

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No.98 of 2011

TUESDAY, THE 23RD DAY OF JULY, 2013/1ST SRAVANA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

K.S.SAHU, EMA-1, NO.133296-Y,
EX CADET (1181/81 NAC), INA EZHIMALA,

PRESENTLY POSTED AT:

INAS 312, INS RAJALI, NAS, ARAKKONAM – 631 006

BY ADV.SRI.V.K.SATHYANATHAN.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI- 110 011.
2. THE CHIEF OF NAVAL STAFF,
INTEGRATED HEADQUARTERS OF MINISTRY
OF DEFENCE (NAVY),FOR PDOP/PDNAM/PDNT
NEW DELHI – 110 011.
3. THE COMMANDANT,
INDIAN NAVAL ACADEMY (INS ZAMORIN),
EZHIMALA, KERALA – 670 310.
4. THE COMMANDING OFFICER, INS GARUDA,
NAVAL BASE, KOCHI - 682 004.
5. THE DIRECTOR,
NAVAL INSTITUTE OF AERONAUTICAL TECHNOLOGY,
NAVAL BASE, KOCHI – 682 004.
6. THE COMMODORE, BUREAU OF SAILORS,
CHEETAH CAMP, MANKHURD, MUMBAI – 400 088.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL.

ORDER**Lt.Gen.Thomas Mathew, Member (A):**

1. The applicant is a serving sailor of the Indian Navy who is aggrieved at being withdrawn from the Indian Naval Academy before he could complete his training for commission as an officer. He has filed this application with a prayer to quash the orders withdrawing him from the Academy and to permit him to continue his training.

2. The applicant was selected after passing a written examination and tests at Services Selection Board to undergo training to be commissioned as an officer. His initial training was at INS Mandovi, Goa for two years from 07.07.2007 and then for a year at Indian Naval Academy (INA), Ezhimala, from 21.06.2009 and finally sea training on board the training ship. At INA he was required to complete 5th and 6th terms of the training. During his 5th term from June–December 2007, he was found in possession of some unauthorized items. After an inquiry, he was marched upto the Commandant of the Academy who recommended 'withdrawal' of the applicant on grounds of lack of 'Basic character' and 'officer like qualities'. The HQ Southern Naval

Command, the next superior HQ ordered relegation of the applicant to the next batch. He repeated the 5th term from January 2010 to June 2010. He was placed on 'Withdrawal Warning List' in January 2010. In April 2010, the applicant and three others were found absent from swimming training. The applicant had claimed that he was sick, however, the Sick Report Register could not be found. During the search for the missing Sick Report Register, some items belonging to other cadets were found in the room of the applicant. He was also found to have tampered with official documents. He was again marched upto the Deputy Commandant of the Academy who awarded him a punishment of 21 days restrictions. The applicant had been awarded some other punishments also during that term. At the end of the term, the INA recommended his case for 'withdrawal' from the course to the Naval HQ through HQ Southern Naval Command. However, he was permitted to continue his training in his 6th term. The Naval HQ approved withdrawal of the applicant from INA and reversion to his original rank and branch as a sailor in the Navy.

3. The applicant has contended that he was illegally removed from the INA during the last few days of his 6th

(final) term without following due procedures. He had successfully completed the course and the term was over. His parents had been invited for the valedictory function and passing out parade. Certain serious allegations were made against him but without proving any of the charges he was punished. One officer, namely Lt.Praveen Kumar was biased and was responsible for the problems that he had. He was given additional punishments by the Adjutant and other officers to increase the total number of restrictions awarded and thus making him liable to be withdrawn from the INA.

4. It is averred that Lt.Praveen Kumar wanted the applicant to take responsibility for the missing laptop of a fellow cadet. When he refused to do that, officers and cadet appointments implicated him in false charges. No eye witnesses were examined and there is no report of theft of these articles which were found in his possession. He denied the charges but still he was cross examined illegally and made to sign blank paper under threat by the officers of the INA. All these actions were taken with the sole aim of removing him from the Academy. At the end of 5th term, he was sent on leave and on his return he was told by the Commandant that he had been relegated and had to repeat

the 5th term again. When he was brought before the Deputy Commandant and the Commandant, he was not given an opportunity to be heard or to examine any witnesses. He could not challenge these orders being a cadet under training.

5. It is submitted by applicant that while repeating his 5th term, he was punished twice for the same offence of being found with a mobile. This was done due to grudge against him by officers and without jurisdiction and in an unconstitutional manner. In May 2010, he was sick and was declared 'attend cabin' by Medical Officer, hence he could not attend outdoor training. Lt.Praveen Kumar called him and three others and asked their explanation for being absent from swimming training. Though he had explained the whole case, he was charged for missing outdoor training and tampering with sick report book. Lt.Praveen Kumar who was behind this whole case carried out a search of his room for the sick report book which was missing from the office. Few of his personal items were removed along with pliers, hammer and screwdrivers. He was again made to sign on blank papers and threatened by the officers. He was charged for possessing unauthorized items and punished by the Deputy Commandant without

being given an opportunity to be heard or cross examine witnesses. The items which were found in his room were the same ones which were with him the previous term.

6. It is averred that on completion of his repeated 5th term, he joined the 6th term, which he completed on 23.11.2010. He passed B.Sc (Naval Science) in first class and on 29.11.2010 was awarded Certificate of Completion of course. His parents were sent official invitation to attend the valedictory function and the passing out parade to be held on 06.12.2010. On 04.12.2010, he was informed by his Squadron Commander that the Naval HQ has issued his orders for 'withdrawal' from the INA and that his parents had been informed not to attend the valedictory function. He was again harassed and warned by two senior officers who searched his room also. He was told not to file any court case against his withdrawal. In the impugned Naval HQ letter it is stated that he failed to make any progress in the course and therefore he was being withdrawn from INA. He was thrown out of the INA unceremoniously even though he had successfully completed his 5th and 6th term and was awarded the B.Sc degree. Before withdrawal a detailed and unbiased enquiry should have been carried out and the applicant given

a chance to explain his version. None of the charges can be proved against him and no proper trial was conducted before his withdrawal. In such cases past performance should always be considered. He had completed the first four terms at INS Mandovi without any problem. However at INA in a short span of time he was awarded 'Restrictions', just to ensure his withdrawal. It is contended that since he had successfully completed his 5th and 6th term and was awarded the graduation degree, there was no reason not to send him for the sea training phase before commissioning as an officer. Instead in an illegal and arbitrary manner he was reverted to to be a 'sailor' and transferred to INS Venduruthy. His representation to the Chief of Naval Staff and the Central Government have not been given the due consideration that it deserved. The applicant has therefore filed this application before the Tribunal to quash the impugned orders and reinstate him for training.

7. The Respondents in their averment have denied all the allegations made by the applicant. It is submitted that the applicant's case was handled as per the law and he was withdrawn as per laid down procedures from training at Indian Naval Academy (INA) and reverted to his original rank

and branch in the Navy. It has been brought out by the Respondent that the curriculum of the INA has two aspects. The first one, academic in nature is for completing the prescribed three years graduate studies in Naval Science and the second is to graduate in other aspects of officers training from the INA to the next stage of sea training. The applicant successfully cleared the three year graduation course and was granted the graduation certificate. However, in the second aspect he was found unfit to continue further training towards commissioning as an officer. This aspect includes Officer Like Qualities (OLQ), integrity, character etc. and his performance in other areas of training which are not included in the academic graduation syllabi.

8. It is submitted by respondents that even during his training at INS Mandovi, his performance has been just average. He had missed more than 40% of outdoor training (ODT) due to sickness during his third term. He was placed in Relegation Warning List (RWL) in the third term for Academics and 4th term for Academics and ODT. The applicant was relegated at INA at the end of 5th term and placed on Withdrawal Warning List. Finally he was withdrawn due to lack of adequate progress in the course namely lack of

officer like quality.

9. The applicant was found in possession of unauthorised items on two occasions, the first time during his 5th term and the second time during his repeated 5th term. During the repeated 5th term he had also tampered with official documents and made false statements to his superiors. After the first incident, he was recommended to be 'withdrawn' from the INA due to the seriousness of the case, however, the HQ Southern Naval Command changed it to 'Relegation'. Thereafter, he was placed in 'Withdrawal Warning List'. After the second incident he was again recommended to be withdrawn at the end of the repeated 5th term. By the time the approval of HQ Southern Command and Naval HQ was received, the 6th term was about to be completed. Even after withdrawal from the INA, the individual was to remain in the Navy and since he had successfully completed graduation in Naval Studies he was awarded the graduation certificate. However, considering his disciplinary background during the training period and lack of progress in the qualities needed to be a Commissioned Officer, he was withdrawn from the INA on the approval of Naval Headquarters.

10. The respondents have submitted that during the

search of the rooms of all cadets on 05.07.2009, unauthorized items were found in his possession. The search was carried out by officers and Cadet Appointments of the INA. Independently the items recovered have been listed by these personnel and the applicant had admitted to the possession of those items. His contention that some of those items were left behind in the room by the previous occupant is not tenable since during term break all rooms are emptied out, cleaned, repaired and then handed over to the new arrivals. It is not only Lt.Praveen Kumar who was involved in the search and investigation but also Lt.Cdr.Jennis Paul, Lt.Cdr.Aplesh Mohan, Lt.Gaurav Joshi, Sub Lt. Mayon Chauhan and Senior Cadet Appointments of the Squadron. The applicant has raised allegation against some of the officers of the INA without substantiating the same or impleading them in the application.

11. It is contended by the respondents that the applicant during his repeated 5th term was found missing from outdoor training without proper authorization. During the enquiry to the incident on 17.05.2010, the applicant kept making false statements and was found to have tampered with official documents and also removed the Sick Report

Book to cover up his action. He subsequently admitted to the fact that the Sick Report Book was in his possession. When a search was conducted for this book, some unauthorised items were again found in the applicant's room. His claim that those were the same items found in his possession the previous term is not tenable since those items had been confiscated and the items recovered were of different types of clothing and equipment. The offence committed by him was grave enough for him to be marched upto the Deputy Commandant who warned him and awarded 21 Restrictions.

12. The respondents have averred that the applicant was permitted to continue in training in the 6th term while a case for his withdrawal was processed through HQ Southern Naval Command to the Naval HQ. He was not sent on 'Leave Pending Withdrawal' since it was taken into consideration that the academic studies of the applicant should not get affected while approval was awaited for his withdrawal from the higher Headquarters. His father was informed that the applicant had been placed in Withdrawal Warning List vide INA letter dated 23.01.2010 (Annexure R14). He was always aware of the fact that his case for withdrawal was under consideration after the 5th term. The withdrawal of the applicant was in

accordance with the existing policy and all procedures were followed while processing his case. The respondents have denied the contention of the requirement of passing a speaking order for his relegation and withdrawal. In consonance with principles of natural justice the applicant was warned and attention drawn to his misconduct. He was also given an opportunity to show cause and reply. The notice was given based on evidence which came up on record. The applicant had admitted to the said misconduct. His representation though not made under Regulation 235-239 of the Navy, was treated as a non-statutory complaint and processed through the Southern Naval Command to the Naval HO. The applicant had filed a statutory ROG on 04.07.2011 which was considered and replied to by the HQ, Southern Naval Command.

13. It is submitted that the applicant had been awarded punishment for other misconducts also during his repeated 5th term. He was found missing from outdoor training and tampering with official documents. He was also found in possession of clothing and equipment belonging to other cadets of the INA. He was imposed 21 Restriction by the Deputy Commandant of the Academy and placed on

withdrawal warning. It is admitted by the applicant that totally he was awarded around 100 Restrictions. These were imposed by different officers of the INA on different occasions. As per the INA Standing Orders when a cadet earns more than 210 negative points in a term he is liable to be relegated or withdrawn when it is the second time during training at the INA. The applicant had been relegated already and he had also been placed on withdrawal warning. Therefore, the INA took up a case with Naval HQ for withdrawal of the applicant on 24.08.2010 (Annexure R5). It is further clarified that 'withdrawal' is an administrative action which is initiated based on lack of adequate progress in the course. Direct entry cadet to the INA would have been removed from the service and discharged whereas applicant being an entry from the ranks, was reverted back to his original branch in the Navy. Parents of the applicant were invited for the valedictory function and the passing out parade as per normal procedure. However, when approval of his withdrawal came from the Naval HQ, his parents were informed telephonically by his divisional officer. It has been reiterated that all the actions taken in applicant's case has been according to the law and no injustice has been done to the individual.

14. In a rejoinder to the reply by the respondents, the applicant has averred that his statutory appeal has not been replied to by the Government, instead the HQ Southern Naval Command only responded to it which has been challenged in this application. It is also submitted that since the Chief of Naval Staff is one of the respondents, there is no further requirement to make individual Officers party to the appeal. He was not aware of two aspects of training and no classes were conducted for 'Officer Like Qualities' and 'Behaviour'. Wild allegations have been made against him, but he was never warned for any of these things by the officers at any time during the training. While he was punished for keeping mobile phones and other items, cadets who were keeping laptops with them were not punished. He was never warned or given any Show Cause Notice before being withdrawn from the INA. The applicant when he joined INA was never issued any letter/circular stating the names of unauthorised items. The items recovered from his room were left behind by previous occupants or those brought by him from his previous training institution. The items recovered are not contraband or illegal items. At no point has he admitted that the items recovered from his room were stolen.

15. It is further stated by the applicant that he had put in 5 years service in the Navy and 2 years training at INS Mandovi. He was never punished during these 7 years for anything. At INA he was immediately targeted and imposed punishments. The main reason is that the officers came to know that his father is an ordinary M.E.S employee (Carpenter) and they could not accept it. He was awarded punishment where others were treated leniently. He was punished twice on the same day for the same charge only to increase the number of Restrictions to add to his overall negative points. There are other cadets who had more restrictions than him and were retained at the Academy. It has been contended that both the Deputy Commandant and the Commandant have given misleading and false feed back to the Naval HQ. The distorted and misleading reports by the senior officers have made the Naval HQ act against the applicant and withdraw him from the course. It has been submitted that his withdrawal from INA is void and he is entitled to the relief sought in the application.

16. On the directions of the Tribunal the Respondents produced copies of Naval HQ letter dated 11.11.1988, HQ Southern Naval Command letters of 24.8.2010 and

06.11.2009 as well as Indian Naval Academy letter dated 26.6.2010. These documents were perused by the Tribunal.

17. Naval HQ letter dated 11.11.1988 deals with Resignation, Relegation and Withdrawal rules of the cadets undergoing training at the Naval Academy. Relevant paragraphs of the orders are as follows:

"Relegation:

4. Subject to approval by Naval Headquarters (DNT) a cadet may be relegated on any of the following grounds:-

(a) Fails to achieve the minimum standards in academic and service subjects in spite of a written warning and re-examination (Re-examination is permitted only upto 3 subjects).

(b) Possesses the basic qualities required of an officer but requires more time to develop them (requisite Officer Like Qualities).

(c) Misses more than 10 weeks continuous training owing to illness or other medical grounds.

(d) On disciplinary grounds.

(e) Fails to achieve minimum standards in outdoor training in spite of written warning.

Withdrawals:

9. Final authority for the withdrawal of a cadet rests with the Government. Withdrawal on medical grounds

will be regulated in accordance with regulation 218, Regulation for the Navy Part II (Statutory). A cadet may be recommended for withdrawal on any of the following grounds:--

(a) Fails to make the grade in academic subjects in spite of relegations and written warning for withdrawal.

(b) Fails to achieve the minimum standards in service subjects, in spite of relegation (s) and written warning for withdrawal.

(c) Found deficient in basic character and other Officer Like Qualities and graded unacceptable in spite of written warnings.

(d) Disciplinary grounds.

(e) Medical grounds. "

18. Indian Naval Academy vide their letter dated 24.08.2009 (Annexure R5) had taken up a case for withdrawal of the applicant on grounds of lack of 'Basic character and Officer Like Qualities' with HQ, Southern Naval Command. After due consideration, HQ Southern Naval Command directed that the applicant be 'relegated' vide their letter dated 06.11.2009.

19. Indian Naval Academy vide their letter dated

26.6.2010 had taken up a case for withdrawal of the applicant on grounds of lack of 'Basic character and Officer Like Qualities' under Regulation 216 of Regulations of Navy Part II.

20. We have heard the learned counsel of both sides and perused the documents that have been produced. It is evident that the applicant had joined the Indian Naval Academy (INA) in June 2009 for the 5th term of his training. He was relegated after the term break in December 2009 and repeated the 5th term from January 2010 to June 2010. At the end of his repeated 5th term on 26.06.2010, the INA took up a case for his withdrawal from the Academy. On 01.12.2010, the Naval HQ directed the withdrawal of the applicant from the course and reversion to his original rank and branch in the Indian Navy.

21. It is seen from the documents that during his 5th term at the INA, he was found in possession of items that did not belong to him. He could not explain satisfactorily how these items were found in his room. He has admitted that he had stolen some of those items in an investigation report signed by him in the presence of two officers (Annexure R2). The applicant was warned and thereafter punished by award of 21 'Restrictions' by the Deputy Commandant of the

Academy. He had been marched upto the Commandant and warned by him also. He was relegated to the next batch after the term and placed on Withdrawal Warning List.

22. The applicant was involved in another case during his repeated 5th term. He was found to have made false statements and tampered with official documents to justify his absence from swimming classes. He admitted to these misdeeds in writing (Annexure R8). Again during a search he was found with some items that did not belong to him. He had been punished for other offences also during that term and had totally received 52 Restrictions which is well above the limit of 42 Restrictions for relegation on disciplinary grounds. Considering his earlier relegation and him being placed on 'Withdrawal Warning List' as well as his conduct during his repeated 5th term, there was adequate grounds for his withdrawal from the Academy. The respondents in accordance with the rules prescribed in Naval HQ letter of 11.11.1988 have ordered the withdrawal of the applicant.

23. The main contention of the applicant is that at the INA, he was singled out by the officers including senior officers due to his humble background and they spared no effort to have him thrown out of the Academy. False

charges were levelled against him and due process of law was not followed in punishing him. He was first relegated and later withdrawn from training without giving him warnings or opportunity to explain his side of the story.

24. The applicant has not made out any case to substantiate his charge of bias against the officers except that his father being an M.E.S employee was not accepted by them. We find that the applicant has admitted to his misdeeds in the Annexures R2 and R8, though he has later denied having admitted to any wrong doings. He has also confirmed having been brought before the Squadron Commander, the Training Captain, the Deputy Commandant and the Commandant on more than one occasion (Annexure A7). It is an admitted fact that he had been warned though he has now termed it as illegal. The Annexures R4 and R14 clearly indicate warnings that have been given to the applicant. On both the occasions he had been given opportunity to explain his conduct; Annexure A2 and Annexure A4 refers. We do not have any reason to doubt the assertion of the respondents that he had been counselled adequately at the INA. The INA had taken up his case for withdrawal during his 5th term itself, however, HQ Southern

Naval Command decided to give him another chance and ordered only his relegation. He was warned and placed on 'Withdrawal Warning List' (Annexure R.14) on his relegation. It is after his misdemeanors during the repeated 5th term that the INA recommended his withdrawal to the Naval HQ. It is true that processing of the recommendation for withdrawal took almost three months. However, the respondents permitted the applicant to continue at the INA during that period to complete his graduation in Naval Science. On approval of the Naval HQ, the applicant was withdrawn from training at INA and reverted back to his earlier rank and branch in the Navy. Considering aforesaid discussions, we are of the opinion that the respondents have acted as per existing orders and there is no requirement for us to interfere with the actions taken by them in this case.

25. In the result the Original Application is dismissed.

26. Issue copies to all. No costs.

Sd/-

LT. GEN. THOMAS MATHEW,
MEMBER (A)

(true copy)

an.

Sd/-

JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

Prl.Pvt.Secretary