

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2568/2023

RHM (TIR) Munnu Singh ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. KK Tyagi, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA for following prayers :-

- (a) *To declare the action of the respondents as unjust, arbitrary and illegal; and*
- (b) *To call for complete record of the matter and peruse the same including the records of delay in re-mustering of the applicant as RHM (TIR); and*
- (c) *To quash and set aside impugned order dated 15 May 2023; and*
- (d) *To declare the applicant's candidature for PC (SL) TEO (AAD) cadre and direct the respondents to send the applicant for necessary training; and*
- (e) *To pass any such further order or orders direction/directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law.*

2. A brief look at the facts of the case show that the applicant was enrolled in the Indian Army on 01.12.2003 as Sepoy in Army Air Defence (AAD) and was promoted to the

rank of Havildar on 15.06.2019. The applicant qualified the TIFC/AIG course on 28.08.2016 and remustered as RHM (TIR) with effect from 01.09.2022 on the basis of Corps vacancy. The applicant had submitted an application for Permanent Commission (Special List)-2022 on 04.07.2022 for Record Officer Category in the rank of Havildar (OFC). The applicant appeared in Service Selection Board (SSB) interview at SSB Centre, Prayagraj on 10.04.2023 and was recommended for Permanent Commission (Special List) 2022 Record Officer category on 14.04.2023. His name appeared in the Merit List of Record Officer category at Serial No 74 in the Merit List against 24 of vacancies.

3. The applicant requested the authorities to consider him for both the categories of PC (SL) RO and TEO vide letter dated 06.05.2023 but respondents rejected the request for consideration for both the categories on the ground of violation of policy. The applicant would become over age for the vacancies arising in the next year and the course of PC (SL) has commenced at IMA from 06.09.2023. It is in this perspective that this OA has been filed.

4. Learned counsel for the applicant submits that the applicant was re-mustered as RHM (TIFC) on 01.09.2022 and thus, become eligible for applying for the PC (SL) TEO

(AAD) in terms of letter dated 21.05.2018.

5. Learned counsel further submitted that the applicant appeared in Services Selection Board (SSB) interview at SSB Centre, Prayagraj on 10.04.2023 and was recommended for grant of PC on 14.04.2023. The conduct of SSB is common for all streams and it is immaterial whether any person has applied for PC (SL) RO or PC (SL) TEO or both.

6. Learned counsel further argues that the unit of the applicant requested for inclusion of the name of the applicant for PC (SL) TEO category as Priority II since the applicant was re-mustered as RHM (TIR) w.e.f. 01.09.2022 which was rejected by the respondent stated that the category cannot be changed at a belated stage which would constitute violation of policy.

7. Learned counsel further submits that the result of SSB was declared on 25.08.2023 wherein the applicant has been placed at the merit position of 74 and another person from the AAD has been placed at the merit position of 80. The result shows that the two vacancies for AAD (TEO) were available and only one vacancy was utilised by Hav Manoj Kumar placed at the merit position of 80 in RO category and the second vacancy remain unutilised.

8. Learned counsel for the applicant submits that the

respondents issued circulars for acute shortage of TEO cadre officers and on the other side not allowing the eligible and selected candidate for commission in the TEO cadre on technical grounds as there is no role of the applicant since he was qualified in all respects on 28.08.2016 but re-mustered on 01 Sep 2022 and was eligible to opt for both categories if he would have been remustered before the due date of filing of application.

9. Learned counsel also submits that the applicant is already 42 years of age and that was his last chance and shall become overage for the vacancy for the year 2023 or afterwards.

10. On the other hand, learned counsel for the respondents submitted that applicant had applied for PC (SL) -2022 quota for Record Officer Commission and the application was received by hand on 04.07.2022 after expiry of cut-off date i.e. 15.03.2022. However, the application was accepted as the cut-off date has been extended up to 31.07.2022 for all candidates.

11. Learned counsel further submits that the applicant had submitted his PC SL-2022 application in the rank of Hav (OFC) and thus, is eligible to apply for Record Officer Category only and the applicant was recommended for PC

(SL) 2022 quota for RO category only on 14.04.2023 by the SSB, Selection Centre, Prayagraj and his name appeared at Serial No 74 of the Merit List against the total of 24 vacancies available.

12. It is the case of respondents that with regard to prayer to consider the applicant to grant commission as TEO category as he was re-mustered to Technical category on 01.09.2022 is in a violation of extant policy. The application of the applicant was already accepted after the last date of submission as a onetime measure and any changes to the application is not feasible after final submission.

13. We have heard learned counsels for the parties in detail and have perused the material placed on record. The only limited question before us to adjudicate is whether the applicant can be considered for the existing vacancy in AAD (TEO), in view of the fact that he has been selected by SSB in PC (SL)-2022 ?

14. A perusal of the select list of SSB shows that in the instant case, the applicant was selected for PC (SL)-2022 quota for Record Officer and is placed at Serial No 74 of the list as against 24 vacancies. As far as the question of delay in re-mustering of the applicant as RHM (TIR) is concerned, we find that the re-mustering of qualified persons is proceeded

with according to the service and rank seniority of the qualified personnels in the respective course and the final appointment as RHM is dependent upon the vacancy accruing. Hence, even if the applicant is qualified for re-mustering the policy cannot be questioned on the sole ground that there was a delay of 6 years in the re-mustering of the applicant, as the process is unbiased.

15. However, we find it pertinent to note that the re-mustering of the applicant was done on 01.09.2022 and the last date of the extended application submission was 31.07.2022, with the applicant being almost one month short of qualifying criteria, which certainly means that had the applicant being re-mustered before 31.07.2022, he would have been eligible for AAD (TEO) vacancy, noting the fact that he is only eligible person who could have occupied the second vacant position, being higher in merit than the candidate already selected against the two AAD TEO vacancies.

16. It is pertinent to observe the only shortfall is the one month is the date of final submission of application and that the applicant when appeared for qualifying examination i.e. SSB, and qualified, he has already been re-mustered and was

eligible for the grant of PC (SL) in AAD (TEO) category, being fully qualified and eligible.

17. Not to lose sight of the letter 050005/GS/AAD-1 dated 29.06.2021, which showcases the shortage of SCO and PC(SL) officers who perform the duties of TEO in unit, with only 18 TEO officers held and posted with Corps of AAD as against the authorisation of 41 officers. The aforesaid letter is reproduced herein:

“Tele:

*Directorate General of Army Air Defence
General Staff Branch Integrated
HQ of MoD (Army) New Delhi-110011*

05005/GS/AAD-1

29 Jun 2021

All AAD formations

INTAKE SERVICE ENTRY: SCO & PC (SL)

1. Ref AG's Branch, IHQ of MoD (Army) DO letter No 58507/Sel Pol/Rtg (A) (P&C) dt 04 Jun 2021 (Copy att).

2. The need for enhancing the intake through Service Entry has long (Illegible) and numerous steps have been taken in the past. However recommendation made by SSB continues to be very low. Further, the No of applicants for SCO & PC (SL) entry has also declined over the last five years (graph at Appx att depicts the declining trend).

3. Now it has been decided by 'Staff Selection Bd' that all SCO & PC (SL) candidates will be made to undergo the complete SSB. This will be done on a trial basis for two years w.e.f. Jan 2022 and a policy letter in this regard has already been issued to envt.

4. In Army AD presently there is an acute shortage of SCO and PC (SL) officers who perform the duties of TEO in unit. There are only 18 TEO officers held and posted with Corps of Army AD against the authorisation of 41. The new SSB policy is an excellent opportunity to increase selection for SCO & PC (SL) entries. This will improve the overall availability of TEOs in Eqpt intensive units.

5. In view of the above, all Cdrs & Cos are requested to encourage more JCO/OR for SCO and PC (SL).

Sd/-
(Deepak Kumar)
Col
Col AD (Coord & Legal)
For DG Army AD

Encls : As above

18. We cannot shy away from the fact that the AAD is under shortage of the PC (SL) officers, with the applicant being one of the qualified PC (SL) officer and Para 5 of the aforesaid letter casts a responsibility on the Cdrs and COs to encourage more JCO/OR for SCO and PC (SL), thereby, leaving enough room for a one time relaxation, especially when the Corps is undergoing shortage of TEO officers, with no compromise on the qualitative aspect, with the applicant being fully qualified through the same process.

19. In view of the aforesaid discussion, we are of the opinion that Respondents ought to have taken a holistic view on the issue which is not only beneficial for the career growth of the applicant, but is also in betterment of the organisation and that a compassionate view is also required to be taken on the issue.

20. Therefore, without any comment upon the existing policy framework before us, we direct the respondents to consider afresh the application of the petitioner seeking grant of PC (SL) in AAD (TEO) category, in the background of

above discussion. The respondents are directed to give effect to such reconsideration within a period of 30 days from the date of pronouncement of this order, and convey the same to the applicant.

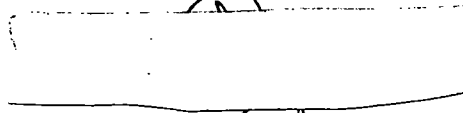
21. Consequently, this OA is disposed of in terms of aforesaid directions.

22. No order as to costs.

Pronounced in the open Court on 16 day of July, 2024.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(LT GEN C.P. MOHANTY)
MEMBER (A)

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