

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

**16.**

**T. A. No. 572 of 2009**

**Writ Petition (Civil) No. 3309 of 1999**

**Amresh Pandey**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. S. Lal, Advocate

**For respondents:** Ms. Barkha Babbar, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**

**HON'BLE LT. GEN. S.S.DHILLON, MEMBER.**

**ORDER**  
**24.05.2012**

1. This writ petition was filed by the petitioner before the Hon'ble Delhi High Court and it was transferred to this Tribunal after its formation.
2. Petitioner vide this petition has prayed to set aside/quash the order of appeal dated 03.10.1998 and direct the respondents to reinstate the petitioner in the same trade as RDO/FIT or lower trade as Clerk/Airman.
3. Petitioner was enrolled as Radio Fitter in the Indian Air Force on 11.03.1996 and remained in the said service for more than 29 months. He was discharged from service on 21.08.1998. It is alleged that persons, namely, Kumar V & Singh N.K. both were given 3 back phases in the same trade and similarly Raj Purohit, another candidate was given 2 back phases who third time failed in 3<sup>rd</sup> Semester but he was finally taken in lower trade as Equipment Assistant. In the similar circumstances, Yadav R.P., another candidate was taken as M.T.D. in lower trade. It is further alleged that petitioner was discharged only after one back phase. This clearly shows the discriminatory and arbitrary treatment with the petitioner. Petitioner after

discharge filed an appeal before the Chief of Army Staff but his appeal was turned down. Thereafter petitioner filed the present petition before the Hon'ble Delhi High Court seeking aforesaid reliefs which was transferred to this Tribunal after its formation.

4. Respondents filed their reply and pointed out that it is true that petitioner was enrolled in the Indian Air Force on 11.03.1996 in the trade of Radio Fitter. He reported to Communications Training Institute, Bangalore on 16.03.1996 and commenced training in Radio fitter trade with Entry No. AT/25. He failed in Semester II Term II (Part II, IV and in total aggregate) held on 26.06.1997 and was back phased to AT/26. Again, petitioner failed in Semester III Term I in Part II held on 26.03.1998 and was given a chance for re-test which he passed. In Semester III Term II (Pre-final) test held from 30.05.1998 to 08.06.1998 he secured 37 marks out of 100 marks in Part II and was declared pass after moderation. He again failed in Semester III Term II Trade Examining Board examination held on 15.07.1998 in Term II Part II scoring 28 marks out of 100 marks.

5. It is further pointed out that petitioner's performance was poor and he was given a number of chances but he could not improve his performance. During the training period, the petitioner was given six warning letters that speak of his poor performance and inability to improve upon it. It is also pointed out that allocation of lower trade is based on number of vacancies available and the merit of the trainee with respect to other trainees. Petitioner was low in merit hence he was given Cease Training and discharge instead of lower trade. He was discharged under Rule 15(2)(j) of the Air Force Rules, 1969 – "Unlikely to make an efficient airman".

6. Thereafter an additional affidavit was also sought from respondents by the Hon'ble Delhi High Court and respondents filed their additional affidavit and explained the position vis-a-vis other persons who had been retained in service. In additional affidavit filed by the respondents, it is pointed that petitioner has been poor throughout his training period. He had completed 122 weeks of training at CTI against the stipulated 104 weeks and was given enough opportunities to improve his performance and was also given one back phase. He was moderated twice by Commanding Officer and was given one re-test. They have also explained the position of the three persons, namely, AC(U/T) A Pandey, AC(U/T) V Kumar and AC(U/T) NK Singh against whom petitioner raised allegations, which reads as under;

	<b><i>AC (U/T) A Pandey</i></b>	<b><i>AC(U/T) V Kumar</i></b>	<b><i>AC(U/T) NK Singh</i></b>
<b><i>Exam Performance</i></b>	<b><i>Failed in TEB Exam once</i></b>	<b><i>Failed in TEB Exam once</i></b>	<b><i>Failed in TEB Exam once</i></b>
	<b><i>Back phased once</i></b>	<b><i>Back phased once</i></b>	<b><i>Back phased once</i></b>
	<b><i>UEB Exam failed</i></b>	<b><i>UEB Exam failed</i></b>	<b><i>UEB Exam failed</i></b>
	<b><i>Failed second time in TEB exam</i></b>	<b><i>Failed Pre-final in TEB exam</i></b>	<b><i>Failed second time in TEB exam</i></b>
<b><i>Discipline</i></b>	<b><i>AWL once</i></b>	<b><i>Nil discipline case</i></b>	<b><i>Nil discipline case</i></b>
<b><i>Moderation</i></b>	<b><i>Given Two</i></b>	<b><i>Nil</i></b>	<b><i>Given three</i></b>
<b><i>Total Performance</i></b>	<b><i>11th Back phase not given by SRB due to poor performance and adverse discipline</i></b>	<b><i>Failed only once, 11th back phase was given by SRB with an opinion that he was a disciplined air warrior and could come up to the required standard.</i></b>	<b><i>11th back phase was given by SRB for his capabilities of becoming a disciplined air warrior.</i></b>
<b><i>Marks</i></b>	<b><i>49%, 22 weeks training, Moderation marks 02, 10+2 Marks 67%</i></b>		

7. It is pointed out by the respondents in their reply that as per merit list prepared by the Station Review Board, petitioner out of 18 candidates was in the 17<sup>th</sup> position as compared to AC (U/T) RP Yadav who was in 10<sup>th</sup> position. The total number of vacancies available for the reallocation was only 14. Petitioner could not be given reallocation being low in merits. Therefore, no discrimination was done to the petitioner.

8. We have heard both the parties and gone through the record. After having perused the record of the case, we are of the opinion that no discrimination has been done to the petitioner. He failed in Semester II Term II, Semester III Term I and was declared pass in Semester III Term II after moderation. He could not improve his performance despite given number of chances. So far as the other persons are concerned, they had been given reallocation by the Selection Committee considering their respective merits. The total number of vacancies available for the reallocation was only 14. Petitioner was positioned at No. 17, therefore, he could not be given reallocation being low in merits. During the training period, he was given six warning letters. He failed to improve despite being given chances.

9. In view of above, we are satisfied that no discrimination has been done to the petitioner. Consequently, petition is dismissed. No order as to the costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**May 24, 2012**  
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