

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

72.

OA 1049/2023 WITH MA 3035/2023

Lt Col Ajay Kumar	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Piyush Thakran, Advocate
For Respondents	:	Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
13.05.2025

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

- (a) Call for the complete records, including the notings vide which the application of the applicant for study leave was not considered and the impugned order sated 10 Apr 2023 was issued; and then set aside the same being illegal and violative of the Fundamental Rights of the applicant.*
- (b) Direct the respondents to consider the application of the applicant for study leave and grant him 02 more attempts to appear in the said exam.*

2. While considering the issue at the stage of admission on 21.04.2023, interim directions were issued. In pursuance of the said directions, the applicant appeared in the examination scheduled for 23.04.2023, which was his third attempt.

3. Thereafter, in view of the interim prayer made by the applicant in MA No. 1546/2024, the following directions were issued by this Tribunal on 08.04.2024:-

The applicant vide the present MA makes the following prayers:-

"a. In the interim, the respondents be directed to allow the applicant to sit in the exam as scheduled on 14 Apr 2024 for grant of study leave and if selected, the same may be subject to the outcome of this OA. The said order may be passed in the light of the previous order as Annexed as Annex M1.

b. Any other order which the Hon'ble Tribunal may be pleased to pass in the light of the present facts and circumstances of the case."

Notice thereof is issued and accepted on behalf of the respondents. The applicant in the instant case is allowed to appear in the exam as scheduled on 14.04.2024 for grant of study leave provisionally subject to final outcome of the OA.

2. On behalf of the respondents it is submitted that a detailed counter affidavit is sought to be filed to the OA to which a submission was made on behalf of the applicant that on 22.12.2023 it was submitted on behalf of the respondents that they have filed an affidavit classified as a short affidavit and it was stated by Ld. Senior CGSC that the same be treated as reply on merits.

3. On behalf of the respondents it is however submitted that they seek to file a detailed counter affidavit in response to averments made by the applicant in the OA. The said prayer made by the respondents in the interest of justice is allowed. The detailed counter affidavit be filed by the respondents within four weeks. Rejoinder, if any, thereto be filed by the applicant within two weeks thereafter."

4. In pursuance of these directions, the applicant appeared in the examination held on 14.04.2024, marking his fourth attempt and passed in this attempt.

5. The applicant completed his MBBS from Government Medical College, Srinagar, Jammu & Kashmir, in 2007 and

his MD in Medicine from Sher-i-Kashmir Institute of Medical Sciences, Srinagar, Jammu & Kashmir in September 2012. Initially, he worked in the Health Department of the Government of Jammu & Kashmir from 2012 to 2013, thereafter he worked as Senior Resident, Department of Medicine at the All India Institute of Medical Sciences (AIIMS) in October 2014 and was commissioned into the Army Medical Corps on 01.11.2014. Having completed his MBBS and MD in Medicine, the applicant was granted ante date seniority of 42 months, considering his MD in Medicine and House Residency experience. He was posted to Base Hospital, Delhi Cantt, as his first posting.

6. Thereafter, the applicant was posted to 153 General Hospital, Leh, on 15.04.2015. He applied for grading vide his application dated 23.07.2015, which was forwarded to HQ Northern Command (Medical) on 24.07.2015. However, no action was taken by HQ Northern Command (Medical) on the application of the applicant. The applicant submitted reminders from time to time. The applicant's grievance is that due to the delay caused by the respondents, he was not granted grading as a specialist in medicine until 30.07.2018. As he was not granted the said grading, the applicant could

not appear in the examination for consideration of the grant of study leave to pursue Super Speciality Medical Course.

7. Be that as it may, the facts remain that the policy for the grant of study leave and its procedure are laid down in the policy Annexure R1 dated 19.09.2023 issued by the Ministry of Defence (MoD) O/o the DGAFMS/DG-1D. Para 22 of the said policy, which deals with study leave, reads as under:

Study Leave

22. Study Leave will be granted to eligible Permanent Commissioned Medical Officers and NT (AMC) Offrs of the AFMS based on service requirement for which the following rules will apply and will be read in conjunction with AI 13/78, as amended by AI 11/88, AI 18/97 or any subsequent amendments.

- (a) Study Leave in India/Abroad will be granted only once for a period of maximum 36 months in the whole service career. Offr is permitted to apply for maximum of three (03) chances for study leave.*
- (b) The period of study leave for courses of study in health sciences will not exceed 36 months. However, in subjects other than health sciences, the maximum duration of study leave will be 24 months only.*
- (c) Officers once granted study leave in the subject of their choice and are not availing it, for whatever reason, will not be considered for study leave in subsequent years.*

From the aforesaid, it is clear that an applicant is entitled to a maximum of three (03) chances to appear in the examination to pursue the Super Speciality Medical Course by obtaining study leave. It is the grievance of the applicant that he could not avail the three chances earlier, due to the delay in

grading caused by the respondents. Be that as it may, the fact remains that despite the delay in grading, the applicant was granted two chances to appear in the examination by the department itself. However, on both occasions, the applicant did not qualify in the examination and, therefore, could not avail the benefit of study leave to pursue higher studies.

8. It is the case of the respondents that, as the applicant had crossed the age limit for appearing in the examination, he was granted a waiver on the second occasion. Nevertheless, despite the waiver being granted, the applicant did not qualify in the examination.

9. Thereafter, when the applicant was not permitted to avail the third chance and no waiver was granted to him, he approached this Tribunal and by the interim order passed on 21.04.2023, he was permitted to appear for the third chance in the examination held on 23.04.2023. However, he did not qualify the exam in that attempt either.

10. Subsequently, when the applicant was not permitted to avail the fourth chance, as it was prohibited under the policy itself, he invoked the jurisdiction of this Tribunal by filing an interlocutory application, i.e., M.A. No.1456/2024. By order passed on 08.04.2024 in MA No.1456/2024, this Tribunal permitted him to appear for the fourth attempt. The applicant

appeared in the examination conducted on 14.04.2024 and he has qualified in the fourth attempt.

11. It is further brought to our notice by learned counsel for the applicant that the Super Speciality Medical Course for which the applicant has now qualified is scheduled to commence on 20.06.2025 and the counselling for the same is to begin tomorrow, i.e., 14.05.2025. The applicant now seeks the grant of study leave from this Tribunal on account of the fact that he has qualified in the examination in his fourth attempt and considering the facts and circumstances of the case particularly the delay of approximately three and a half years caused by the respondents in granting grading to the applicant, it is his contention that he should be given an opportunity to avail the study leave to pursue the said course.

12. The respondents vehemently oppose the aforesaid prayer and submit that for the delay caused by the respondents, the applicant has already been granted one waiver to appear in the second attempt. Thereafter, based on the discretion exercised by this Tribunal, he was granted one more opportunity to appear in the third attempt. However, the applicant failed to pass the exam in all three attempts. It is contended that no further chance should be granted to him, as this would amount to a violation of the policy and

would set a precedent whereby other ineligible candidates may also seek additional chances. Such a course of action, if permitted, would result in the establishment of an erroneous practice contrary to the existing policy framework.

13. The respondents have also raised an objection regarding the jurisdiction of this Tribunal, contending that this Tribunal has jurisdiction only in respect of service matters as defined under Section 3(o) of the Armed Forces Tribunal Act, 2007. It is submitted that under Section 3(o) (iv), matters relating to leave of any kind are expressly excluded from the definition of "service matters".

14. Learned counsel for the respondents argues that study leave, even if it is to be granted in accordance with the policy dated 19.09.2023 (Annexure R1), falls outside the jurisdiction of this Tribunal. Therefore, it is submitted that this Tribunal cannot take cognizance of the present application and the same is liable to be dismissed on this ground itself. Section 3(o) of the Armed Forces Tribunal Act, 2007 defines "service matters" reads as under:

3(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), means all matters relating to the conditions of their service and shall include—

(i) remuneration (including allowances), leave, pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include matters relating to—

But shall not include matters relating to-

(i) Orders issued under section 18 of the Army Act, (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957), and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and posting including the change of place of unit on posting whether individually or as a part of unit, formation or ship in relating to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Forces Act, 1950 (45 of 1950).

(iii) any matter pertaining to leave of any kind.

(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;

(p) 'Summary disposals and trials' means summary disposals and trials held under the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(q) "Tribunal" means the Armed Forces Tribunal established under Section 4.

15. We have heard the learned counsel for the parties on various issues, and at the very outset, we would like to address the objection raised by the respondents regarding jurisdiction with reference to Section 3(o) of the Armed Forces Tribunal Act, 2007. This objection has been raised today for the first time at the stage of final arguments. Neither in the counter affidavit nor at the time when notices were issued and interim orders passed on 21.04.2023,

or when orders were passed on 08.04.2024 in MA No. 1456/2024, was any such issue of jurisdiction ever raised. As a result, interim orders were passed in favour of the applicant, and based on the interim order passed by this Tribunal on 08.04.2024, a right has accrued to the applicant to claim the grant of study leave on account of having qualified in the fourth round of examination conducted in the matter.

16. That being the case, in the facts and circumstances of this case, we are not inclined to reject the application solely on the ground of jurisdiction, especially when the respondents, by their own conduct, permitted this Tribunal to exercise its jurisdiction and grant interim relief to the applicant on two occasions. Having waived the right of raising of this objection at the appropriate time, and having allowed this Tribunal to pass orders due to which certain rights have now accrued to the applicant, it is not an appropriate case where the application can be dismissed on the basis of the said objection.

17. On the contrary, the conduct of the respondents from the time of filing of this application till date amounts to acquiescence and submission to the jurisdiction of this Tribunal. Therefore, this Tribunal is competent to exercise

jurisdiction in the present matter based on such acquiescence in the peculiar facts and circumstances of the case.

18. Having held so, we make it clear that the question regarding the grant of study leave and whether it constitutes a "service matter" within the meaning of Section 3(o) of the Armed Forces Tribunal Act, 2007 is left open to be decided in an appropriate case, based on its own facts and circumstances. This order shall not be treated as a precedent to be cited in other cases, for the simple reason that we are exercising jurisdiction in this case solely on account of the respondents' conduct and acquiescence in the circumstances of the present matter.

19. As far as the issue of granting permission to the applicant to pursue the Super Speciality Medical Course by appearing in counselling, and availing of study leave to undertake the said course, is concerned, the issue that arises is whether the same is in violation of the policy as contained in Clause 22 of Annexure R1 dated 19.09.2023. The applicant succeeded in the examination conducted in his fourth attempt, by virtue of the interim order passed by this Tribunal. The question now is whether any relief can be granted to the applicant in light of the policy provisions and the peculiar facts of the case.

20. In the present case, the applicant was allowed to take the fourth attempt only due to the interim order passed by this Tribunal on 08.04.2025 in light of the delay in granting grading to the applicant which is attributable to the respondents themselves. The applicant has now qualified in the said fourth attempt and seeks study leave to pursue the Super Speciality Medical Course commencing on 20.06.2025.

21. Given the fact that the delay in grading, which caused the applicant to miss earlier chances to appear in examination to qualify for study leave, was not due to any fault on the part of the applicant, and that the Tribunal had earlier granted him relief based on a *prima facie* consideration of this delay, we are of the view that this is a fit case to consider relaxation under exceptional circumstances, as contemplated under Clause 22 of the policy.

22. Thus, notwithstanding the technical violation of the policy, and considering the facts of the case in their entirety particularly the delay caused in grading the applicant by the respondents and the applicant's eventual success in the examination, the applicant is entitled to be considered for grant of study leave to pursue the Super Speciality Medical

Course for which counselling commences on 14.05.2025 and the course commences soon thereafter.

23. The respondents may be right in contending that, as per the policy, study leave can be granted only once for a maximum period of 36 months during the entire service career, and that the opportunity to appear in the qualifying examination is limited to three chances. However, it is also evident that the policy itself was first breached by the respondents when, for nearly three years between 2015 and 2018, the grading was not granted to the applicant despite the fact that he had submitted his application for grading on 15.04.2015, and the matter was kept pending till January 2018.

24. By this delay itself, the respondents had deviated from the prescribed timelines and conditions of the policy. Furthermore, although the applicant was granted a waiver to appear in the second attempt, he was not permitted to appear in the third attempt. He was only able to do so pursuant to the interim order passed by this Tribunal on 21.04.2023, wherein he appeared for the third attempt on 23.04.2023, but did not qualify. Technically, the matter could have ended there, and the applicant would not have been entitled to any further attempt.

25. However, this Tribunal, though a statutory body governed by the Armed Forces Tribunal Act, 2007, and bound to implement policy in accordance with statutory rules, is also entrusted with the responsibility of adjudicating disputes in a fair and justice oriented manner, keeping in view the broader principles of equity and substantial justice to men in uniform of the Armed Forces who approach this Tribunal to ventilate their grievances.

26. The applicant, a qualified medical doctor, has served in the Indian Army and rendered his services in challenging field postings such as Leh, Ladakh, and other difficult terrains under the Northern Command. Due to various reasons and some of them attributable to the respondents, including delay in processing his grading application, and some to the applicant himself, who could not qualify within the earlier three chances, his eligibility was adversely impacted.

27. Nevertheless, pursuant to the interim order passed by this Tribunal on 08.04.2024, the applicant was allowed to appear in the examination in a fourth attempt, in which he successfully qualified. The counselling for the Super Speciality Medical Course for which he has now qualified is scheduled to commence on 14.05.2025, and the course is set to begin immediately thereafter.

28. In light of these peculiar facts and circumstances, we are of the considered opinion that the requirements of justice warrant the exercise of our jurisdiction under Section 14 and the inherent powers of this Tribunal under Section 14(7) of the Armed Forces Tribunal Act, 2007, to grant one more waiver to the applicant even though it is not expressly permitted under the Policy. This is being done to ensure substantial justice to the applicant, in recognition of his service to the nation since his commissioning into the Army Medical Corps on 01.11.2014, and his continuous deployment over the last ten years in harsh and difficult operational areas of Jammu & Kashmir and Leh, Ladakh.

29. Taking a pragmatic and justice oriented approach; we hold that this Tribunal, in an exceptional case and without treating this as a precedent, directs that the applicant, having qualified in the fourth attempt, is to be granted one additional opportunity. He shall be permitted to participate in the counselling scheduled for 14.05.2025 or any other date as may be and if selected, be granted study leave to pursue the Super Speciality Medical Course.

30. We clarify that this order is passed in the peculiar facts and circumstances of the case. We are conscious of the fact that certain deviations from the policy have been made, but

our intent is not to undermine the policy, rather, we have taken this step to do substantial justice based on equity consideration and looking at the applicant's career, his service to the nation.

31. Accordingly, we direct that this judgment/order shall not be cited as a precedent. It is passed as a onetime measure based solely on the exceptional facts of this particular case.

32. Accordingly, the OA stands disposed of.

33. Pending miscellaneous application, if any, stands disposed of.

34. Let a copy of this order be given *'DASTI'* to both the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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