

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

8.

OA 2694/2025

Lac Tarun Kumar Patel Prop Fit Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Dinker S Mishra, Advocate
Mr. Vishwajit Kumar Singh, Advocate

For Respondents : Dr. V.S. Mahndiyar, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.09.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred as AFT Act, 2007), the applicant has filed this application and the main prayer made in Para 8 (b) and (c) read as under:

“(b) To direct the respondents to allow the applicant to appear in CPE against his waived chance and also to apply to provision of lead time as per AFO 23 of 2014.

“(c) To direct respondents to consider applicant’s re-mustering application dated 14 Feb 2025 and to give the applicant the option to re-muster in the manner laid down in Air HQ policy and AFOs.”

The impugned order is nothing but certain queries made by the applicant and reply to the same by the respondents.

2. Facts in brief indicate that the applicant was enrolled in the Indian Air Force (IAF) as an Airman on 03.04.2013 in the trade of Propulsion Fitter and the initial engagement was for a period of 20 years. After his enrollment, the applicant underwent the Joint Basic Phase Training (JBPT) at Airmen Training School, Belgaum and he is stated to have completed the said training. Thereafter, he was routed for Trade Phase/Module – I Training at Mechanical Training Institute (MTI) AFS, Tambaram. The applicant completed the Module – I Course (MOD – I) on 31.03.2014 and thereafter, he was posted at No.1 TETTRA School, Chandigarh to undergo MCF (MiG-27) and completed the said course on 25.07.2014.

3. On completion of this course, he got his first posting as a System Trained Airmen at Air Force Station, Jodhpur on 26.07.2014. The applicant applied for the (1st Chance) to appear in the Corporal Promotion Examination (CPE) in January-June 2017 cycle but he could not appear in the said examination due to emergency leave which he had taken to take care of his brother who met with a severe accident. Thereafter, he was detailed for conducting the MOD – II Course which commenced from 06.03.2017 at Mechanical Training Institute, Air Force Station, Tambaram. He

completed this course on 26.08.2017 and after completing the course, he approached the authority for waiver of the 1st Chance in CPE but the same was denied to him in view of the provision of Para 34 (b) of AFO 23/2014. Subsequently, he applied for participating in the CPE in July-December 2017 and again in January-June 2018 cycle and on both these occasions, he could not clear the examination.

4. The applicant was further posted in Air Force Station, Kanpur from January, 2019 and underwent certain training. In the year 2020, the Commanding Officer issued a letter asking him for re-mustering to lower trade vide letter dated 20.02.2020 wherein the applicant submitted his reply to the same and again in the year 2021, applied for waiver of 1st Chance after conversation and confirmation from the Ground Crew Examination Board (GEB) and the same was approved in May, 2021. Subsequently, he was eligible to appear in the January-June 2022 cycle but was not able to apply (online) as a system in which he was trained became obsolete. The applicant was said to have detailed for some more courses between May-September, 2022 and after completing his course, he applied for appearing in CPE January-June 2023 cycle in the new system but could not be

made eligible due to some practical experience in the new system and he was withdrawn due to lack of experience.

5. Be that as it may, it can be seen from the aforesaid that the applicant again tried to apply for the July-December, 2024 cycle for the CPE but according to the applicant he could not do so as the applicant had completed 11 years of service, he was not eligible to proceed further in the matter. Even though, the applicant, on 08.08.2024 sought permission to appear in the CPE, the same was denied to him vide communication dated 19.12.2024 on the ground that permission to appear in the CPE beyond time limit of 11 years of service cannot be permitted. As he did not clear the CPE within 11 years of service, he was issued with a Show Cause Notice (SCN) on 20.05.2025 by the Competent Authority.

6. It is the case of the applicant that as he was on leave between 04.06.2025 to 21.07.2025, he could not submit his reply to the SCN and the reply was sent by the applicant on 23.07.2025 after he returned from the leave. Subsequently, he tried to make queries with regard to his career progression and re-mustering vide various communications but when nothing was done and he was not

permitted re-mustering, being aggrieved by the same, he has filed this application.

7. From the facts that have come on record, it is clear that as per the AFO 23/2014, the applicant was required to clear the Corporal Promotion Examination (CPE) within the timeline prescribed and when he did not clear the examination which is admitted by the applicant, the SCN in question has been issued to him. In the SCN issued vide Annexure A-9 dated 20.05.2025, it has been clearly indicated that in accordance to the applicable provisions the applicant has completed 11 years of service as on 31.07.2024, he had availed two chances out of the three available chances to clear the CPE but failed in both the chances. Despite having one more chance, it is alleged in the SCN that he has neither applied nor participated in the 3rd Chance. In the meanwhile, he has completed 11 years of service and as per the rule, as he has not cleared the said examination which is a mandatory requirement, the SCN is issued asking him to show cause as to why he should not be discharged from service. The applicant has submitted his reply to the SCN and now without waiting for the Competent Authority to take a decision on the SCN, when the issue is pending before the Competent Authority, the applicant raised

certain queries by his communication and when these queries have been replied to, he had approached this Tribunal seeking the relief in question.

8. From the aforesaid narration of facts, it is clear that in accordance with the rule, the applicant has not cleared the required examination within the stipulated period and in accordance with AFO 23/2014, therefore, action is being taken. The applicant has been issued with a SCN. The applicant has submitted his reply to the SCN and till date a final decision in the matter has not been taken. In the meanwhile, the applicant wants that the AOP in question be quashed and the respondents be directed to permit the applicant to appear in the CPE or consider his re-mustering application.

9. At this stage, the issue is premature and in anticipation of a negative response from the respondents or rejection of his defence to the Show Cause Notice, the prayer made by the applicant cannot be acceded to. There cannot be an anticipated order by this Tribunal when the Competent Authority is still seized of the matter and is yet to take a final decision on the SCN and the reply submitted by the applicant. Once a final decision is taken in the matter under the Air Force Act and the rules framed thereunder, the applicant has

statutory remedy and it is only after exhausting these remedies that jurisdiction of this Tribunal under Section 14 of the AFT Act, 2007, can be invoked. Merely because a reply to certain queries made by the applicant, the respondents have given certain reply and treating the reply to be a decision by the Competent Authority on the SCN, in anticipation of action to be taken by the Competent Authority, jurisdiction cannot be exercised by this Tribunal particularly when the issue into the SCN is still under consideration with the Competent Authority. This Tribunal cannot step into the shoes of the Statutory Competent Authority and decide the SCN on merit and grant relief to the applicant. The applicant has simply raised certain queries before Air Officer Commanding Personnel Forum (AOP) on 25.05.2025 and the AOP Forum replied to the same based on the facts that this is not a decision taken on the SCN by the Competent Authority.

10. That being so, in our considered view, at this stage, this application under Section 14 of the AFT Act, 2007, is wholly misconceived, has been filed in anticipation and presumption by the applicant with regard to a decision to be taken into the Show Cause Notice and on such anticipation and presumption, jurisdiction of this Tribunal under Section 14 of

the AFT Act, 2007 cannot be invoked. This Tribunal cannot pre-empt the action to be taken by the Competent Authority and interfere in the matter. The Show Cause Notice of the applicant is to be considered and appropriate order passed by the Competent Authority and thereafter only cause of action will accrue to the applicant to challenge the action after resorting to statutory remedies available in accordance with law.

11. Accordingly, finding no case made out to interfere at this stage in anticipation of a discharge as contended by the applicant, this Tribunal cannot grant any relief or interfere into the matter.

12. With the aforesaid, the OA is, therefore, dismissed.

13. A copy of this order be provided ***DASTI*** to learned counsel for the parties.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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