
(2019) 12 AFT CK 0015

In the Armed Forces Tribunal

Case No : Original Application No. 1075 Of 2019

Manoj Kumar Poonia

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-12-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2019) 12 AFT CK 0015

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : K.P Singh Chauhan, Neema Rani, Vijendra Singh Mahndiyani

Final Decision : Dismissed

Judgement

1. The challenge in this O.A filed under Section 14 of the Armed Forces Tribunal Act 2007 is against the letter dated 22.05.2019 (Annexure AI),

whereby the request of the applicant for detailing him for Nursing Assistant Class-I (one) course has been rejected by the respondents.

2. The brief facts of the case are that the applicant was enrolled in the Army on 30.12.1995 as a Nursing Assistant. On 04.09.2006, the applicant was

detailed for a Nursing Class-I (one) course. However, due to the sudden death of his wife in a road accident, he could not attend the said course and

submitted a permanent unwillingness certificate. However, for doing 'Senior Cadre Course', it was mandatory to undergo Nursing Assistant Class-I

(one) course. In June 2018, the applicant gave a letter to the respondents to consider him for the Nursing Assistant Class-I (one) course because for

getting his next promotion i.e. from Havildar to Naib Subedar, it was mandatory to do 'Senior Cadre Course'. However, the respondents rejected his

request on the ground that having offered permanent unwillingness certificate in

2006 for this course, there is no provision for the applicant to do this course again in 2018. Thereafter, vide letter dated 29.10.2018, the applicant was disqualified for the senior cadre course. However, the applicant states that he had never given such a permanent unwillingness certificate. Thereupon, the applicant caused to send a legal notice to the respondents and in reply, the respondents issued the impugned letter dated 22.05.2019 stating that the applicant cannot be detailed for Nursing Assistant Class-I (one) course again as he had already submitted a permanent unwillingness certificate. Being aggrieved, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned order dated 22.05.2019, 05.12.2018 and 13.11.2018; and

(b) Direct the respondents to allow the applicant to undergo for Nursing Assistant Class-I (One) Course.

3. Learned counsel for the applicant submitted that the applicant's fundamental rights are being violated. The applicant had refused to undergo the said course under extreme compassionate circumstances, on account of his wife's death in 2006, but never refused to undergo the said course permanently. He pleaded that since this course is important for his promotion, he be permitted to undergo this course.

3A. The learned counsel for the respondents submitted that while serving with Base Hospital, Delhi Cantt, the applicant was detailed to undergo

Nursing Assistant Class-I course from 01.09.2006 to 31.08.2007 at Command Hospital (Northern Command), Udampur. However, he submitted a

permanent unwillingness certificate dated 29.09.2006 duly recommended by the competent authority due to his personal problem to undergo the said

course. Accordingly, the name of the applicant was permanently deleted from the said course and the same was intimated to the unit of the applicant

vide letter dated 06.10.2006. Thereafter, the applicant was screened for Senior Cadre Course (SCC) for the period from 06.11.2018 to 07.01.2019 but

he was found unqualified for the said course due to lack of Nursing Assistant Class-I (one) course, which was duly intimated to the unit of the

applicant vide letter dated 29.10.2018. The applicant submitted his willingness certificate for Nursing Assistant Class-I (one) course on 05.12.2018.

However, the competent authority took the view that as per Appendix 'C' to Para

37 of the Army Medical Corps Records Office instructions 01/2014, once permanent unwillingness is rendered and recommended by the CO/Col (Med)/Brig (Med)/MG (Med), the same cannot be revoked. Accordingly, a reply was given to the legal notice sent by the applicant's lawyer. And there being no justifiable ground, the O.A deserves to be dismissed being devoid of merit.

4. Having heard counsel on both sides and perused the records made available to us, the only question that arises for our consideration is, whether the respondents were justified in not detailing the applicant for the Nursing Assistant Class-I (one) course on the basis of the permanent unwillingness certificate given by him.

5. There is no dispute that the applicant was initially detailed for Nursing Assistant Class-I (one) course with effect from 01.09.2006 to 31.08.2007 at Command Hospital, Udhampur while he was serving with Base Hospital, Delhi and that the applicant was not able to attend the said course. For non-detailment of the applicant for the said course, the respondents referred to Appendix 'C' to Para 37 of the Army Medical Corps Record Office

Instructions 01/2014, which states that permanent unwillingness certificate once rendered and recommended by CO/Col (Med)/Brig (Med)/MG (Med)

will not be revoked. However, what the learned counsel for the applicant says is that the applicant had never given a permanent unwillingness

certificate from detailing him for the Nursing Assistant Class-I (one) course. It is in these background, we have to decide the case.

6. In order to come to a just conclusion, we think it necessary to refer to the relevant Army Instructions (01/2014) in this regard, the relevant portion of which reads as under:

Personnel unwilling to attend CI-I & II Courses

37. Whenever an indl is detl on such courses and he is unwilling for personal reason to undergo the same, he will make a request to his OC imdt on

receipt of the detl order from AMC Records. The OC will explain the indl suitably all the implications that may arise as a result of his unwillingness

and also give him the facilities/assistance to remove his difficulties so as to enable him to attend the course. Even after this if the indl expresses his

unwillingness to do so, the OC unit will obtain from him a cert to this effect as per appx Cto this ROI. This cert will be submitted by the CC unit within

five days from date of receipt of the detl order through their Col (Med)/ Brig (Med)/ MG (Ned). The Col (Med)/ Brig (Med)/ MG (Ned) of

Div/Area/Corps/Comd will make specific endorsement with regard to deletion of name of the unwilling pers from the course or otherwise and fwd the

same to the AMC Records. Permt unwillingness cert once rendered and recom by CO/ Col (Med)/ Brig (Med)/ MG (Ned) will not be revoked. Temp

unwillingness cert either for cl-I or II courses will not be acceptable for more than two consecutive courses in the interest of service. (emphasis

supplied)

7. However, all along, the stand taken by learned counsel for the applicant is that the applicant had never submitted any unwillingness certificate. The

respondents countered this contention stating that the applicant had already given such a certificate on 27.09.2006 and drew our attention to Appendix

'E' to ROT 15/2005 annexed with Annexure A1, which reads:

CERTIFICATE OF PERMANENT UNWILLINGNESS

TO ATTEND A COURSE OF INSTRUCTION

1. I, No. 13993883P Rank SEP/NA Name MANOJ KUMAR VERMA of Base Hospital Delhi Cantt am permanently unwilling to attend

Nursing Assistant Class-I (One) Course at CH (NC), C/O 56 APO for which I have been detailed under AMC Records signal No A-8091

dated 04 Sep 2006. My reasons for this unwillingness are .--

(a) Health Reason - Nil

(b) Domestic circumstances - Nil

(c) Any other reasons?" I was posted to this hosp on compassionate ground on 10 Jun 2005. My wife has expired in road accident on 21

Nov 2004. I have two small children and there is no one available at my home to look after my children. Due to the present situation it is

very difficult for me to attend the said course. Therefore I request to kindly accept my permanent unwillingness cert to attend the Nursing

Assistant Class-I (One) course.

2. I request that this certificate may be accepted. I understand the implications arising out of this request of mine, in that my juniors who are

fully qualified or who may attain full qualifications will be granted higher classification/promotions over me and consequently I will also

lose my seniority. I further understand that I will be the first to be considered for discharge on completion of colour service or on qualifying

for minimum pension (in the case of JCOs and NC0s) even though there may be no surplus in the category.

Unit.' Base Hospital Delhi

Sd/-

Date : 27 Sep 2006 (No.13993883P Sep/NA MK Verma)

REMARKS OF SR REGISTRAR & OC TROOPS

1. Interviewed the indl

2. Recommended

Base Hospital Sd/- (AK Nayak)

Delhi Cantt-10 Col

Sr Registrar & OC Tps

REMARKS OF COMMANDANT

Rec. & Iwd.

Station : Delhi Cantt-10 Sd/- (G. Rajagopal) Brig

Date. 27 Sep 2006 Commandant

REMARKS OF DDMS HQ DELHI AREA

Rec. & Iwd

Station.. Delhi Cantt-10

Date. 29 Sep 2006

A bare reading of the above certificate would show that the applicant had already given an unwillingness certificate and the respondents were justified

in not detailing the applicant for Nursing Assistant Class-I (One) course based on the relevant AMC Record Office Instructions. Additionally, we also

accept the point of view of the respondents, that every course has to be done at a certain experience level of service. Thus what was required to be

done in 2006 cannot be justifiably done in 2018 without creating other complications for the organisation.

8. Viewed thus, we do not find any merit in the instant O.A and the same is dismissed, without any order as to costs.