

**ARMED FORCES TRIBUNAL
KOLKATA BENCH, KOLKATA
O.A. No. 28 of 2011**

Present : **Hon' ble Mr. Justice H. N. Sarma, Judicial Member**
 Hon'ble Lt. General K.P.D.Samanta, Administrative Member

IC-62850M Major Sumit Ranjan
 Presently posted in Station Headquarter, Nasirabad,
 C/o 56 APO
 Permanent R/o D/36, Ajanta Colony, PO Keshri Nagar,
 Patna-800 024, Bihar,
 Local Address : C/o Major Amit Ranjan,
 Flat NO. 5C, Block-2, J.S.Arora Enclave,
 Fort William, Kolkata-700 021

VS

1. Union of India through the Secretary,
 M/o Defence, South Block, DHQ,
 PO, New Delhi-110 011
2. The Chief of Army Staff
 IHQ of MoD (Army), South Block, DHQ,
 PO New Delhi- 110 011
3. The Military Secretary, IHQ of Mod (Army)
 South Block, DHQ,
 PO New Delhi-110 011
4. General Officer Commanding-in-Chief,
 Southern command, C/o 56 APO
5. Station commander, Station Headquarters,
 Nasirabad, PIN 900 103, C/o 56 APO
6. OIC, Legal Cell, Bengal Area,
 Alipore, Kolkata-700 021

For the applicant : Mr. T.K.Hazra, Advocate

For the respondents : Mr. Anup Kr. Biswas, Advocate

Heard on : 23.8.2012

: Order on 29.8.2012

ORDER**Lt. Gen. K.P.D.Samanta, Member (A) :**

The applicant was commissioned in the Indian Army on 10.12.2002 and was detailed for undergoing Basic Young Officers (BYOs for short) course at MHOW(M.P.) from 5th January to 10th April, 2004. He could complete only the platoon weapon part of the course but was returned back to his unit on medical ground without completing the second part of the course. This was on account of a motor cycle accident bringing the applicant to a lower medical category A₃ P₃ on account of injury thus sustained. He was subsequently upgraded to S₁ H₁ A₁ P₁ E₁ category in September 2004 and was again detailed for BYOs course from 22.9.04 to 23.3.05. Though he rejoined the course but on account of sickness, for which he was hospitalized resulting in medical inadequacy, for which he was again returned back to the unit without completing the course. Thereafter, he was posted to Manipur in a counter insurgency area where he joined the unit and participated in counter insurgency operations in which he claimed to have done well. Unfortunately while at Manipur, he contacted the fatal disease i.e. Hansens disease in April 2005 and thus, remained on medical care in low medical category for a long time. Subsequently he was upgraded in his medical category and became fit to undergo BYO course.

2. In view of his inability to complete the BYOs course on medical ground within the stipulated time limit, he, in terms of regulation 77B of Defence Services Regulations (RA) 1987, applied for Inter Arms/Services Transfer (IAST for short) to the MS Branch on 25.4.2007. This application has neither been addressed nor disposed of by the authorities concerned.

3. Thereafter the applicant was served with a letter from the MS Branch on 23.8.2010 directing him to resign because he could not complete his BYOs course in terms of Special Army Instruction No. 1 of 2006 drawing its basic contents from the Regulation of Army 1987, regulation 77. This letter dt. 23.8.10 is annexed to the OA at annexure- H to the OA. The applicant replied to this letter on 14.9.10 explaining his reasons and reiterating that his Arm (Infantry) should be changed from Infantry to some other service where he could be usefully employed and for which his application for IAST was still pending. Having not heard anything on the subject, the applicant filed a statutory complaint to the Govt. of India on 9.10.10 on the issue. Subsequently, the MS Branch issued another show cause notice to the applicant on 2.11.10 (annexure-I to the OA) asking him to show cause why he should not be compulsorily retired from service since he had declined to resign, primarily for not having been able to qualify in BYOs course.

4. The applicant in his OA has annexed Govt. of India, Ministry of Defence order dt. 30.3.11 at annexure-K by which the applicant's statutory complaint has been rejected by the Central Govt. Therefore, having left no other option and apprehending that his service might be terminated/put an end to at any time, the applicant has approached this Tribunal seeking relief by way of quashing the show cause notice dt.2.11.2010 (annexure-I) and the order dt. 30.3.11 (annexure-K) and to consider his representation dt. 25.10.07 seeking transfer of arm/service or in the alternative to allow him continue in Infantry so that he could complete the BYOs course subject to acceptable medical category.

5. In addition to main relief, the applicant had also prayed for an interim order restraining the respondent Nos. 2 and 3 from taking any further steps in the matter of

show cause notice dt. 2.11.2010 and also for restraining respondent No. 2 from taking any further action pursuant to the impugned order dt. 30.3.11. This Tribunal by order dt. 10.6.11 had allowed the interim prayer to the extent that the respondents were restrained from giving effect or further effect to the show cause notice dt. 2.11.10 till the disposal of this OA.

6. The learned counsel for the applicant, Mr. T.K.Hazra vehemently argued the case in favour of the applicant and has brought to our notice the contents of the Special Army Instruction No. 1/2006 dt. 1.1.2006 (annexure-R1 of the reply of the respondents) in which it has been clearly mentioned that officers who could not complete their BYOs course on medical ground, but who could be usefully employed in any other arm or service, should be considered for IAST by the MS Branch. For this purpose, the ld. Counsel has relied on para 3 of this Special Army Instruction which is quoted below :-

“ All officers, including Short service Officers, are required to attend and pass in the Basic Young Officers (BYOs) Course (all parts or legs thereof) of their respective arm or service within the first four years of service. Those officers who attend a BYOs course for the first time but fail or are unable to complete the course, will be given a second chance to qualify on it. Officers who cannot attend their present arm/service BYOs on medical grounds may be transferred by the Military Secretary to another arm/service, where they can usefully employed and can attend and qualify on the BYOs of the new arm/service.....” (underling supplied by us for emphasis)

7. Mr. Hazra has also emphasized that the applicant was always willing to do the BYOs course but for reasons beyond his control, like medical disability, he was unable to complete the course on every occasion he tried. Therefore, it could not be termed as failure in the course as being projected by the respondents. Therefore, the service of the applicant could not be terminated under Army Rule 13(a). For this purpose, he has also

drawn our attention to Regulation of Army 1987, para 77(2) which is similar in contents as para 3 of the SAO 1/2006 quoted above.

8. In conclusion of his argument, Mr. Hazra has prayed that the applicant should be considered for IAST and should be given some other arm or service within the army or alternatively, he be allowed to complete the BYOs course in his present arm since his medical category now is in P₂(per) S₁ H₁ A₁ P₂, E₁, which is a permissible medical category to do the BYOs course. The choice between either of the prayers, he left to the discretion of the Chief of Army Staff as he may deem fit and proper.

9. The respondents have contested the application by filing a counter affidavit in which the facts as stated in the original application by the applicant have not been denied or controverted. They have also annexed the Special Army Instruction No. 1/2006 as annexure R1 and SAO 3/S/2006 as annexure R4 of the reply affidavit. Annexure R1 deals with rules regarding retention in service with regard to officers as it relates to qualifying in BYOs course and promotion examination, whereas annexure-A4 i.e. SAI 03/S/2006 deals with medical categories permissible to attend various courses.

10. The main issue raised in the counter affidavit is primarily based on the contents of annexure-R1 and R4 highlighting that the applicant could not qualify in BYOs course despite giving him two chances and therefore, he should either resign or his services should be terminated in terms of para 77(2) of RA 1987 and the contents of Annexure-R1. No new facts have been brought to our notice especially with regard to question why the officer's prayer for IAST was not considered by the competent authority.

11. As an explanation, the Id. Counsel for the respondents, Mr. A.K.Biswas has submitted that the MS Branch officers were required to come with certain documents but

they could not be made available to him. Such a promise by the MS Branch was given to the Id. Counsel since 9.3.12 as would be evident from our orders dt. 9.3.12 and 16.4.12 and ultimately the matter was heard on 23.8.12 and on that date, Mr. Biswas, Id. Adv. for the respondents was constrained to contest the matter with available documents. He has very frankly submitted that there was no other orders or document to further his view point. However, Mr. Biswas contested the issue very strongly to substantiate that the applicant was not in acceptable medical category while he applied for IAST. According to his oral submission, the acceptable medical category is minimum P2. Mr. Hazra, Id. Adv. for the applicant at this stage however, submitted that the applicant was S_{3(T)} for 24 weeks and P2 on the date he applied for IAST which was on 27.10.07 but he ultimately got upgraded to S1 but remained in P2 . Therefore, as submitted by Mr. Hazra, the applicant was in acceptable medical category, had he been allowed to be assigned in another arm or service at that point of time. Notwithstanding above, such oral submissions of the Id. counsel for either parties could not be supported by in documentary or by any order/instructions.

12. Mr. Biswas contends that besides two chances given to the applicant to clear his BYOs course, as required under the rules, a third chance was also given to him to do the same course from 18.1.10 to 15.7.10. However, the applicant did not attend the course despite a vacancy having been allotted to him. To this Mr. Hazra, Id. adv. for the respondents has drawn our attention to his rejoinder to the counter affidavit and submitted that the applicant on this occasion also was not in an acceptable medical category to do the said course which terminated on 15.7.11. His category was upgraded to P₂ which is an acceptable medical category for BYOs course only after the course had

terminated. Under such circumstances, it was not possible for him to attend the said course and the applicant was in no way to be blamed for this.

13. Mr. Biswas has lastly contended that the application is premature as the authorities have not yet passed any final order on the show cause notice in view of subsistence of the interim order granted by this Tribunal. He submits that the respondents be allowed to pass the final order and thereafter if the applicant felt aggrieved he could always approach this Tribunal for remedy. Mr. Hazra raised serious objection to this suggestion by stating that the respondents by rejecting the statutory complaint of the applicant have already disclosed their mind and therefore, it can reasonably be expected that the fate of the show cause notice would be the same and the applicant would be thrown out of service and, therefore, it would be just and proper and in the interest of justice to decide the matter on merit.

14. We have carefully considered the rival contentions of ld. advocates for both the sides and examined all records and affidavits produced before us. We are clearly of the view that the applicant at no stage was hesitating in his efforts to undergo BYOs course and clear the said course. In fact, we find that the applicant cleared the more difficult part of the course, which was part I, in his first attempt and only the support weapon part of the course was left which the applicant could not attend because of medical constraints on both the occasions. As regards the third chance, we have ascertained from the documents that the applicant was not in an acceptable category during such a course and got his medical category clearance documents only after expiry of the course. We do not understand as to why the respondents kept on giving him chances without ascertaining his medical category as obtaining at that point of time. Notwithstanding the above, it is

quite evident from the records that the applicant had never failed at a BYOs course. He was at every occasion returned to the unit on medical ground after passing first half of the course. Therefore, his case will not squarely fall within the definition of those who could not qualify BYOs course and deserved to be removed from service under provision of RA 1987 para 77 or SAO 1 of 2006. The application of such provision to this case appears to be highly misplaced and grossly unjust and misapplication of law. The applicant's application for IAST should have been considered in a positive manner as such provision exists in the rules quoted above. The authorities again failed to apply their mind to positively resolve the issue and make all efforts to retain the officer in service. At this point, we would also like to observe that Indian Army is suffering from acute shortage of officers especially in younger service bracket like the applicant. The expenditure involved in his initial training at NDA/IMA and subsequent experience in counter insurgency and other ^{field} ~~filed~~ peace areas, has been enormous and such an officer could always be usefully employed in other establishments. There is nothing on record to establish that the conduct and functional efficiency as a regimental officer of the applicant was deficient at any stage. Under such circumstances, throwing away an officer of such value would be a great loss to the Army and to the country. Therefore, it would be always wise and prudent to make every effort to retain a trained officer like the applicant and obtain his best utility in the organization, more so when the rules permit, as in this case and in fact, the basic intention of the Govt. to issue Special Army Instruction No. 1/2006 dt. 1.1.2006 points to this end.

15. In view of what has been discussed above, the action/proposed action against the applicant by the respondents cannot be approved of. Accordingly, we allow the original

application. The impugned orders dt. 2.11.10 and 30.3.11 are hereby set aside and quashed. The respondents, especially respondent No. 2, are directed to consider and take a decision with regard to detailing the applicant, who is now stated to be in acceptable medical category, for completing the rest of the BYOs course in Infantry. In case he is found to be not fit medically, or in case the respondents think it proper, to allow his application for ISAT dt. 25.10.07 (annexure-G) which is still pending with the authorities. A decision in this regard be taken and conveyed to the applicant within 60 days from the date of communication of this order. The interim order is made absolute.

16. No costs.
17. Let plain copy of the order be handed over to both the parties.

(LT. GEN. KPD SAMANTA)
MEMBER (ADMINISTRATIVE)

(JUSTICE H.N.SARMA)
MEMBER (JUDICIAL)