

(2020) 02 AFT CK 0028

In the Armed Forces Tribunal

Case No : Original Application No. 485 Of 2014, Miscellaneous Application No. 576 Of 2014

Sandeep Kumar And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Rules, 1954 — Rule 13(3)
Armed Forces Tribunal (Procedure) Rules, 2008 — Rule 4(5)

Citation : (2020) 02 AFT CK 0028

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

Bench : Division Bench

Advocate : S.S. Pandey, Anil Gautam

Final Decision : Dismissed

Judgement

M.A No. 576 of 2014:

1. This is an application filed under Rule 4(5) of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking permission to join together and file a single O.A. Since we are disposing of the O.A itself, we think it appropriate to allow this M.A. Accordingly, the M.A is allowed.

O.A No. 485 of 2014:

The applicants through the medium of the instant O.A filed under Section 14 of the Armed Forces Tribunal Act, 2007, seek the following reliefs:

(a) Call for the records, including any policy instruction, based on which the respondents have declared the applicants unfit for the tradesman category

on the ground that they do not have the requisite height in terms of the communication dated 08.04.2014 and thereafter quash all such orders.

(b) Direct the respondents to consider the applicants afresh for their re-mustering in any trade based on their height or even for clerk category with all consequential benefits as the clerk aptitude test in which the applicants supposed to have been failed have already been discontinued by the respondents since 2011 by reinstating them in service.

2. The facts germane to the case are that, the applicants were enrolled in the Army in the category of Clerk (General Duties) in the Corps of Artillery

on 18.09.2009, after finding them fit in all respects for the same, including medical and physical tests. They underwent the mandatory training at Arty

Centre, Hyderabad. During January 2010, the applicants had appeared for the Proficiency and Aptitude Test for Clerks, on the basis of the policy

instructions issued by the fourth respondent. Thereafter, the applicants were informed that they would be discharged from service based on the policy

instructions, as they failed in the Proficiency and Aptitude Test. The applicants, therefore, submitted an application before the Commanding Officer on

24.01.2010 requesting for another opportunity to clear the Aptitude Test or in the alternative for change of trade. Though the outcome of the

application was not made known to them, they were allegedly made to understand that it was not possible to accept their request as they lacked in

physical standards. Thereafter on 12.02.2010¹ they were discharged from service in consequence of 'unlikely to become efficient soldiers' under Item

IV of the table annexed to Rule 13(3) of the Army Rules, 1954 (hereinafter referred to as 'the Rules'), allegedly without giving them any show cause

notice and without considering their case for change of trades. Questioning the validity of the discharge order, the applicants filed O.A No. 641 of 2010

before this Tribunal with a further prayer to reinstate them back into service by accommodating them in any State quota. This Tribunal allowed the

said application and directed the respondents to adjust the applicants in any posts in State quota. The operative part of the aforesaid order dated

03.05.2013 is reproduced as under:

9. Therefore, keeping in view the social measure and also that the petitioners have a legitimate expectation to continue in service, they will

be adjusted against the quota of other States and that quota can be adjusted in subsequent quarters. The termination orders dated

12.02.2010 is quashed and the respondents are directed to re-muster these

petitioners against the Soldier (Tdn) quota in any of the State

quota subject to fulfilling the other eligibility conditions. The petition is allowed accordingly.

As there was delay in implementing the aforesaid direction, the applicants filed an execution application (1v1.,A No. 483 of 2013) before this Tribunal.

Thereafter on 04.02.2014, the third respondent accorded sanction to re- muster the applicants back into service without any back wages and directed

the fourth respondent to implement the orders of this Tribunal. However, the fourth respondent, vide Annexure A5 dated 08.04.2014, rejected the

candidature of the applicants due to shortfall in height. The relevant portion of the said order is reproduced as under:

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2. You were considered again for re-mustering as Soldier (Tradesman) subject to fulfilling other eligibility conditions. The medical and Intake Board

has found your height 167 cms against minimum required ht of 170 cms for Soldier (Tradesman).

3. As per policy in vogue minimum required height is 170 cms for Soldier (Tradesman) cat for State Haryana. Hence, your candidature is rejected due to shortfall in height.

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Thereafter on 29.05.2014, the execution application filed by the applicants was disposed of with the liberty to challenge the order passed by the fourth

respondent cancelling the candidature of the applicants. Hence the instant O.A.

3. Mr. Pandey, learned counsel for the applicants vehemently contended that the impugned order rejecting the candidature of the applicants is illegal,

unconstitutional and violative of Articles 14 and 16 of the Constitution. He further submitted that the applicants are entitled to be re-mustered as

Soldier (Tradesman) as they fulfil the necessary height criteria for the said post. Furthermore, the respondents misinterpreted the provisions of the

policy to deny the benefit of Army service to the applicants. According to learned counsel, it is not necessary to possess the requisite physical

standards which are required for a Soldier for remustering. Mr. Pandey, learned counsel for the applicants also submitted that the respondents did not

measure the height of the applicants properly. He also stated that the applicants should have been considered against the vacancies of other States

and considered as per the standards applicable for the said State instead of discharging them from service. It was also contended that the applicants

were not given a second opportunity to pass the Proficiency Aptitude Test and they were not remustered as Tradesmen although they were declared

fit for the same. It was his further contention that the applicants were not given a show cause notice prior to their discharge from service.

4. On the other hand, the respondents have filed a counter affidavit, wherein they have stated that the applicants were enrolled in the Army with

effect from 18.09.2009 through Branch Recruiting Office, Hissar and their basic Military Training commenced with effect from 05.10.2009. While

undergoing the Basic Military Training, they failed in the Proficiency Aptitude Test conducted on 07.12.2009. As per the laid down procedure, if the

soldiers fail in the Proficiency Aptitude Test, they will be allowed to exercise an option for change of trade and the same is granted only if vacancy is

available in the Unit HQ quota allotted to the centre in the required State and Class and the recruit Clerk is fulfilling other essential criteria. As per the

recruitment policy, the Clerks have relaxation in physical height criteria during enrolment vis-a-vis other trades. Consequent to their failure to qualify

the Proficiency Aptitude Test, feasibility to absorb them in another trade/category was explored as per the instructions on the subject. However, their

re-mustering to another trade/category (Tradesman) was not feasible as there were no vacancies for candidates from Haryana in the category of

Hindu/JAT/AIAC. The candidates who do not meet age/height/weight/education criteria and vacancy from that State and class do not exist are

dismissed under Item IV of the table annexed to Rule 13(3) of the Rules. Accordingly, in the case of the applicants, as there were no vacancies from

Haryana State, they were dismissed from service. However, pursuant to the directions given by this Tribunal, sanction for reinstatement/re-mustering

into service of the applicants were issued and on receipt of such instructions, the applicants were intimated to report at the Centre and necessary

action was initiated for advance utilisation of vacancy for Tradesman from next recruiting sub cycle. Necessary medical examination, verification of

documents and Intake Board were carried out for their reinstatement. During the medical and Intake Board, it was found that the first applicant was

having a height of 167 cm against the minimum required height of 170 cm and the second applicant was having a height of 169 cm against minimum

required height of 170 cm for Soldier (Tradesman) and of State of Haryana. It was on account of the shortfall in height, the candidature of the

applicants were rejected. In this situation, Mr. Anil Gautam, learned counsel for the respondents submitted that there is no illegality or irregularity in

the action taken by the respondents rejecting the candidatures of the applicants and thus the O/A deserves to be rejected with costs.

5. Having heard the submissions made by the learned counsel for the parties and perused the documents available on record, the only question that

arises for our consideration is, whether the action of the respondents in discharging the applicants without re-mustering them to another trade on the

ground of lack of physical standard, is justified or not?

6. It is an admitted fact that the applicants were enrolled in the Army on 18.09.2009 and that while undergoing the Basic Military Training, they failed

in the Proficiency Aptitude Test (PAT) and that persons who do not pass PAT are to be re-mustered in some other trade or discharged. It is also an

undisputed fact that PAT is conducted only once during the entire duration of training and there is no provision for a second PAT test. According to

the respondents, the applicants were considered for re-mustering, but they did not meet the prescribed criteria for re-mustering as they lacked the

minimum required height for a non-clerical trade. Thereafter, as per the directions of this Tribunal, the candidates were considered for re-mustering

even against the quota of other States. However, the physical standards of required height for all States around Haryana (western plain region) i.e.

Punjab, Chandigarh, Delhi, Rajasthan and western Uttar Pradesh is same i.e. 170 cm. for non-Clerk/SKI trade. Thus, in the case of the first applicant,

it was found that he was having a height of 167 cm against the minimum required height of 170 cm and in the case of the second applicant, he had

only 169 cm height against 170 cm. It was on account of the shortfall in height, the candidatures of the applicants were rejected. Therefore, it is clear

that the applicants did not fulfil the minimum height requirement for Tradesmen category not only for Haryana, but also for other neighbouring States

coming under the category of 'western plain region'. Further, the applicants cannot be considered in this category as relaxations in the minimum

standards of fitness or other physical requirements cannot be permitted in recruitment of Defence personnel. Such relaxations would clearly compromise the efficiency of the Defence services. Thus, it was in these circumstances that the applicants could not be re -mustered to another trade.

7. Furthermore, we find no merit in the contention of the learned counsel for the applicants that they were not issued a show cause notice before their discharge from service, as there is no provision for issuing a show cause notice for recruits who have not been attested.

8. Resultantly, we have no hesitation in holding that there is no illegality or irregularity in the impugned action of the respondents in discharging the applicants from service. The O.A fails and is dismissed. No order as to costs. Pronounced in open Court on this the 18th day of February, 2020.