

COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
OA No.1987/2021

Sep Raj Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under section 14 of the Armed Forces Tribunal Act, 2007, applicant has filed this Original Application and the prayers made in para 8 read as under:-

"A. Issue direction to the Respondents to declare applicant qualified for re-mustering with notional seniority at par with his colleagues who were declared qualified in the same course based on fresh Mark Sheet which have been received after due verification; and/or

B. Direct the Respondents to permit the applicant to re-mustered as Clerk (SD) considering his successful completion of re-mustering course and obtaining less marks in one optional paper is nothing to do with his final pass result and meet criterion of re-mustering; and/or

C. A direction to produce all record with regard to re-mustering of candidate in year 2020-2021 by DSC Record or Pass such other and further orders/directions to meet the ends of justice."

2. The applicant was enrolled in the Defence Service Corps on 02.06.2018 as a Sepoy after his term in the Army was over. On 20.11.2020 a test was conducted for re-mustering Solders (General Duty) to Soldiers (Staff Duty). Applicant passed the screening test on 08.12.2020 and on 11.12.2020 joined re-mustering Clerk (SD) Course. However, on 06.04.2021, the applicant was sent back to his parent unit indicating that he did not meet the eligibility criteria of having passed the 10+2 Secondary School Examination which was the eligibility criteria for re-mustering Clerk(SD) Course. The applicant got his marks verified from the examining authority, namely, the National Institute of Open Schooling (NIOS) and got the fresh mark sheet issued on 01.06.2021. He produced the same before the competent authority for permitting him to join on the re-mustering post of Clerk (SD) Course. This was denied by the respondents. A legal notice was sent which was also denied and thereafter the applicant was sent back to his parent unit and his prayer for re-mustering from Solder (General Duty) to Solder Clerk (SD) had been rejected. Challenging the same the applicant has filed this OA.

3. Shri Manoj Gupta, learned counsel for the applicant invited our attention to the policy dated 24.09.2020 laid down by the competent authority for re-mustering of solders (General Duty) to

Soldiers Clerk (Staff Duty). In the qualification prescribed for such re-mustering in the policy para 3(v) it is indicated as under:-

“(v) Candidate should have passed 10+2 or equivalent examination from any recognized Education Board. He should have scored minimum 45% in aggregate and minimum 33% in each subject. (This relaxation of minimum percentage of marks is applicable till 31 Mar 2021 only).”

It is the contention of the applicant that he has passed the 10+2 or equivalent examination conducted by the National Institute of Open School, an autonomous Institute under the Department of School Education and Literacy, Ministry of Human Resource, Government of India. It is his case that he appeared in the examination conducted in the year April 2011 in the subjects of Hindi, Word Processing, Painting, Geography and Political Science and passed all the subjects with more than 33% marks and obtained 330 marks out of 500 in the said examination which is more than the minimum aggregate of 45%.

4. *Inter alia* contending that the applicant has been illegally denied the benefit of re-mustering in spite of the qualification acquired, this Application has been filed and reliance is placed on a judgment rendered by a co-ordinate Bench of this Tribunal in OA No.203/2022 in the case of *Sep. Govind Singh v. Union of India & Ors.* decided on 28.05.2024, to say that passing in the

optional subject in the said examination is not necessary. It was argued that the contention of the respondents that the applicant has failed in the 6th subject i.e. English wherein he obtained only 26% marks is not sustainable as English was an optional subject and mere failing in the optional subject would not render the applicant ineligible for appointment and for the said purpose reliance is placed on the judgment in the case of *Sep. Govind Singh*(supra).

5. The respondents have refuted the aforesaid contention and it is their case that as the applicant did not meet the required qualification prescribed in the Policy dated 24.09.2020, he was not eligible for appointment. It is the case of the respondents that on verification of record it has been noted that the applicant passed the 10+2 examination from the National Institute of Open Schooling but had failed in the subject of English as per mark sheet (Annexure R-3) wherein English subject was also mentioned as one of the subjects in 10+2 and on verification this was found to be correct and as the applicant has failed in the subject of English, it is said that his re-mustering was not permitted.

6. While hearing the matter this court on 22.08.2024 observed as under:-

“Having heard learned counsel for the parties, we find that the applicant's claim for re-mustering as a Soldier

(General Duty) to Soldier Clerk (Staff) has been rejected on the ground that the applicant does not meet the high qualification of having passed the Senior Secondary School Examination, i.e. 12th Class. Respondents rely upon a mark sheet issued by the National Institute of Open Schooling vide Annexure R-3 wherein the applicant is shown to have appeared in the examination conducted in April 2011 and in the mark sheet issued on 09.06.2011, which bears the signature of the applicant, he appeared in the following subjects viz. Hindi, Word Processing, Painting, Geography, Political Science and English. However, in English he had failed as he had obtained only 26 marks, which is the requirement in the QR that the person concerned has to pass in all the subjects with minimum 33% marks. The applicant has produced a mark sheet vide Annexure A3 at page 18 which is also a photo copy of the mark sheet issued by the National Institute of Open Schooling in the name of the applicant. It has been issued on 28.09.2011 and it speaks about the applicant having passed the Senior Secondary Examination held in April 2011. However in this certificate the applicant seems to have appeared only in five subjects viz. Hindi, Word Processing, Painting, Geography and Political Science. At page 21 is another mark sheet for the same examination conducted in April 2011 and issued on 07.05.2021 wherein also the applicant is seem to have passed only in five subjects which does not include English. Further the applicant has filed a document as Annexure R-6 being a communication made by the Sr. Record Officer, OIC Records, Defence Security Corps Records on 23.08.2021 seeking verification of the educational qualification certificate of the applicant. There is no reply to the same available on record.”

7. In view of the above, this court directed the National Institute of Open School to verify the documents of the applicant and indicate the correct position. In pursuance to the same, we have received a communication from the National Institute of

Open Schooling through the record office and the said examining authority has certified that the applicant appeared in six subjects in the examination but failed in the subject of English and on his request a corrected mark sheet was issued to him deleting the subject of English in which he had failed. They have also indicated that English was an optional subject and as in all the other five compulsory subjects the applicant had passed, therefore, English was not necessary to be included in the mark sheet issued to the applicant.

8. In our considered view, this issue has already been considered by a co-ordinate Bench of this Tribunal in the case of *Sub. Govind Singh* (supra) wherein also an identical situation existed inasmuch as in the mark sheet issued by the National Institute of Open Schooling on 05.06.2015, in the said case, the applicant therein had obtained only 20 marks in Political Science and, therefore, he was held disqualified due to not meeting the QR criteria. However, an inquiry was conducted and based on the amended mark sheet and provisional certificate issued by the NIOS, it was found that Political Science was an optional subject and passing in the said subject was not necessary and, therefore, in the final mark sheet issued to the applicant i.e. Govind Singh the marks obtained in the subject of Political Science was deleted and a fresh mark sheet was issued on 28.07.2021 which forms

part of the order passed by the Bench in the said case. After taking note of all these aspects, in paragraph Nos.5, 6, and 7 the following observations and findings have been recorded and the Application was allowed:-

“5. Having heard both the parties and perused the documents placed before us including the Mark Sheet dated 28.07.2021, we find that respondents were not wrong in declaring the applicant ineligible for the said re-mustering course due to inclusion of sixth subject of Political Science in the Mark Sheet issued by NIOS dated 05.06.2015, in which the applicant had scored 20% marks.

6. However, in view of the final Mark Sheet issued on 28.07.2021 wherein we find that the sixth subject of Political Science has been excluded being only an optional subject and not a compulsory one, the applicant meets the minimum education criteria laid down for re-mustering.

7. In view of the aforesaid analysis, we direct the respondents to permit the applicant to complete the course for re-mustering in trade of Clerk (Staff Duty) as laid down in their policy letter dated 24.09.2020 and on qualifying such course, he shall be re-mustered in the trade of clerk (staff duty) along with all consequential benefits and the same shall be given effect to within three months from the date of pronouncement of this order.”

9. In the present case also the position is exactly similar except for the fact that in the case of *Govind Singh*(Supra) the optional subject was Political Science wherein the applicant had obtained only 20 marks and in the instant case the optional subject is English wherein the applicant has received 26 marks. However, in all the compulsory subjects as indicated hereinabove, the applicant has passed and meets all the QR criteria and, therefore, there is no reason as to why the OA should not be

allowed as we find that the applicant meets all the qualification criterion laid down for being re-mustered to the trade of Clerk (Staff duty) in accordance with the policy dated 24.09.2020. Accordingly, we allow this Application and direct the respondents to re-muster the applicant in the trade of Clerk (Staff Duty) along with all consequential benefits and the same shall be made effective within three months from the date of pronouncement of this order.

10. On such re-mustering, the seniority of the applicant shall be as per his intra batch seniority amongst the individuals who have been re-mustered in pursuance to the DSC records letter on the subject issued in the case of other batch mates. Application stands allowed with the aforesaid directions.

11. No order as to costs.

12. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open court on 29th day of November, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/vb/