

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A NO. 28 OF 2015
(Along with MA 45 of 2015)

ON THIS 9TH DAY OF OCTOBER, 2015

CORAM : HON'BLE JUSTICE SUNIL HALI , MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(ADMINISTRATIVE)

SAGAR CHANDRA CHAKRABORTY, HAVILDAR
HEAD QUARTERS COMMANDER WORKS ENGINEER(CWE)
1, NATIONAL LIBRARY AVENUE, ALIPORE,
KOLKATA – 700 027

.....Applicant

-VS-

1. Union of India service through
The Secretary, M/o Defence,
South Block, New Delhi-110001
2. Engineer in Chief
Kashmir House
Integrated Headquarters of Ministry of Defence
(Army)
New Delhi – 110 001
3. The Commandant,
College of Military Engineering (CME)
Pune – 411 031
4. The Officer-in-Charge,
Bengal Engineering Group,
Records BEG Roorkee,
Roorkee – 247667
5. The Commander Works Engineer Kolkata
1, National Library Avenue, Alipore,
Kolkata – 700 027

.... Respondents.

For the Applicant : Mr. Alok Kishore, Advocate
Mr. S.K. Chowdhury, Advocate

For the respondents : Mr. Anup Kumar Biswas, Advocate

ORDER**PER Justice Sunil Hali, MEMBER (Judicial)**

The applicant was enrolled as a direct Havildar 'X' Group (Graduate Entry) in Corps of Engineers on 19th September, 2003. He had earned good appreciation during his service tenure. Based upon his merit the applicant was selected for free seat to attend Diploma in Civil Engineering Course, Serial-103 (DCE-103) at College of Military Engineering (CME). The applicant qualified the examination and claims to have earned distinction with more than 75% marks. The course was completed by the applicant on 20th October, 2012. By an order dated 20th September 2012 it was directed that all the students mentioned at Appendix 'A' stand transferred to MES Militarised Cadre and posted to units shown in the Appendix. The order clearly mentions that the persons mentioned in the Appendix 'A' in that letter are transferred to MES Militarised cadre. As many as 48 people stand transferred from various cadre to MES cadre. All of these NCOs had qualified their two years Diploma Engineering before being transferred to MES Unit.

2. On completion of the said course, all the persons were given their place of posting in MES, but the applicant was not allowed to proceed and was directed to remain at CWE Kolkata. The order contemplated that a Court of Inquiry was constituted for an alleged leakage of question papers for the recruitment examinations for Group 'C' posts conducted at CME, Pune in May, 2012. The applicant was kept as a witness and remained attached with CWE Kolkata till March, 2013.

3. On conclusion of the Court of Inquiry, no incriminating materials was found against the applicant and he was posted at CWE Kolkata. He was given the movement order on 23rd March, 2013 and the applicant moved to his place of posting on 3rd April, 2013 at Kolkata and continued to serve to the satisfaction of his seniors. According to the applicant vide Part II order dated 11th April 2013 of Respondent No.5, endorsed the fact that the applicant was taken on the strength of CWE.

4. A communication was issued by Respondent No.5 to Respondent No.4 informing that the Technical Proficiency Certificate of the applicant has not been received till then and the same may be forwarded at the earliest for necessary action. In response to this communication, Respondent No.4 (BEG Centre & Records) Roorkee on 19th August 2013 addressed a letter to CME Pune, Respondent No.3 informing that the applicant has been reverted back to his parent unit, i.e. 501 FSEG. In consequence of this order the applicant was reverted from JE MES cadre to Surveyor Cartographer. This order was questioned by the applicant in OA No.89 of 2013, which was dismissed as premature as the concerned authorities were yet to dispose of the Statutory Complaint filed by the applicant. Since the statutory complaint filed by the applicant has not been decided till date, he had no other option but to approach the Court.

5. The contention of the applicant is that after successfully completing Diploma Course Serial No.103 (DCE-103) from College of Military Engineering (CME), Pune from 25th October 2010 to 20th October 2012, the applicant is eligible for promotion in MES as JE in the rank of Havilder. The direction of the respondent withholding the Diploma Certificate of the

applicant is de hors the rules. Consequently on completion of the Diploma Course the individual was not issued Technical Proficiency Certificate as per order dated 19-8-2013. Denying the Technical Proficiency Certificate to the applicant is violative of Articles 14 & 16 of the Constitution.

6. According to the applicant, having entered in the MES after he was transferred from 501 FSEG he could not be reverted back to the same cadre. The applicant was in the cadre of JE in the MES based upon his qualifying the Diploma. Reverting him back to Surveyor Cartographer was in violation of the Rules.

7. On the other hand, the stand of the Respondents is that the applicant was selected for Diploma Course Serial No.DEC-103 and attended the same at CME Pune with effect from 27th September 2010 to 21st October, 2012. A nominal roll of students of Diploma Course DCE-103 received from CME Pune resulted in issuing of posting order of Diploma Students including the petitioner one month in advance from the date of completion of the course. A Court of Inquiry was initiated regarding leakage of Question Papers of Recruitment of Group 'C' employees. It was alleged that the applicant was involved in the leakage, while he was undergoing the Diploma Course in CME, Pune. The Court of Inquiry did not rule out the involvement of the applicant in the scam and as per direction of the IHQ of MoD, E-in-C's Branch the posting of the petitioner was withheld vide order dated 2nd November, 2012. After the completion of the Court of Inquiry the applicant was relieved from CME to CWE Kolkata.

8. Vide order dated 8th April 2013 it was directed that sanction of E-in-C for withdrawal of the applicant from Diploma Course Serial No.DCE-103 was obtained. It was observed that the applicant therefore would not be posted to MES Unit during his entire career. This decision was taken on the premise that there was suspicion that he was involved in Question Paper scam. As a consequence of which his posting to CWE Kolkata vide order 20th September, 2012 was cancelled on 19th August 2013. The applicant was sent back to his previous unit, i.e. 501 FSEG as Surveyor Cartographer.

9. It was also observed that they would issue the Technical Qualification Certificate at the time of his superannuation. It is admitted that the statutory complaint has not been decided as yet.

10. We have heard the learned counsel for both sides.

11. The question that comes for consideration is as to whether on completion of Diploma Course the applicant is entitled for re-mustering as a JE in the rank of Havildar in MES?

12. The applicant was appointed and enrolled in the Army as a Havildar 'X' Group (Graduate Entry) in the Army as Surveyor Automated Cartographer in the Corps of Engineers. For progression of their career an option has been provided by the Army for re-mustering after obtaining the requisite qualification in the trade. As per Qualification Regulations for Soldiers 1958 of the Defence Services Regulations provides for re-mustering. It provides that a soldier will be chosen for training. Para 5 of the Qualifications of various categories as provided in the Defence Services Regulations states that on successful completion of training the soldier will

be mustered in Group A, Class 3 in Engineer (Fd) or (Tn) or (MES) Branch and be promoted to Havildar provided vacancies exist. In view of the abovesaid statutory provision, the applicant was posted as JE, CWE, Kolkata. He worked there as JE CWE for a period of more than 1 year before he was reverted back to his substantive post of Surveyor Cartographer.

13. So far as re-mustering of persons to other trade after completion of Diploma is concerned, no further confirmation is required in respect of the persons who had undergone two years Diploma Course. This in itself is clearly reflected by an order dated 20th September, 2012 whereby the posting order of Diploma holder including that of applicant was issued one month in advance of completion of the course. The Order by itself reflects that the Diploma Students from various category were transferred and adjusted in MES Department on completion of two years of their training.

14. Therefore, the question whether mustering is permissible in such a situation is clearly affirmed by the aforementioned order. On the completion of two years training as a matter of course the individuals are permanently transferred to MES. This is further substantiated by the fact that respondents have in their communication dated 9-5-2013 addressed by Lt. Col SRO for OIC Records to CWE Kolkata seeking information in respect of the abnormal delay in initiation of ACR of the applicant. The order by itself speaks that the applicant had been sent on permanent posting on completion of Diploma.

15. What clearly emerges from the aforementioned para is that re-mustering is consistently been followed in case of persons who intend to change their trade provided they qualify the examination. The order dated 20th September 2012 by itself is a clear indicator that all those persons who qualified in the Diploma course were absorbed in MES cadre.

16. The stand of the respondents in the present case is not that re-mustering is not permissible, but because there is suspicion that the applicant is involved in the paper leak scam, therefore, it was decided not to post him in MES by recalling him from the training on the initiation of the Court of Inquiry. No disciplinary proceeding was initiated against the applicant or other persons involved. The respondents have taken the plea that there is strong possibility that the applicant might be involved in the scam. On the basis of this finding, the matter was referred to E-in-C, who withheld the posting of the applicant in the MES.

17. From the stand taken by the respondents it is expressly clear that all the persons who have completed training for two years have been permanently transferred to MES. It also appears that the respondents vide order dated 8th August, 2013 on the basis of sanction accorded by E-in-C for withdrawal of the applicant from Diploma Course and as a consequence thereof it was reiterated that it shall be deemed that he has not completed the Diploma Course and would not be posted in MES during his entire career.

18. The stand of the respondent clearly reveals that there is a strong suspicion that the applicant was involved in the said scam. He was

withdrawn from the Course. Therefore, it shall be deemed that he has not completed the Diploma Course.

19. The argument per se seems to be perverse and misleading. Firstly, there is no finding of the Court of Inquiry or Disciplinary Authority which indicts the applicant. It is merely on the basis of suspicion that the applicant is supposed to be guilty. It is trite that merely on suspicion a person cannot be indicted. There has to be clear finding that the accused is involved for which he is to suffer the consequences. In case there was material against the applicant, natural course provided under law was to initiate disciplinary proceeding against him which would ultimately result in his dismissal from service or conviction. Without taking recourse to such action, respondents have adopted novel method of recalling the applicant from the course he was undergoing. There is no causal connection in what is alleged against the applicant and the nature of order that has been passed. The applicant could have been recalled from the course if something incriminating was found against him while undergoing such course or on the basis of some disciplinary proceeding which could be initiated against him. The process adopted of recalling the applicant is de hors the rules and cannot be sustained in law. It may be pertinent to mention that after the conclusion of the Court of Inquiry, the applicant's Technical Qualification Certificate was issued and as a consequence of which he was transferred to CWE, Kolkata for a period of one year. As a result of this, the sanction accorded by E-in-C in recalling him from the Course had become infructuous. That sanction lost its legal sanctity after the petitioner is given the Technical Qualification Certificate and posted in

MES. It may also be noted that on his re-mustering to the MES as JE in the rank of a Havildar, his promotional prospects get brightened. Therefore, withdrawing this benefit tantamounts to deny him of his right for consideration for higher post, which is violative of Articles 14 & 16 of the Constitution. The other aspect is that while he acquired the Diploma he cannot be reverted back as Surveyor Cartographer as this will render his newly acquired qualification fruitless.

20. In view of above, we find sufficient force in the application. Accordingly, the OA is allowed. MA is also disposed of accordingly. We set aside the order dated 19th August, 2013 (Annexure 12) passed by the respondents. The respondents are directed to post the applicant in the MES and release the Qualification Certificate etc. if not already done.

21. No order as to costs.

22. Registry shall take appropriate steps to handover the case records if produced by the Respondents observing all the usual formalities.

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice Sunil Hali)
Member(Judicial)

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