay and allowances for 41 days. He used to seek leave off and on and the respondents have in detail narrated various acts of commission and omission and lack of initiative in performing duties by the applicant as detailed in the counter affidavit."

9. Though the petitioner had filed a rejoinder to the reply filed by the respondents, the Tribunal, in paragraph 6 onwards, which we have already reproduced above, has, on a consideration of facts which arose before it had dismissed the original application.

10. Today, before us as well, learned counsel for the petitioner has advanced submissions similar to those made before the Tribunal. On a perusal of the show cause notice, it is clear that the respondents have primarily alleged two grounds on which he was sought to be discharged (i) that despite adequate opportunities provided by the ship towards improving his swimming skills, he has not passed the swimming tests in four years of service, and (ii) that the professional competency of the petitioner as observed was held to be poor as he failed repeatedly in all ASW Department POS tests conducted at the regular interval by the ship and also by CITs.

11. The submission of learned counsel for the petitioner is that, although the petitioner had not passed the swimming test within four years, having cleared the test on 31.08.2021, the same ought to have been treated as a mitigating factor and, therefore, the respondents should not have terminated



the services of the petitioner.

12. We are unable to agree with the submission made by the learned counsel for the petitioner for the simple reason that the petitioner was required to pass the test within the period of four years as stipulated under the Rules. His connected submission is that, despite the petitioner not having cleared the swimming test within four years and the show-cause notice having been issued much thereafter, the action initiated by the respondents is itself bad; inasmuch as the delay must enure in his favour. This submission does not impress us.

13. This is for the simple reason that the respondents, having not taken action against the petitioner immediately after four years has not caused any prejudice to the petitioner; rather it was to the benefit of the petitioner that he could able to continue in the service even thereafter. Insofar as the overall performance of the petitioner while working for the respondents, the petitioner has not disputed the case as set up by the respondents in their reply, nor has any argument been advanced by the counsel for the petitioner before us to state that what has been contended by the respondents in their reply is contrary to the record.

14. In fact, during the course of the submissions, the learned counsel for the petitioner has stated that because of certain family problems, he was not able to discharge his duties diligently.

15. If that be so, the grounds on which the petitioner has been discharged are not perverse; there is some basis for the respondents to come to a conclusion that they are required to invoke the provisions of regulation 278(1) to discharge the petitioner from the services of the Navy.

16. We are of the view that the Tribunal is justified in coming to the



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conclusion as it has done in the impugned order.

17. The petition being without merit is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JANUARY 9, 2026/msh