

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

OA 3999/2023 with MA 5272/2023

Ex SEA II (UW) Rahul Kumar Saraswat		Applicant
Versus		
Union of India & Ors.		Respondents

For Applicant	:	Mr. Ved Prakash, Advocate
For Respondents	:	Ms. Jyotsna Kaushik, Advocate

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 called into question the tenability of the impugned order (Annexure A1) dated 20.04.2022 by which he has been discharged from service on the ground of being unsuitable to be retained in service in light of Regulation No. 278 of the Regulations for the Navy, Part III and the letters detailed in the impugned order.

2. The applicant was enrolled in the Indian Navy on 16.02.2016 as an SSR with the basic date of engagement being 22.02.2016 for a period of 15 years which was to end on 28.02.2031. However his services were discharged by the impugned order w.e.f. 22.04.2022

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in accordance with the provisions of Regulation 278 of the Regulations for the Navy, Part III (Statutory). The case of the applicant is that while he was performing his duties he was served with a show cause notice on 27.03.2020. In the show cause notice (Annexure A3) three reasons were indicated for his discharge. They are:

“4(a) You have not passed your mandatory swimming test since your induction into Indian Navy on 22 Feb 2016. Despite adequate opportunities provided by the ship towards improving your swimming skill, you have not passed your basic swimming test in four years of service and, therefore, failed to be promoted to the next rank to date.

(b) Your professional competency has been observed to be poor and have failed repeatedly in all ASW Department POS tests conducted at regular interval by the ship and also by CITs.

(c) You have been found habitual of feigning sickness and projecting personal issues with an intention to avoid operational commitments of the ship. Further, on several occasions, you have displayed conduct unbecoming of a uniformed person, insisting upon disembarkation from long sailings while breaking the authorized channel”

It is the case of the applicant that much before the service of this notice and ever since his enrolment in 2016 he had been putting in his best service. In spite of this the show cause notice was issued mainly on the ground that he had not passed the mandatory swimming test, that he was professionally poor and that he had not cleared the POS tests conducted at regular intervals. Referring to the

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documents available on record as well as the reply to the show cause notice submitted by the applicant vide Annexure A4 on 03.04.2020 it was the case of the applicant that as he had certain difficulties including the birth of a child who expired on 21.12.2020, he could not clear the swimming test. He ultimately cleared the test on 31.08.2021 and also cleared the PQ examination on 01.09.2021 and therefore he was eligible for promotion. In spite of this he was not promoted and his services were brought to an end. He challenges the termination as illegal and points out that as far as the allegation of habitual sickness and absence from duty is concerned he has explained the same by stating that he had requested leave from the Divisional Officer but the leave was denied. Referring to certain averments made by the applicant in the rejoinder, particularly in Paragraphs 2, 3, 4 and 5, the learned counsel tried to emphasize that the applicant was suffering from appendicitis, had certain ailments, sickness and family problems which compelled him to take leave. Therefore learned counsel argued that the applicant had explained all the circumstances and in spite of all explanations and justifications given without considering his reply to the show cause notice and without giving him any opportunity to demonstrate his merit in service he was declared unsuitable under Regulation 278(1) and action was taken against him.

3. The respondents have refuted the aforesaid contentions and submit that the applicant had been discharged in accordance with Regulation 278(1), which reads as under:

"278 Unsuitable, Incompetent or Undesirable Sailors: If the Commanding Officer finds that any sailor of the ship's company is unable, either through mental or physical incapacity or through incompetence, to perform the duties of the lowest rate in his branch to which he can be reduced in rank or if the retention of any sailor is considered undesirable on grounds of conduct or character, he shall take the appropriate course among the following:-

If the sailor volunteers for some other rank, the duties of which he is considered competent to perform application for transfer is to be made in accordance with Regulation 273. When sailors, who are serving in a different branch from that in which they were entered, are found unsuitable for the duties of the lowest rate to which they can be reverted in their present branch application may be made for compulsory reversion to their original branch.

Full particulars accompanied by the sailor's service documents shall be forwarded to the Captain Naval Barracks through the Administrative Authorities for transmission to the Chief of the Naval Stagg, should be think fit, with a recommendation for discharge as 'Unsuitable'

Any sailor whose efficiency, physical condition or value to the Service becomes materially impaired may be recommended for discharge under this clause.

It is the case of the respondents that despite being given adequate opportunity to improve his conduct and character and come up to the Naval standard required the applicant was setting a bad example

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to other sailors and the respondents had no option but to discharge the applicant on being satisfied that he is unsuitable and lacks professional competency for discharging the duties in the Navy. The respondents in the detailed counter affidavit filed stated that the applicant's performance on board was just average or below average. On numerous occasions, he was found to be either missing from his duty place or absent on the ground that he was feeling ill, with complaints such as fever, backache, and chest pain, and he would cite family problems as an excuse for shirking duties and avoiding departmental responsibilities and work. It is the case of the respondents that the professional competency of the applicant was observed to be very poor; he repeatedly failed in all the swimming tests and the PQ tests conducted by the ship at regular intervals. He was counselled to improve himself; in spite of that, he exhibited work-shyness, had a very reluctant attitude towards service, and was not showing any progress in his work. The respondents have brought on record the following details with regard to his professional capabilities, conduct, disciplinary actions, and attitude towards work while on board various Naval ships from time to time. The details are as follows:

- (a) *Counselled on 14 May 2018 (Annexure R/11) for clearing his swimming test as the same will affect his date of promotion.*

- (b) *Counselled by Executive Officer on 01 August 2018 (Annexure R/12) with respect to discharge of duties, act of self harm/suicidal act, misbehavior/bad conduct towards ladies and act of stealing onboard.*
- (c) *Counselled by ASWO 11 (Annexure R/13) for his casual attitude towards work, missing from place of duty and using mobile phone during working hours.*
- (d) *Counselled by Department Officer (Annexure R/14) for his misconduct and reluctant attitude towards service.*
- (e) *Counselled and warned by Executive Officer on 13 December 2019 (Annexure R/15) for his reluctance towards the organization, professional knowledge below average and not clearing mandatory swimming test.*
- (f) *Counselled by Divisional Officer (Annexure R/16) to clear his PET and swimming test at an early date.*
- (g) *Counselled by Divisional Officer on 24 February 2020 (Annexure R/17) to improve his professional standards and pass swimming test at the earliest.*
- (h) *Counselled and warned by Divisional Officer on 27 February 2020 (Annexure R/18) to improve his professional knowledge and pass his swimming test at the earliest.*
- (i) *Advised and counselled by Divisional Officer on 06 March 2020 (Annexure R/19) to channelize his efforts towards improving professional knowledge and clearing swimming test.*

(j) Counselling and warned by Divisional Officer on 16 March 2020 (Annexure R/20) for his professional incompetence and failure on swimming.

It is the case of the respondents that the applicant was motivated, counselled and informed about the activities. He was found to be a non-swimmer since joining the service, he took many attempts to pass the swimming test, he lacked skills and had fear of water. Even though he was enrolled on 16.02.2016 and started discharging duties immediately it took him five years to clear the swimming test on 31.08.2021, i.e. much after the issuance of the show cause notice itself on 27.03.2020. The respondents further submit that on the excuse of facing several family problems and personal issues the applicant was away from duty. He would take leave and be away from duty and sometimes not available in the place of duty on the excuse of suffering from backache or chest pain and not being able to sit properly. He took leave in 2019 for various periods on account of his mother's ailment and operation for kidney stone. He got married in January 2019 and thereafter started taking leave on account of his wife's health problems and various other issues. It is the case of the respondents that because of his absence and his continued habit of breaking the rules he was punished on various occasions. On 12.06.2018 he ran away from INS Mysore and was subsequently awarded "Warning Punishment" by the Commanding

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Officer of the ship for remaining absent without leave for 206 hours. He was awarded solitary confinement in the cell for seven days, stoppage of leave for 41 days and deduction of pay and allowances for 41 days. He used to seek leave off and on and the respondents have in detail narrated various acts of commission and omission and lack of initiative in performing duties by the applicant as detailed in the counter affidavit.

4. The applicant in rebuttal in his rejoinder from Para 2 onwards particularly up to Para 5 explains that he used to submit leave applications to the Divisional Officer and as the Divisional Officer refused to sign the leave requests to attend to family issues and ailment in the family, the applicant had no other option but to leave his unit to take care of his parents. The applicant admits being away from duty not only to attend to his parents but also his absence from duty for short durations on account of his own ailment such as back pain, etc. He tries to explain the allegations primarily on the ground that he was compelled to do so because of his family problems and bodily ailments like back pain, chest pain, etc. He admits that he was facing various domestic and health issues and would improve in future and be available for all requirements. It is further stated that he has cleared the swimming test and the PQ test and therefore ignoring the same and discharging him was not in the fitness of things. Further it was tried to be emphasized that the show cause

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notice was issued by an executive authority and not by the Commander of the unit/ship and therefore the action taken by the respondents is unsustainable.

5. We have heard the learned counsel for the parties and perused the records.

6. As reproduced hereinabove Regulation 278(1) of the Regulations for the Navy permits the Commanding Officer to discharge a sailor who is mentally or physically unfit or who is incompetent to perform duties. On account of physical condition, inefficiency or professional incompetency such a sailor can be discharged if found unsuitable. Admittedly from the material available on record it is clear that the applicant after joining duties in February 2016 was not able to clear the swimming test. It was only on 31.08.2021 i.e. after five years of joining service and more than a year and a half after the issuance of the show cause notice Annexure A3 dated 27.03.2020 that he cleared the examination.

7. From the counter affidavit and the documents filed by the respondents particularly Annexure R11 dated 14.05.2018 it is evident that the applicant was counselled for failing to clear the swimming test. He was repeatedly counselled with regard to his fear of water and inability to swim. Annexures R11 to R20 are communications relating to counselling and advice given to the

applicant on his swimming ability, non-passing of the swimming test, suicidal tendencies and acts of self-harm, casual attitude towards work, absence from place of duty on various occasions, unauthorized use of mobile phone during working hours, reluctance in discharging duties, lack of organisational or professional knowledge and below-average conduct in performance of duties. With specific reference to non-clearance of the swimming test counselling was given not only in 2018 but also in 2019 (Annexure R15), 2020 (Annexure R17) and again in March 2020 (Annexure R20). The overwhelming documentary evidence adduced by the respondents indicates that the applicant was not performing his duties and that his conduct was unbecoming of a member of the Armed Forces. He did not clear the swimming test for nearly five years and even the PQ test was cleared only after the show cause notice was issued.

8. Taking note of all these factors the documents clearly indicate that after affording him repeated opportunities, including counselling and advice for more than 4½ years and when no improvement was shown the respondents treated him as an unsuitable sailor and proceeded to take action under Regulation 278. In our considered view the applicant being a member of a disciplined Force such as the Indian Navy was required to perform duties onboard ships where clearing the swimming test is of

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paramount importance. Not only did the applicant fail to clear the test for nearly five years after entry into service but he also consistently exhibited reluctance, inability and fear of entering the water. These are factors of critical importance and a sailor cannot be permitted to be retained in service with such shortcomings. The applicant's conduct also clearly indicates reluctance in performing duties while citing physical ailments and family problems as excuses to remain absent from duty on various occasions. In this background the respondents analysed the applicant's work and shortcomings for a period of about five years, repeatedly counselled and advised him and when no improvement was forthcoming discharged him from service upon being satisfied that he was unfit to serve as a sailor in the Navy.

9. The subjective satisfaction arrived at by the competent authority in assessing the applicant's work and thereafter discharging him in accordance with Regulation 278(1) in our considered view is a fair, reasonable and justifiable action based on the facts and circumstances. A member of the Armed Forces is expected to be fit in all respects both mentally and physically and to be capable of performing the onerous duties attached to service conditions. If the competent authority finds a person unsuitable for retention in the Force the subjective satisfaction so arrived at in the absence of bias, mala fides, ill motive or violation of statutory rules

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cannot be interfered with by this Tribunal on sympathetic considerations. In the present case based on the material on record and the analysis as detailed hereinabove we find that the competent authority has taken the decision after due evaluation of all relevant material. The assessment being in accordance with law we cannot sit in appeal over the same and take a different view.

10. As far as the ground that the show cause notice was issued by an incompetent authority is concerned it is of no consequence. This is because the entire material on the basis of which the show cause notice was issued along with the reply to it and all other relevant records was placed before the competent authority viz. the Commanding Officer, the statutory authority empowered to take action in the matter. That authority after evaluating each and every aspect has taken a conscious decision as demonstrated by the respondents through their counter affidavit and the overwhelming documents filed.

11. Furthermore in his rejoinder (Paragraphs 2 to 5) the applicant himself admits to the shortcomings but attempts to explain them on the ground of personal health issues and family problems. In our considered view in the totality of the facts and circumstances and for the reasons discussed hereinabove the action taken against the applicant is in accordance with law. The respondents have adopted a

fair and reasonable approach in dealing with his case and there is no reason for this Tribunal to interfere, particularly in a case involving the discharge of a man in uniform who has been found unfit for retention on account of the numerous shortcomings detailed in this order.

12. Accordingly, finding no merit, we dismiss the application, without any order as to costs.

13. Pronounced in open Court on this the 12th day of September, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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