

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

67.

OA 100/2025

L/Nk Rajkumar Mandal	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Arvind Kumar, Advocate with Ms. Riti Sarkar, Advocate
For Respondents	:	Mr. K K Tyagi, Sr CGSC

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

ORDER
15.04.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the relief claimed in para 8 reads as under:-

“8. It is humbly prayed that this Hon'ble Tribunal may graciously be pleased to consider the foregoing submissions and call for the records, issue notice to respondents for showing cause as to why the prayer of the applicant should not be allowed setting aside and quashing the impugned actions of the respondents of not considering the case of the applicants for granting the pre mature discharge to the applicant and after showing cause or causes by respondents and hearing both sides, be pleased to:-

8.1 Set aside the letter dated 09.11.2024 of the respondent authorities of denying the legitimate claim of the applicant.

8.2 Direct the respondent authorities to issue discharge order.

8.3 Award cost of the instant case; and

8.4 Grant any other relief or reliefs as to this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The facts in brief indicate that the applicant was enrolled in the Indian Army on 18.06.2016 and after completing his training was posted to various units. Prior to his joining on 16.08.2015, the applicant appeared in the Teachers Eligibility Test (in short TET) conducted by the West Bengal Central School Service Commission. The applicant succeeded in the said recruitment process and in the year 2016 was selected for appointment as an Assistant Teacher. However, the said recruitment process fell into litigation before the Calcutta High Court and the selection process was cleared by the Calcutta High Court only on 28.08.2024 and the applicant was called for counseling on 20.11.2024. Immediately on receipt of the letter of counseling on 20.11.2024, the applicant sought premature discharge from service on 04.11.2024 and in order to expedite the process of discharge initiated the signal to the higher echelon on 05.11.2024. The applicant sought permission and leave to appear in the counseling process which was to be held on 20.11.2024 and on 07.11.2024, the competent authority granted leave and permission to the applicant to appear in the counseling process. The applicant appeared in the

counseling process on 20.11.2024 and on 05.12.2024 an appointment letter was issued for appointing the applicant as an Assistant Teacher in Barachandghar High School, Barachandghar, kaliganj district- Nadia, West Bengal. The applicant immediately respresented to the respondents and sought his discharge from service and when nothing was done, invoked the jurisdiction of this Tribunal on 06.01.2025 by filing this application.

3. Notice was issued to the respondents immediately thereafter on 27.01.2025 they were granted two weeks' time to indicate to this Court as to what action has been taken with regard to discharge of the applicant. Even though, time was granted up to 10.02.2025 to give their say when nothing was done on 13.02.2025, we pass a detailed order which reads as under:-

"Facts of the case indicate that the applicant was enrolled in the Army Corps of Signals on 18.06.2015. However, much before joining the said service, the applicant applied for appointment to a post of graduate teacher with the West Bengal Central School Service Examination in the year 2015. The applicant seems to have succeeded in the said selection process, however, the said process of selection fell into litigation before the Hon'ble Calcutta High Court which directed for staying the recruitment process in proceedings being WPA 20595/2022 and other cases. The appellate side of the Calcutta High Court by a judgment rendered vide Annexure A-3 cleared the selection process only on

28.08.2024 and after the selection was approved by the Calcutta High court, the applicant was called for counseling by the West Bengal Central School Services Commission. Accordingly vide Annexure A-5 the applicant in November 2024 sought permission to participate in the counseling. His application was forwarded and his request for premature separation and release from service was forwarded to the competent authority along with sanction of the unit concerned and the same is pending as is available on record with the competent authority since November 2024. Now, the applicant's grievance is that he has to join the post to which he has been appointed by the West Bengal Central School Service Commission and in case he does not join by 17.02.2025, his right to join on the selected post would be taken away.

2. The respondents were issued notice and they were directed to inform us as to what is the position with regard to the premature retirement of the applicant, we are informed that the applicant is on leave and, therefore, a final decision on his prayer for premature separation has not been taken. Taking note of the totality of the facts and circumstances, as detailed hereinabove, we are of the considered view that prima facie a case is made out by the applicant for considering his case for premature separation and the respondents should be directed to expedite taking a decision in the matter. Accordingly, we direct the applicant to rejoin his duties immediately and the respondents to process his claim for grant of premature separation and decide it within one month of the applicant's re-joining duties. Till a final decision in the matter is not taken and we are apprised of the same, we direct that the appointment of the applicant with the West Bengal Central School Services Commission/Bengal Govt. shall be kept in abeyance and one post allotted to the

applicant shall be kept vacant till further directions by this Tribunal.

3. List the matter for further orders on 20.03.2025.

4. Let a copy of this order be issued DASTI to learned counsel for both the parties."

Thereafter when the matter was taken up on 20.03.2025, the respondents again prayed for time and we granted three weeks' time and the matter was directed to be listed on 03.04.2025. When the matter was taken up on 03.04.2025, we were informed that the Discharge Board meeting was to be held and time was taken to inform us as to what is the final outcome of the decision of the Discharge Board. When the matter is taken up today, the respondents have neither produced any order of discharge nor are they aware of the proceedings of the Discharge Board and the counsel is not abreast with any instructions in the matter.

4. Face with the aforesaid situation, we are required to take a decision in the matter and learned counsel for the applicant invites our attention to the communication received by him from the West Bengal Central Service Commission and the Rules governing the selection and appointment of teachers published in the Calcutta Gazette. The Rules of 2016 clearly indicate that the time limit for appointment cannot exceed the period stipulated in Rule 16 which reads as under.

"16. Recommendation of candidates for appointment to the post.-(1) The Regional Commission shall hold counseling with

a view to recommending the name of the candidate from the list for appointment against each vacancy.

(2) Thereafter, the Regional Commission shall recommend the name of only one candidate against each vacancy depending on his/her position in the panel and availability of requisite vacancy and a copy of the letter recommending the name shall be sent through speed post or in such other mode to the candidate, to the concerned authority of the School as well as concerned District Inspector of Schools (SE) where the particular vacancy exists.

(3) A recommendation letter shall remain valid for a period of ninety days from the date of issue:

Provided that the Regional Commission may, if it thinks expedient to extend the validity of the recommendation beyond the period of ninety days for any reasonable cause, for the reasons to be recorded in writing, extend the period of validity of such recommendation letter for a further period not exceeding sixty days.

(4) The concerned School authority shall on the basis of the recommendation of the Commission, issue the letter of appointment to the candidate allowing joining time of not less than thirty (30) days through registered post with acknowledgement due and upon receipt of appointment letter from the concerned school authority the candidate shall join the post within the stipulated period as mentioned in the appointment letter on verification of original certificates/documents of the candidate by Headmaster/Headmistress or Teacher in Charge.

Provided that if the School authority has any doubt about the vacancy position, it shall intimate the same to the Central Commission/Regional Commission, District Inspector of Schools (Secondary Education) and Director of School Education.

(5) If-

(a) a candidate refuses to accept his/her allotment of post during counseling, or

(b) the Central Commission gets information from any school or from the District Inspector of Schools (Secondary Education), or otherwise, that a candidate recommended for appointment has not accepted the offer of appointment or join the post within the stipulated period, or

(c) such a candidate refuses to accept appointment, or

(d) on further scrutiny it appears that the candidate has misrepresented the facts,

the Central Commission may do away with his name from the panel and will be deemed to have been depanelled and recommend the name of a candidate from the waiting list to the Regional Commission for Counselling and final Recommendation, strictly within the validity period of the panel and waiting list.

(6) If a candidate, whose name has been recommended by the Regional Commission for appointment, cannot be appointed to the vacancy for which he/she was recommended for the reason that such vacancy ceased to exist, the managing committee, by whatever name it is called, or the ad-hoc committee or the administrator or the concerned District Inspector of Schools (Secondary Education), as the case may be, shall send an information in this regard to the Regional Commission and Regional Commission may, on receipt of such information, recommend his/her name for any other appropriate vacancy.

(7) If the managing committee, by whatever name it is called, or ad-hoc Committee or the administrator, if any, of any School does not appoint the candidate on the recommendation of School Service Commission having jurisdiction, the Regional Commission shall forward the matter to the School Education Department through Central Commission for taking action under section 9A of the Act.

(8) Male candidate shall not be recommended for appointment in any girls' school.

5. Based on the aforesaid, learned counsel for the applicant makes a submission that in case the applicant does not join the appointed post on or before 19.04.2025, the post to which he had been appointed would lapse and his right to seek appointment to the post would be frustrated and he would suffer irreparable loss. Except for contending that the counsel has no instructions in the matter, neither the representations and the communications made by the applicant are responded to by the competent authority nor

has the requisitioned notices and the time granted by this Court been responded to by the respondents and this Court is handicapped on account of the non-cooperative attitude of the respondents.

6. From the records, it is seen that the applicant has appeared in the selection process much before his recruitment in the Indian Army and when he was recruited in the Indian Army, the selection process conducted by the West Bengal Central School Service Commission fell under litigation before the Calcutta High Court in a writ petition bearing number WP(A) 20595 of 2022 and other cases. By a detailed judgment rendered on 28.08.2024, vide Annexure A3, the appellate side of the Calcutta High Court decided the issue and based on the same, the applicant was recommended for appointment and he received the appointment letter. Immediately on receipt of the order for counselling, the applicant made a request for premature retirement and discharge from service on compassionate grounds vide Annexure A1 on 04.11.2024. The competent authority recommended his case for grant of compassionate discharge and as indicated hereinabove, in spite of repeated communications as available on record and correspondence and request made by the applicant, nothing has come on record indicating as to what action has been taken by the respondents. The respondents have not indicated as to why premature discharge cannot be granted to the applicant and why

they have not taken a decision in the matter even though the application filed by the applicant is pending before the competent authority since 24.11.2024.

7. Considering the fact that much before his appointment in the Indian Army, the applicant had participated in the selection process and he appeared in the counselling after his selection after taking approval and leave from the competent authority, we are of the considered view that it is a fit case where the applicant should be granted the benefit of career progression and discharge from service of the Indian Army.

8. Therefore taking note of the totality of the facts and circumstances of the case, we direct that the applicant is deemed to be discharged from the service of the Indian Army from today and the discharge certificate be issued along with requisite orders and certificates by the competent authority within a period of two days from today. Even if the documents are not received, the applicant would be deemed to have been discharged from service from today and based on this order, he shall be permitted to join duties by the authorities of the West Bengal Central School Service Commission and the Headmaster of the institute to which he is appointed. The respondents may process his claim and settle it in accordance with law according to their own sweet will, but the same shall not come in the way of the applicant in treating him to have been discharged

and join the duty within the time prescribed by the West Bengal Central School Service Commission. In case the final discharge certificate cannot be provided within the short period stipulated, a provisional discharge certificate shall be provided within two days. The applicant is deemed to have been discharged from the Army service from today. We are passing this order in the interest of justice and by virtue of the powers vested in us under Section 14 of the Armed Forces Tribunal Act, 2007.

OA stands disposed of.

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

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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