FORM NO. 21
(SEE RULE 102(1))
ARMED FORCES TRIBUNAL ,KOLKATA BENCH

OA No.72/2018.

THE 11TH DAY OF MARCH, 2024.

No.15444099F Sep/BTA Jaypal Singh alias Jaipal Singh.

... Applicant.

-Vs-
Union of India and others. .... Respondents.

Advocates present:

For the applicant,

Mr Aniruddha Datta.

For the respondents,

Mr Ajay Chaubey, Sr.PC.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

(2) In this application following reliefs have been sought to be granted:

(a) To declare the applicant pass-out in BTA Class-III Exam in 2nd chance in June 2016;

(b) To declare null and void and inoperative his BTA Class III Exam(Third chance) held in December 2016 and CEE(Trade change) in 2018;

(c) To set aside the impugned letter no.490002MP(Remust/18 dated 12.03. 2013(Annexure A/3) whereby the applicant was discharged from service; and

(d) To pass any other or further order as deemed fit and proper in the given facts and circumstances of the case.

(3) Applicant was enrolled in the Indian Army as Sepoy on 28.06.2013. He had to pass three tests namely BTA(blood transfusion assistant) Class III and BTA Class IV within 5 years of his enrolment. As per the rules/instructions, these tests were to be passed in 3 chances. As per AMC(Records) Office Instruction No.01/2014(revised edition) if a soldier fails in BTA Class iII and BTA Class IV in all the three permitted chances he will not be granted any further chance to pass out the same and will be discharged from service under Army Rule 13(3) II(V) after issuing show-cause notice against the contemplated discharge and secondly, he will be re-mustered in another category subject to fulfilment of qualifying requirements on his option to be given for the same.

(4) As per the Instruction No.1/2014(Annexure A/1) a soldier was to be treated as having passed out the exam in case he secures 40% mark in each subject, whereas 50% in aggregate. However, the applicant failed in both the parameters and as such

was declared fail. He had appeared in BTA-III(2nd chance) in June 2016 and secured the marks tabulated in the result-sheet(Annexure A/4):

NOMINAL ROLL CUM RESULT SHEET: CLASS-III

(To be initiated in duplicate at Trg Hosp/Centre where indi underwent Cl-III Trg.Both copies to be disp to No2 TT Wg, AMC(through respective Exam centres).

Trg Hosp/Centre- TRANSFUSION CENTRE(EC) [EC] KOLKATA | Sheet No.01 of 01 | Name of Exam Centre- CH

1	2	3	4	5	6	7	8	9
Srl. No	Army No	Rank	Name	Attempt No	Internal Assessment (100)	Prac & Oral (100)	Theory(200)	
							Paper-I (100)	Paper-II (100)
1	-	-	-	-	-	-	-	-
2	-	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-
6	-	-	-	-	-	-		-
7	15444099F	SEP/BTA	JAYPAL SINGH	SECOND	55	54	56	45

(5) The complaint made is that though the applicant in BTA-III(2nd chance) held in June 2016 secured more than 40% marks in each subject and 210 marks out of 400 in aggregate i.e. 50% as required in terms of the Instruction No.1/2014, to his utter surprise was again declared fail.

(6) On the other hand, he appeared in BTA-III(3rd chance) in December 2016 and at this time also he was declared fail. When requested his superior officers to disclose the marks he obtained, the applicant was rebuked and threat given that if he wanted to continue in service he should remain silent. Not only this, he was served with letter dated 06.03.2017(Annexure A/2) thereby advising him to choose whether he is

willing to be re-mustered the trade or discharged from service. Having left with no other option than to opt to muster any other suitable trade vide his application dated 10.03.2017(Annexure A/2). Therefore, he was re-mustered in Dresser from BTA. The test of this trade was held on 28.01.2018 at No.2 MT Bn AMC Centre and College. He had been declared fail in this exam also. Thereafter he was served with letter dated 12.03.2018(Annexure A/3) proposing his discharge from service. Subsequently he was informed that he would stand discharged from service on 28.06.2018 on completion of 5 years of service.

(7) The applicant later obtained statement of marks he obtained in BTA(2nd chance) exam, Annexure A/4, and to his utter surprise, irrespective of passing out in each subject and obtaining 50% in aggregate, the respondents have declared him fail to the reasons best known to them. It is after obtaining the statement that he believed that it is for this reason the marks obtained in BTA-III by him were not disclosed to him intentionally, wilfully. Since he has passed out the BTA-III, he should have been retained in service. However, due to illegal, mala fide and negligent acts attributable to the respondents he had to face the procedure prescribed for discharge from service. Therefore, he made representations on 23.02.2018 and 19.03.2018(Annexure A/5 colly). However, the same were also not considered and decided by the time the OA had been filed.

(8) Therefore the applicant submits that in the ends of justice, equity, and fair play he be declared to have passed out BTA-III(2nd chance) exam. The failure to do so and rather to resort to the procedure prescribed for re-mustering of the trade and

subsequently discharge from service is highly illegal, arbitrary, unconstitutional and discriminatory in nature. The application as such has been sought to be allowed and the impugned proceedings proposing his discharge from service quashed and set aside.

(9) Respondents when put to notice have filed reply to the OA. The factual aspect of the matter has not been denied. The only stand taken to substantiate the plea qua dismissal of the original application is that the applicant has failed to pass out BTA-III in all the permissible limits and even on re-mustering in Dresser also he has failed to pass the exam. Therefore the applicant is stated to have been rightly proposed to be discharged from service.

(10) As regards the Army Instruction No.1/2014(Annexure A/1/Annexure R/1) the submissions made in the reply are as under.

> *"Paragraph 16 of AMC Record Office Instructions No 01/2014(Photocopy attached as Exhibit R-1) stipulates that, "on successful completion of Class-IV technical training, all the candidates will move to the designated training establishment for 75 weeks of training as per detailment order issued by AMC Records. Training hospitals/institute are responsible to impart training strictly as per schedule, laid down syllabus and others instructions issued from time to time. They will be awarded class-III of respective trade on passing of their final test". Accordingly, after passing Blood Transfusion Assistant technical trade test Class-IV(four), the petitioner had posted to Eastern Command Transfusion Centre Kolkata with effect from 26 Jun 2014 for upgradation of Technical Trade Class i.e. Class-III.*
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> *Paragraph 83 and 84 of AMC Record Office Instructions No 03/2014(Photocopy attached as Exhibit R-2) stipulates that:-*

"83. A minimum of 40% in each subject and an aggregate of 50% of total marks must be obtained to qualify in a test. Qualified individuals will be graded as under:-

(a) 50 to 59 per cent : Pass

(b) 60 to 74 per cent : Credit

(c) 75 per cent and above : Distinction

The above grading are however not applicable for the specified standards like typing speed or taking notation at laid down speeds with permissible errors. The minimum marks required to pass the examination in the following trades are 50% in each two test separately in:-

(a) Written

(b) Oral and practical."

(11) It has been submitted that in BTA-III(1st chance) the applicant secured less than 40% marks in some subjects, whereas in aggregate also less than 50%. As regards the score of the applicant in BTA-III(2nd chance) held in June 2017, the submissions made in the reply read as under:

"Accordingly, the petitioner had appeared in his trade test Class-III final examination as second attempt in Jun 2016, in ***that he had earned total*** *210 marks i.e. 52.5%(Internal Assessment – 55/100 i.e.55%, Practical & Oral – 54/100 i.e. 54%, Theory Paper I -56/100* ***i.e*** *56% and* ***Theory Paper II- 45/100 i.e. only 45%),*** *out of 400 marks* ***(Photocopy of Nominal roll-cum-result sheet attached as Exhibit R-5).*** *In terms of paragraph 84 of AMC Records Instructions No 03/2014,* ***the minimum marks required to pass the written examination i.e. theory is 50% of total marks of subject,*** *whereas the petitioner had earned only 45/100 marks i.e. 45% in his theory paper II. Hence, he was declared fail in his trade test Class-III final examination as second attempt."*

(12) Respondents have also provided scores of the applicant in 3rd and final chance. However, he is not aggrieved by the result of such exam in the 1st and 3rd chances and rather that of 2nd chance held in June 2016.

(13) It is in this backdrop that we have heard learned counsel on both sides and also perused the records.

(14) As a matter of fact, the respondents in view of their own admissions brought to this score cannot dispute the claim of the applicant in this application for the reason that they themselves have admitted in so many words in the reply filed to the OA the criterion to declare a candidate pass in BTA-III(2nd chance) exam i.e. to secure 40% marks in each subject and 50% in aggregate. The applicant when appeared in BTA-III(2nd chance) exam in June 2016 he secured 55 marks out of 100 in internal assessment, 54 out of 100 in practical and oral, 56 out of 100 in theory paper-I, and 45 out of 100 in theory paper-II, totalling 210 marks.

(15) We fail to understand on what basis the applicant has been declared fail in his exam when his score in each subject is above 40%, whereas in aggregate also it is more than 50% as the total marks out of 400 he secured are 210.

(16) Learned Sr.PC, when confronted with such factual position, has failed to our notice anything contrary as to how in view of such score of the applicant he could have been declared fail? Therefore, we find the present a case where the applicant has not only been harassed but humiliated also as despite passing out BTA-III exam in

second chance he was forced to appear in such exam in third and final chance and when failed, even also in another trade i.e. Dresser, which was not at all required had the officers dealing with such exams been cautious and careful in declaring the result. Therefore, the entire exercise after the BTA-III(2nd chance) exam held in June 2016 carried out in the matter is not only illegal but arbitrary and whimsical also. The applicant as such is absolutely justified in claiming that the entire exercise of BTA-III(third and final chance) exam held in June 2016 and the re-mustering proceedings as well as the trade test on re-mustering of the applicant in the trade of Dresser conducted by the respondents deserves to be quashed and set aside and the applicant to continue in service up to his normal tenure in terms of his enrolment in the Army.

(17) It is worth mentioning that the interim relief granted vide order dated 18.06.2018 keeping in abeyance the show-cause notice dated 14.06.2018 and extended from time to time though was ordered to be vacated vide order dated 22.07.2022, the discharge of the applicant from service has however been again stayed till further orders vide order dated 21.07.2023. This order is still in force. Not only this, but the applicant has also approached the Calcutta High Court in WPA 23287/2023. The interim order was ordered to be extended till further orders vide order dated 20.02.2023 passed in CAN 2/2023. Therefore, the interim order passed in favour of the applicant is still in force and he has not been discharged pursuant to the impugned show-cause notice.

(18) For all the reasons herein above this application succeeds and the same is accordingly allowed. Consequently the impugned discharge is quashed and set aside.

As a result of the applicant having passed BTA-III exam in second chance held in June 2016 it is hereby ordered that the result of the BTA-III(third chance) held in the month of December 2016 and the re-mustering proceedings are illegal, null and void, hence quashed. The applicant has not been discharged from service. He is therefore allowed to continue in service till completion of his tenure specified in the terms and conditions of his engagement with all consequential benefits. This application is accordingly disposed of so also the miscellaneous application(s) if any pending. No order so as to costs.

LT GEN SHASHANK SHEKHAR MISHRA
HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY
HON'BLE MEMBER(J)

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