

(2022) 03 AFT CK 0020

In the Armed Forces Tribunal

Case No : OA 557 Of 2022 With MA 694 Of 2022

Sub (Hony Lt) Pawan Kumar (Retd)

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 30-03-2022

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Armed Forces Tribunal (Procedure) Rules, 2008 — Rule 22

Citation : (2022) 03 AFT CK 0020

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

Bench : Division Bench

Advocate : B. P. Vaishna, H. V. Shankar

Final Decision : Allowed

Judgement

OA 557/2022

1. Invoking the jurisdiction of this Tribunal under Section 14 of the AFT Act, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

"(i) To direct the respondents to set aside the cancellation of call up order issued to applicant vide CA-2/1667/Re-Emp/CU/J-82/17 dated 03.06.2021 by which applicant is being denied from joining re-enrolment in DSC as the present OA is squarely covered in the matter of Sub Adyanath Ghosh (Retd).

(ii) To direct the respondents to re-employ the applicant for the post of SUB (GD) in DSC through latest forth commencing course in the interest of Justice."

2. There being a delay of 257 days in invoking the jurisdiction of this Tribunal application for condonation of delay under Section 22 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been filed and the delay is explained by indicating that due to the covid pandemic situation applicant was prevented from submitting his representation against the impugned order passed on 03. 06. 2021 and he also pleaded for condonation of the period from 15.03.2020 to

28.02.2022 in view of the suo motu order passed by the Hon'ble Supreme Court on 10.01.2022 in Writ Petition (C) 3 of 2020 .

3. Having heard learned counsel for the parties on the said application and after taking note of the facts and circumstances of the case, in our opinion, it is a fit case where the application for condonation of delay has to be allowed as the period between 15.03.2020 to 28.02.2022 has to be exempted while evaluating the period of limitation and if that is done the application would be within limitation. Accordingly, the delay is condoned. M.A. 694/2022 is allowed.

4. Even though, the matter is listed today for admission but considering the fact that the issue involved in this case stands covered by an order passed by this Bench on 17.11.2021 in O.A. No. 1051/2022 Sub Adyanath Ghosh (Retd) vs. Union of India, it is not necessary to issue notice as the matter has to be disposed of in the light of the law laid down in the case of Adyanath Ghosh (supra).

5. The applicant retired from the Indian Army in the Rank of Sub (Hony. Lt) on 31.08.2020. The applicant applied for and was selected for Re-employment in DSC as Sub (GD) in the interview conducted by JAK LI Regt Centre. On 14.04.2021 appointment letter was issued to the applicant and he was directed to report to DSC Centre, Kannur on 30.04.2021 for re-employment in DSC and to attend the Re-Orientation Training JCOs Course No J-82 commencing from 02.05.2021 up to 12.06.2021. The applicant reported in time at the DSC Center Kannur (Kerala) on 28.04.2021 to participate in the training which was to commence from 02.05.2021. However, on 28.04.2021 the applicant was informed that due to Covid-19 Pandemic and the prevailing situation the training program has been postponed and the applicant was directed to go back to his home town and he was also told that he will be recalled and intimated when the training again commences.

6. The applicant thereafter came back from the DSC Center, Kannur to his home town, where surprisingly by the impugned order dated 03.06.2021 he was informed that his name has been taken out from the J-82 Re-Orientation course on account of his being overage and now he cannot be permitted to participate in the course which was to commence on 14.06.2021. Challenging this action the applicant has filed this application. Along with the applicant one Sub Adyanath Ghosh was also selected for the same J-82 course; had also reported for participating in the course which was to commence from 02.05.2021 and like the applicant he was also sent back as the course was postponed on account of the pandemic situation, Sub Adyanath Ghosh was also dealt with in similar manner and by identical impugned order passed on 03. 06. 2021 Adyanath Ghosh was prevented from participating in the course which was to commence from 14.06.2021 on the ground that he has become overage. Aggrieved by the action, Adyanath Ghosh invoked the jurisdiction of this Tribunal by filing O.A. 1051/2021 and by order (Annexure A-5) dated 17.11.2021 the issue in question involved in this case was considered by this Bench and from Para 7 onwards up to Para 13

the issue was discussed and adjudicated upon in the following manner.

"7. Having heard both sides at length there is no dispute on the rule position and the fact of the case. In that, but for the extraordinary circumstances arising from the Covid pandemic and the second surge in Apr/May 2021, due to which the course which was to commence on 02.05.2021 was rescheduled to 16.06.2021, the applicant in the normal course would have been reemployed in the DSC. The issue to be adjudicated is only one; considering the extraordinary circumstances, whether the Respondents should have taken a more pragmatic view of the case and provided the necessary waiver on age as an exceptional case, thereby providing the applicant the opportunity for re-employment in DSC, which was his legitimate expectation when he first reported for the course in April 2021.

8. It is well established that the Covid pandemic was an extraordinary situation faced by the whole world and different countries adopted their own ways to arrest the spread and provide succor to those infected. As the spread stabilized, our nation and various organizations commenced urgently required activities with necessary precautions to cater for the continuing Covid environment. Thus, in this case too, the Army initially decided to postpone the course and subsequently rescheduled it with necessary precautionary measures. In that the personnel reporting for the course were to undergo a period of quarantine and then undergo the reorientation course.

9. It would not be out of place to mention that in these extraordinary circumstances, even certain statutory requirements were put on hold by the Hon'ble Supreme Court in order to mitigate the difficulties faced by the litigants and the judiciary. In March 2020, the Hon'ble Apex Court had taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Pandemic and resultant difficulties that could be faced by the litigants across the country. Consequently, vide its order dated 23.03.2020, Hon'ble Supreme Court directed that the period of limitation in filing petitions/ applications/suits/ appeals /all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March,2020 till further orders. Again in 2021, The APEX Court in its order dated 27.04.2021 stated that "In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded" and that its earlier order of 23.03.2020 has been restored and that in continuation of its order dated 08.03.2021 the Apex Court has now direct that "the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders". The orders were finally withdrawn with effect from 02.10.2021.

10. In a case, namely, OA 959/2021, the applicant took ill with Covid during the DSSC entrance exam and continued to give the exam whilst suffering from Covid. Under these circumstances, since he was unable to give his best, the applicant applied to take the exam in September 2021 as his second

compensatory chance which was declined by the respondents. The Tribunal permitted the applicant to take the exam in 2021 and finally admitted the appeal and directed the Respondents to consider the entrance exam taken by the applicant in September 2021 as his second compensatory chance and that he be permitted to attend the DSSC Course subject to passing the exam and being nominated for the Course.

11. The fact of the matter is that the applicant in this case under the normal circumstances would have got re employment with DSC and completed the re orientation course on schedule. We are of the opinion that in the instant case, the actions of the Respondents did not cater for and take into consideration the extraordinary circumstances arising from the Covid pandemic, resulting in the applicant being denied the legitimate right to a second job, for which he was rightfully selected.

12. In view of the foregoing, we allow the OA and direct the Respondents to grant reemployment to the applicant in DSC as a special case and the vacancy be suitably adjusted from within the yearly quota available for reemployment of JCOs.

13. With the aforesaid, OA stands disposed of. As such, MA(s), if any pending, also stands disposed of. No Costs.”

7. As the case of the applicant is also identical in nature, both on facts and law, we see no reason to take a different view, we allow this O.A. in terms of the order already passed in the case of Adyanath Ghosh (*supra*) and direct that the directions contained in Para 12 and 13 in the case of Adyanath Ghosh (*supra*) be implemented and the applicant be also granted similar consideration.

The O.A. thus stands allowed and disposed of in the aforesaid terms.