

(2022) 06 AFT CK 0010
In the Armed Forces Tribunal
Case No : O.A. No. 605 Of 2022

Lt Col Ashutosh Singh

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 01-06-2022

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2022) 06 AFT CK 0010

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Neeraj, Brig S. ?Prabhu, Brig MS Legal

Final Decision : Dismissed

Judgement

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act 2007 by the applicant who is a serving Lt Col and is aggrieved by the fact that he has been denied an opportunity to attend the Defence Services Staff College (DSSC) Course since his selection for an UN mission was not cancelled. The applicant has made the following prayers :-

(a) Call for records on the basis of which the Respondents have failed to withdraw the name of the applicant in terms of the Policy of the Respondents from UN Mission, declining the request for early repatriation and not considering his grievance as service wrong for appropriate orders as presented by the applicant in the complaint as well as not considering the nomination of the applicant for the subsequent course on the basis of earlier selection as proposed by the then Commandant DSSC and thereafter quash all such orders including the order dated 05.04.2019 and 21.06.2021.

(b) Direct the Respondents to accept the proposal submitted vide letter dated 27.09.2020 and on that basis pass necessary orders for nomination of the Applicant for the 78th Staff Course commencing from 06.06.2022 on the basis of earlier selection of the Applicant over and above the strength of the

Officers already nominated for the course 78 against the phased enhanced vacancy.

(c) Pass such and other orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

And in the interim, direct the Respondents to complete necessary administrative action to release an extra vacancy on the DSSC Course commencing from June 2022.

Brief Facts of the Case

2. The brief facts of the case as per the applicant are that he was commissioned into the Indian Army on 10.12.2007. In 2018 the applicant was preparing for the DSSC entrance exam scheduled from 10th to 15th September 2018. On 06.09.2018 the applicant was informed that he had been shortlisted for an interview for selection of officers for an UN mission and that he was required to submit his willingness certificate (Annexure A-2). Although the applicant had sought permission to submit his willingness certificate after the entrance exam he was informed that he had to do it forthwith and accordingly the applicant submitted a willingness certificate. In the applicant's opinion, even if he gave his unwillingness and then got nominated to attend the DSSC Course, as per the existing policy, it would only be considered as the officer being non available and would not attract the normal ban of 18 months from being considered for such foreign assignments. The applicant gave the DSSC Entrance Exam from 10 to 15.09.2018, and then received instructions to report to Army HQ for the interview scheduled on 25.09.2018 and was informed on the same day that he had been selected for UN Mission in South Sudan (UNMISS).

3. On 20.11.2021, the DSSC exam results were declared and the applicant was nominated to attend DSSC-75 scheduled from June 2019 (Annexure A-4). The applicant immediately intimated his unwillingness for the UN assignment vide Signal dated 22.11.2018 (Annexure A-5) and letter dated 22.11.2018 (Annexure A-6). The applicant also submitted a formal application dated 24.11.2018 (Annexure A-7), duly recommended by the chain of command. He later visited Army HQ to withdraw his name from the UN assignment under the provisions of Para 27(d) of the Policy dated 26.06.2018 (Annexure A-3). In response, the applicant received letter dated 04.12.2018 (Annexure A-8) from Respondent No 5 stating that if he was indeed unwilling to proceed on the UN Mission whether the applicant would bear the cost of the ticket booked for his deployment. In response to this, the applicant intimated that he was unwilling for the UN assignment and that he was also willing to bear the cost of the air ticket (Annexure A-9).

4. Despite the applicant's clear stance that he was unwilling for the UN assignment, and assurance that his case was under consideration and that the 'Reserve' candidate would be nominated for the UN assignment, he was asked to report to Army HQ on 10.12.2018 for pre-despatch formalities

(Annexure A-10). He was also informed that since the DSSC Course was to commence only in June 2019, that he should proceed to UNMISS and that he would be repatriated at an early date. Accordingly, the applicant proceeded to UNMISS on 15.12.2018 (Annexure A-11). After reaching the mission area, on 28.01.2019 itself the applicant submitted an application for early repatriation (Annexure A-13). However, this was declined vide Respondent No 5's letter dated 05.04.2019 (Annexure A-14). As a result of this, the applicant remained in the mission area till 28.12.2019 when he was finally repatriated.

5. After his return from UNMISS, in July 2019 he was posted on staff to DSSC Wellington, as AAG. Whilst at DSSC on staff, he narrated his case to the Comdt, who asked him to make a representation and forwarded it, strongly recommended for consideration vide letter dated 23.09.2020 (Annexure A-15). The Comdt also then wrote a DO letter dated 27.09.2020 (Annexure A-16) addressed to GOC-in-C ARTRAC with a copy to Respondent No 3 recommending that the applicant be now nominated for the DSSC Course based on his earlier selection. Since there was no reply to the case taken up, the applicant filed a statutory complaint dated 27.04.2021 (Annexure A-17), which was turned down with instructions that the applicant take up the case with MS-11 vide their letter dated 21.06.2021 (Annexure A-1). Hence this OA.

Arguments by the Counsel

6. The Counsel elaborately took us through the details of the case as mentioned above. He drew our attention to 'Policy for Selection of Officers for Foreign Assignments' at Annexure A-3, in particular to Para 26, 27 and 30 pertaining to willingness certificate and process for waiver and stated that while normally a willingness certificate was to be rendered at the initial stages and it invited a 18 month ban, Para 27(c) categorically mentions that in case an unwillingness certificate is accepted after the stipulated time it shall invite a ban. The Counsel vehemently asserted that a provision therefore existed to accept the unwillingness certificate even after the stipulated time, and the Respondents had unfairly denied this option to the applicant and resultantly denied him the opportunity to attend the DSSC Course, which was one of the most important career courses for an officer, the nomination to which the officer earns through his individual merit after qualifying in a competitive exam. The Counsel also then asserted that notwithstanding the policy on unwillingness, the applicant's case was a peculiar and the policy made provisions for waiver to any of the clauses/ stipulations , with the proviso that such a waiver needed to be approved by the COAS. The Counsel emphasised that in view of the existing policy, withdrawal of willingness was permissible and was thus not an irrevocable matter. The Counsel vehemently stated that the Respondents should have sought the approval of the competent authority at the very initial stages in November 2018 when the applicant gave his unwillingness once he was nominated to attend DSSC-75. It was possible to then nominate the 'Reserve' and it would

have met the ends of justice to the applicant and the Reserve too would have had the opportunity to proceed on a UN assignment. The Counsel then took us through the sequence of events consequent to the deployment of the applicant into the mission area and stated that even then, the opportunity existed to repatriate him early so that he could have attended DSSC-75. The Counsel concluded that considering the importance of DSSC Course in the career of an officer, where most of the subsequent appointments and opportunities only flow if one is qualified on the DSSC course, grave injustice has been done to the applicant by not considering his case sympathetically at the initial stage of deployment. The Counsel stated that in order to ensure justice to the applicant, he be permitted to attend the DSSC-78 commencing in June 2022 as a special case.

Arguments by the Counsel for the Respondents

7. The Counsel for the Respondents also took us through the chronology of events, the policy on the subject and stated that once a set of officers are shortlisted for selection for a UN assignment, only those officers who have expressed their willingness in writing are then called for the interview. The Counsel added that at this stage if an officer expresses his unwillingness, then another officer is shortlisted for interview in place of the officer who has expressed his unwillingness. The Counsel further added that as per the policy, an officer who expresses his unwillingness would not be considered for any foreign assignment for a period of 18 months. Elaborating further, the Counsel stated that in the case of officers who are already nominated for a career course like DSSC, expression of unwillingness would not invite a ban as such officers are considered as being non available.

8. The Counsel then stated that in response to call up signal, the applicant had intimated his willingness vide signal dated 08.09.2018 (Annexure R-1). The Counsel added that on 10.09.2018, the last date for rendering willingness certificate, the applicant was once again briefed on the implications of submission of willingness and its impact on attending a career course for which he was just then taking the exam. It was also intimated to the applicant that though it was his last chance for the DSSC course, it was in no way his last chance for consideration for a foreign assignment.

9. Further explaining the selection process, the Counsel stated that once the officers reported to Army HQ for the interview, they were once again briefed in detail on 24.09.2018 about the selection procedure, various provisions of the policy including the implications of willingness certificate required to be rendered. Consequent to the briefing all officers willing to attend the selection process, including the applicant, rendered their willingness certificate; the Counsel then took us through the applicant's certificate dated 24.09.2018 (Annexure R-2). The Counsel then emphasised that out of all the officers who were issued call up notice for the interview and were required to render

their willingness, there were five officers who were similarly placed as the applicant since they too were also appearing for the DSSC Entrance exam, who rendered their unwillingness. These officers were consequently under a 18 month ban for subsequent consideration for foreign assignments. The Counsel then emphasised that the applicant thus chose to submit his willingness certificate voluntarily, fully knowing its implications and that the applicant was finally selected for the appointment of SO U3 Ops , UNMISS with the tentative deployment in December 2018.

10. The Counsel then stated that in the intervening period between the selection on 25.09.2018 and declassification of the DSSC-75 result on 20.11.2018 when the applicant applied for withdrawal from the UN assignment, the applicant had undergone his medical examination, documentation process and had also attended the pre induction training at CUNPK, Delhi. The complete documentation was then despatched to UN HQ and the Permanent Mission of India at New York, which in turn takes about 8 to 10 weeks for processing the deployment including obtaining clearances from the host nation and issuing necessary travel tickets. The Counsel emphasised that considering the process involved, change in nomination was not acceptable to the UN authority since any delay could result in loss of vacancy and prolonged stay of those awaiting repatriation.

11. The Counsel then stated that the applicant's initial request for withdrawal was duly deliberated at various levels and taking into consideration various issues involved and the embarrassment to the country that was likely to be caused due to cancellation of a nomination at the belated stage, the initial request for withdrawal was rejected by the competent authority. The applicant thus proceeded to UNMISS for a one year tour of duty from 15.12.2018 to 28.12.2019. The applicant's request for early repatriation too was examined in detail and rejected.

12. The Counsel concluded by emphasising the following :-

(a) That the applicant had rendered his willingness for the UN assignment in the full knowledge of its implication, specially with respect to his nomination for the DSSC Course.

(b) That the provisions of Para 27 (d) of Policy dated 26.06.2018 were not applicable to the applicant as this was only applicable to those who were already nominated for career courses, and not for those who were yet to be nominated.

(c) That similarly placed officers like the applicant who were aspirants for DSSC-75 had rendered their unwillingness and had been placed on 18 months ban as per policy.

(c) That the applicant's request for withdrawal had been considered in detail and had been rejected by the competent authority after due

deliberation and application of mind.

Consideration of the Case

13. While we appreciate the importance and relevance of the DSSC Course in the career of an army officer, in the instant case the applicant has had to make a very difficult choice. The choice between foregoing an opportunity of a foreign assignment and taking a chance of being nominated for the DSSC Course, or forego the opportunity to attend the DSSC course, the probability of which itself was uncertain at that point of time, and choose to be considered for a foreign assignment. Then, life is always about making choices.

14. From the records produced before us, its amply clear that the implications of rendering willingness/ unwillingness had been explained to the applicant and all others who were to undergo the selection process. The applicant was thus permitted to attend the interview only because he had rendered his willingness, first vide Signal at Annexure R- 1 and subsequently the certificate dated 24.09.2018 at Annexure R-2, having been physically briefed on the procedure and implications of various provisions of the policy. Thus, as on 25.09.2018 when the applicant attended the interview his willingness was a fully considered choice that he made. Having been selected for the UN assignment on 26.09.2018, he then willingly participated in all the pre despatch activities and had not made any request for withdrawal. The Willingness Certificate signed by the applicant as available on record is reproduced below and has no ambiguity in its content and language. The contention of the applicant that he had misinterpreted the policy, especially after having been explained in detail is difficult to comprehend.

Appendix 'A'

(Refers to Para 26(a) of MS

Branch letter No 04526/

MS Policy dated 26 Jun 18)

WILLINGNESS CERTIFICATE TO BE RENDERED BY OFFICERS WHILE PROCEEDING ON FOREIGN ASSIGNMENTS

1. I hereby certify that I am willing to proceed on Course/ Deputation to UNMISS. I also certify that I will not withdraw my willingness to join the aforesaid course/ assignment if selected/ approved and I am aware of the consequences of any such withdrawal.

2. I will not seek extension of tenure on any grounds whatsoever. I have been apprised that any effort to seek extension beyond the mandatory tenure, personally or through the host organisation, will be viewed as an act of indiscipline and dealt with accordingly.

3. I have not applied for PMR/ NOC for civil employment as on date. I will not apply for PM/ NOC for Civil Employment before proceeding on foreign assignment or while serving abroad.

4. I will not ask for premature repatriation on any grounds while serving abroad.

5. I willingly and consciously accept any effect on my future career in terms of the following:-

(a) Non-placement/ delay in placement on Criteria/ Command appointment.

(b) Not being Adequately Exercised in a Criteria/ Part Criteria appt.

(c) Non-detailment on career courses/ subsequent courses.

(d) Delay in assumption of higher rank till return to India.

(e) Delay in subsequent promotion.

(i) Delay in passing departmental/ promotion examinations and consequent loss of seniority.

6. I have read and understood the contents of MS Branch Policy letter No 04526/ MS Policy dated 24 Jun 2018.

Sd xxxxxxxxx

IC No 70008K

Rank - Maj

Station - New Delhi

Name -ASHUTOSH SINGH

Date -24 Sep 2018

Arm/ Service/ Regt - ARTY/

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15. We have also seen the records pertaining to the examination of the applicant's case for withdrawal consequent to nomination for DSSC-75; case initiated for early repatriation from the mission area and the DO letter written by Comdt DSSC for reconsideration of the applicant's case for nomination to the next course.

16. Immediately on the declassification of the results of DSSC-75, the applicant had initiated three communications for withdrawal from the selection for UNMISS; a signal from his Unit; a DO from the applicant to the Addl MS (B); and a formal application dated 24.12.2018 duly recommended by the chain of command, which was received on 04.12.2018. In the intervening period

between selection on 26.09.2018 and receipt of letter seeking communication, the applicant had already completed his pre despatch documentation, medical examination and also attended the pre induction training at CUNPK, Delhi. Also, based on the nomination details provided to UN DPKO, the applicant's deployment had already been approved and UNDPKO had also forwarded the travel tickets for the officer.

17. All the three communications have been examined together at the MS Branch with inputs from SD Directorate/ SD-3A(UN). Based on the inputs dated 04 and 07.12.2018 provided by SD-3A(UN) on the status of the applicant's approval for deployment and receipt of tickets, and the fact that any cancellation at this juncture would have adverse impact, the application for withdrawal was finally rejected and the applicant was informed vide MS branch letter dated 12.12.2018.

18. The applicant's application dated 28.01.2019 requesting early repatriation in view of nomination for DSSC-75 was also examined in detail. It is seen from the files that there had been a case in 2014 for early repatriation to attend DSSC course which had been accorded sanction. Since the cases for repatriation was being dealt with on a case to case basis it was decided to issue a policy for repatriation. Accordingly the 'Policy on Repatriation of Indian Army Troops in UN Peace Keeping Missions' was promulgated vide SD-3A(UN) letter dated 08.03.2018 and this has been adhered to since then. Under this policy, repatriation could be on compassionate grounds; disciplinary grounds; medical grounds and on miscellaneous grounds under exceptional conditions. While the repatriation of compassionate grounds requires the sanction of DCOAS(IS 8sT), repatriation on disciplinary and misc. grounds requires the sanction of the COAS. This case was examined in detail by SD-3A(UN) with inputs from MS Branch and was rejected. It is also pertinent to state that a similar request for early repatriation to attend DSSC 75 by another officer in MONUSCO was also rejected by the COAS. It is also seen from the records that yet another case of an officer seeking early repatriation from UNDOF on his nomination to attend DSSC-78 commencing in Jun 2022 too has been declined on the same grounds that the officer in full knowledge of the implication of rendering his willingness cannot now seek early repatriation to attend the DSSC course. (Officer was initially a reserve when he appeared for the DSSC exam; the officer got upgraded and was deployed on 12.10.2021 when the results of DSSC were eclassified on 01.12.2021).

19. The DO letter from Comdt DSSC to GOC-in-C ARTRAC with copy endorsed to MS (Annexure A-16) has also been examined in detail at the highest level and had been declined by the competent authority for since renomination to DSSC is only if an individual could not join the course to which he was nominated due to medical reasons; or was nominated for a foreign staff course and that was cancelled. The grounds on which renomination was recommended by Comdt DSSC was contrary to the policy and HQ ARTRAC too

did recommend the case. It is also seen from the records that of all the officers called for interview on 26.09.2018, five officers had rendered unwillingness and were imposed with a 18 month ban for any foreign assignment consideration, as per the policy. Thus while examining the case of the applicant, the Respondents took serious notice of the fact that any deviation from the laid down policy to permit the applicant to repatriate early to join DSSC-75 would have been grossly unfair to these officers who had adhered to the policy with sincerity of purpose and ended up with a ban. And that any deviation from the laid down policy according permission to the applicant would be inappropriate and would set an incorrect precedence.

20. Thus, examination of the records indicate that the applicant had rendered his willingness for selection for UNMISS with the full knowledge of the implications and repercussions on career courses. It is also pertinent that other similarly placed officers had made the choice of rendering unwillingness and had been placed on an 18-month ban. Thus any dispensation to the applicant at this stage would be grossly unfair to these officers. Between his selection in September 2018 and seeking withdrawal in end November 2018, the applicant had completed his pre-despatch documentation and medical examination. Importantly, in the intervening two months, the Army HQ had already processed and received the approval and ticket from UN DPKO for the deployment of the applicant. Considering the various implications of cancelling the applicant's approved deployment and processing the deployment of a fresh candidate, the stance of the Army HQ in rejecting the appeal of the applicant for withdrawal is justified and we uphold this decision. The rejection of the applicant's plea for early repatriation is also upheld in the light of the fact that the Army HQ has applied the existing policy on repatriation uniformly and have rejected similar requests by other officers too.

21. DSSC/DSTSC entrance exams provide a very unique, fair and impartial platform to the officers of the Army to compete on pure merit without any subjective interference, to an all arms and services course for which nomination is based purely on the officers' professional competence. This has thus ensured that these exams enjoy explicit trust and faith of the officers. In order to maintain this it is important that minimum exceptions to the laid down policies are made.

22. It is seen that given the frequency of rotation in various UN missions subscribed by the country, there will always be a few selections which takes place just prior to the DSSC exam, or in the intervening period between the conduct of the exam and the declassification of results. Notwithstanding the importance and relevance of DSSC Course in the career of an officer, it remains the prerogative of the individual officer to make the choice and render his /her willingness/ unwillingness and then abide by the choice made.

23. In the light of the above consideration, we do not find any merit in the OA and it is accordingly dismissed.

Pronounced in open Court on this day 1st of June, 2022.