

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

**O.A No. 959 of 2021**

**Maj Rajender Kumar  
Versus  
Union of India and others**

**..... Applicant  
..... Respondents**

**For Applicant : Mr. Rajiv Manglik, Advocate  
For Respondents : Mr. S.R. Swain, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)**

**ORDER**  
DT: 22.9.21

1. This application has been filed under Section 14 of the AFT Act, 2007 by the applicant who is a serving Major in the Indian Army. The applicant is aggrieved for not being given a second compensatory chance for the DSSC Entrance Examination. The applicant has made the following prayers:

- (a) Declare the action of the respondents as unjust, arbitrary and illegal; and
- (b) To direct the respondents to grant the applicant second compensatory chance to appear for DSSC Examination 2021; and
- (c) To award exemplary costs in favour of the applicant.

**Brief Facts of the Case**

2. The brief facts of the case, as per the applicant, are that he was commissioned into Corps of Engineers on 07.06.2008. As is the aspiration of any serving officer, the applicant too decided to take the competitive

exam for the prestigious Defence Services Staff College (DSSC) course. As per the policy contained in SAO 1/S/2013, on the criteria and eligibility for appearing in the competitive exam, an officer is entitled three attempts to pass the exam. An officer is also entitled to two additional compensatory chances under certain conditions as stipulated in the policy. Based on the service profile of the applicant, he was entitled to avail his three chances in 2018, 2019 and 2020. In 2017, the applicant could not take the exam being posted in an operational area. In 2018, the applicant was posted as an instructor to College of Military Engineering (CME), where as per the prevailing policy at CME a newly posted instructor was debarred from taking competitive examination in the first year of his tenure. Thus, the applicant could not avail of his second mandatory chance in 2018. The applicant finally took the exam in 2019; however, did not pass. The applicant was provided his first compensatory chance in 2020 for having missed his chance of 2017 whilst being deployed in an operational area.

3. The examination of 2020 was scheduled from 07.09.2020 to 12.09.2020. The applicant took examination at Jammu as he was posted at Garrison Engineering of Air Force Station, Jammu. In the meanwhile, since the whole world was swept by the Covid Pandemic there were strict instructions for conduct of the exam under the prevailing conditions of Covid. The applicant obtained the necessary Covid negative certificate which was a prerequisite to be allowed to take the exam at the designated Centre. Once the examination commenced, the applicant developed

symptoms of Covid on 9th and 10th and reported the matter to the conducting authorities. As per the instruction on the subject the applicant was segregated into a separate place and he continued to give his examination though he felt feverish and unwell. The applicant was able to take his Covid test from a Service hospital only on 11.09.2020. While the examination concluded on 12.09.2020, the Covid result was obtained on the 14.09.2020 and the applicant tested positive and had to move into quarantine.

4. Since the applicant took ill with Covid during the exam and continued to give the exam whilst suffering from Covid, he was unable to give his best. Under these circumstances, the applicant applied to take the exam in Sep2021 as his second compensatory chance. Vide impugned letter dated 21.05.2021 the respondents declined the second compensatory chance and hence this OA.

**Arguments by Counsel for the Applicant**

5. The Counsel for the applicant took us to the service profile of the officer, explained the importance and relevance of the DSSC course and emphasized on the additional weightage that this course enjoys as part of the quantified merit in various promotion boards. He then took us through the details contained in Special Army Order SAO 1/S/2013/GS (Annexure A-3) which lays down the eligibility conditions and modalities for the conduct of the DSSC Entrance Examination. He further elaborated on the new service criteria policy vide which, eligible officers are permitted to



appear in the exam as per the upper service limit of 12 years or below on 01 Jun of the year of the commencement of the course. He further added that since the officer should not have completed 12 years on the 1st of June in the year in which he joins the course, an officer is entitled to take his three mandatory chances in the 9th, 10th and 11th year of his service. The counsel then went on to explain the issue of compensatory chances which has been provided in the SAI to cater for certain contingencies because of which an officer may not be able to take his examination. Referring to Para 12 of Appendix R of the SAO (Annexure A-5) the Counsel stated that an officer is can be granted upto a maximum of two compensatory chances within the permissible age / service limit, with relaxation in age/ service based on the number of compensatory chances are provided. The Counsel further elaborated on Para 28(j) of the SAO and stated that as per the policy, officers posted to NDA/ IMA/ OTA are not permitted to appear in the exam in the first year of their tenure at these establishments, unless it's their last mandatory chance. He further added that though this policy was stipulated for NDA/ IMA/ OTA, many other training establishments too have similar rules, in that they will not permit officers posted as Instructor to appear in the exam in the first year of their tenure.

6. The counsel then explained that the applicant was entitled to his three mandatory chances in 2017, 2018 and 2019. He then stated that the applicant could not appear for the exam in 2017, as he was posted in an

operational area; that he could not take his examination in 2018 being posted to the College of Military Engineering as an instructor, and that the applicant could only take the exam in 2019 in which he did not pass. The Counsel further added that the applicant had been given his first compensatory chance in 2020, against the chance that the applicant had forfeited in 2017.

7. The counsel then elaborated the issues related to the Covid pandemic prevailing in Sep 2020 and the precautionary measures required to be taken all over the country. The Counsel then stated that the DSSC Entrance exam 2020 was conducted from 07 to 12.09.2020 and that elaborate instructions (Annexure A-6) had been issued to cater for the conduct of the exam under pandemic situation. He further added that as per the instructions, any officer exhibiting symptoms of Covid during the exam was to be tested for Covid and that the officer was to continue with the exam until he tested positive, and that separate segregated seating arrangements were to be made to cater for such officers. The applicant had appeared in the exam at the Jammu Centre, being posted as GE AF Station Jammu. The Counsel then stated that the applicant felt unwell and developed symptoms of Covid on 08/09.09.2020 and reported the matter to the conducting authorities who segregated the applicant and he continued taking the exam. He then stated that the applicant could take the Covid Test only on 11.09.2020, the results of which were received only on 14.09.2020 which was POSITIVE. The Counsel emphasised that the

fact that this established that the officer was suffering from Covid on 11<sup>th</sup> Sep when he took the test and that the onset of symptoms necessarily would have happened a few days prior; thus the applicant had taken the exam whilst suffering from Covid.

8. The applicant did not pass the Sep 2020 exam and therefore applied for his second compensatory chance in Sep 2021 vide his application and Statement of Case dated 22.12.2020 (Annexure A-7). Further, as per Respondent's letter dated 26.04.2021 (Annexure A-8) the last date for online registration for the Sep 2021 exam was 30.05.2021. The applicant then enquired about the status of his application for the second compensatory chance and was informed on 23.05.2021 that his application had been rejected vide HQ ARTRAC letter dated 21.05.2021 (Annexure A-1). Since the last date for registering the application was 30.05.2021 and the fact that his application had been rejected, the applicant filed this OA.

9. The Counsel concluded that even though the Respondents had issued elaborate instructing for the conduct of the exam under pandemic situation, they had clearly not foreseen a contingency where an officer might have to undertake the exam, or may have to pull out of the exam due to Covid that there would be a necessity of providing a compensatory chance under these extraordinary circumstances. He vehemently stated that these were extraordinary circumstances and that the applicant was entitled for consideration of a second compensatory chance, as stipulated



in the policy, and that the applicant be accorded the second compensatory chance in lieu of the chance he forfeited in 2018 being posted at CME, or on the fact that he had to take the 2020 exam whilst suffering from Covid.

**Arguments by Counsel for the Respondents**

10. The counsel for the Respondent briefly took us through the contents and provisions of the SAO 1/S/2013GS and added that this had since been superseded by AO 10/2018/GS (MT-2) and that as per the current policy a maximum of two compensatory chances could be provided, that too only for the stipulated conditions listed below :-

- (a) Counter Insurgency Operations. Officers should have served in active Counter Insurgency Operations for not less than 180 days preceding the exam.
- (b) Operation MEGHDOOT Officers should have served for not less than 90 days as part of the unit deployed in Siachen Glacier preceding the exam.
- (c) United Nations Peace Keeping Mission. The officer should have served in United Nation Peace Keeping Mission for not less than 180 days preceding the exam or the officer should have been outside India on the date of the exam.
- (d) Medical Reasons. Hospitalisation of upto 90 days prior to the exam for injuries attributable to military service

11. He stated that illness during the exam did not make any officer eligible for grant of a compensatory chance and that no compensatory chances had been granted so far to officers who had taken ill (for any ailment) or who had tested positive for COVID-19. The Counsel further added that in the eventuality of giving dispensation as sought to the

applicant, many others were likely to seek similar dispensation. Moreover, based on the policy position, it was not possible to provide the applicant a second compensatory chance merely because he had tested positive after the examination was over.

12. The Counsel relied on the judgement of the Supreme Court in ***Rachna and others v. Union of India and others in WP(C) 1410 of 2020 dated 24.02.2021 (2021 SCC Online SC 140)*** which stated that since a large number of candidates who appeared in various examinations in the year 2020 during Covid pandemic and that everyone must have faced some constraints/ impediment/ inconvenience, in one way or the other, and the fact that the petitioners had taken the same exam in previous years, seeking an additional chance on the pretext of Covid pandemic was a lame excuse to seek additional chances and accordingly the WP was dismissed.

### **Consideration of the Case**

13. The matter was initially heard on 28.5.2021 and the Respondents were directed to provisionally accept the examination application of the applicant subject to final decision in this petition. Since there was a delay in filing the counter affidavit, the Respondents were directed to issue the admit card and permit the applicant to take the exam vide our Order dated 11.08.2021. Consequent to filing the counter affidavit on 12.08.2021, the Respondents filed RA 17/2021 to review the order passed on 11.08.2021, which after being heard, was withdrawn by the



Respondents. Subsequently, the applicant gave the DSSC Entrance Examination in the month of Sept 2021.

14. There is no dispute about the number of chances that the applicant is entitled for appearing in the entrance examination, and the years in which he was entitled to the three regular chances. Having heard both sides at great length the only issue to be decided is whether the applicant is entitled to a second compensatory chance based on the fact that he had to forego his regular chance in 2018 on being posted to CME, and the fact that he had to take the exam of Sep 2020 whilst suffering from Covid.

15. The current policy on compensatory chances have been explained by the Respondents and their main argument has been that illness during the exam did not make any officer eligible for grant of a compensatory chance and that no compensatory chances had been granted so far to officers who had taken ill (for any ailment) or who had tested positive for COVID-19; and that giving dispensation as sought to the applicant was likely to result in many other officers seeking similar dispensation. In essence, their argument has been that, based on the policy position, it was not possible to provide the applicant a second compensatory chance merely because he had tested positive after the examination was over.

16. It is well established that the Covid pandemic was an extraordinary situation faced by the whole world and different countries adopted their own ways to arrest the spread and provide succor to those infected. As the spread stabilized, our nation and various organizations commenced

urgently required activities with necessary precautions to cater for the continuing Covid environment. Thus, the Army too decided to hold the DSSC Entrance exam under these conditions with instructions on precautions to be adopted and actions to be taken in the eventuality of an officer appearing in the exam being infected with Covid. Although the instructions explicitly mention that the officers appearing in the exam and suffering from symptoms of Covid will take the Covid test and continue taking the exam till they test positive, it does not explicitly state whether such officers would be entitled to a compensatory chance considering that the Covid pandemic was an extraordinary situation and not a regular medical issue.

17. Contrary to the arguments of the Respondents that the applicant tested positive after the exam, we have no hesitation in concluding that the applicant was suffering from Covid symptoms during the week of the exam considering the fact that the applicant reported his illness to the conducting authority; subsequent exam was taken in a segregated environment; and that the Covid test was taken on 11.09.2020, during the exam. The delay in obtaining the result on 14.09.2020 after the exam can only be attributed to the prevailing Covid environment and the increased testing that was being undertaken within the limited resources of the system.

18. The case of ***Rachna (supra)*** does not help the respondents as that case is entirely different to the case of the applicant. In that case, the

petitioners were agitated by the overall prevailing conditions and restrictions during the pandemic which restricted regular activities and therefore had made a plea that they all need to be given an additional chance for the civil services exam. The applicant's case is not a plea that he ought to be given another chance because of the prevailing overall pandemic situation. The applicant's case is that he was suffering from Covid and its debilitating effect during the exam, proved by the fact that he tested positive in a test taken on 11.09.2020 and therefore did not fare well on the exam and that he should be considered for his second compensatory chance, for which provisions exist.

19. In view of the above, the O.A is allowed directing the Respondents to consider the entrance exam taken by the applicant in Sep 2021 as his second compensatory chance and to permit him to attend the DSSC Course subject to passing the exam and being nominated for the Course.

20. No orders to costs.

[REDACTED]  
**(RAJENDRA MENON)**  
**CHAIRPERSON**

[REDACTED]  
**(P. M. HARIZ)**  
**MEMBER (A)**