

(20) 06 AFT CK 0030

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1999 Of 2018, Miscellaneous Application No. 1698 Of 2019

Vivek Beniwal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 19, 0020

Acts Referred:

- Armed Forces Tribunal Act, 2007 - Section 14

Hon'ble Judges: Sunita Gupta, J; B.B.P. Sinha, Member (A)

Bench: Division Bench

Advocate: Amit Kumar Singh, J.S. Rawat

Judgement

1. In this O.A filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant is seeking the following reliefs:

(a) Quash the impugned order dated 04.05.2018, whereby the applicant has been asked to give his willingness/unwillingness for transfer to Admin

Stream;

(b) Direct the respondents to keep the applicant in the Fighter Pilot Stream or alternatively do not change his stream from flying to ground duty; and

(c) Stay the effects of the impugned order dated 04.05.2018 whereby the applicant has been asked to give his willingness/unwillingness for transfer to

Admin Stream until the present O.A is disposed of.

Brief Facts of the Case:

2. The applicant was commissioned in the Indian Air Force on 20.06.2015. After going through structured stages of flying training i.e. Basic Stage,

Stage 1, Stage 2 and Stage 3, he was posted to 224 Sqn with effect from 07.11.2016 to undergo type training in Jaguar aircraft i.e. Jaguar Operational

Flying (JOE) training. As an under-training operational pilot on Jaguar aircraft, the applicant started his flying training from 15.05.2017, after the

completion of his ground training and simulator training. On 08.06.2017, the applicant, while flying his fifth solo sortie, met with an incident while

landing, whereby the aircraft went off the runway during the landing roll. Luckily, the applicant escaped unhurt. It was suspected that this accident

was due to pilot error by the applicant, however, nothing certain could be said about it because the Court of Inquiry (CoI) which was looking into this

matter had not yet been finalised till the filing of this OA. In the meantime, unconnected with this accident, 224 Sqn was routinely visited by the

Aircrew Examination Board (AEB). The AEB, as the name suggests, is an IAF organization under the control of AIR HQ and its mandate is to visit

all Flying Squadrons of IAF and check the pilots for their flying skills and on aircraft related ground subjects. It is also required to check the suitability

of the flying environment at an Air Force Airfield. In the written tests conducted by AEB on 24.07.2017 for all the pilots of 224 Sqn, the applicant

failed in the test in three papers. As per the policy on the subject, the applicant was given written warnings and he was given another re-test by AEB

after 30 days of failing, however, he failed again in the re-test and was again given written warnings. Accordingly, as per the policy on under-training

pilots, the applicant's Sqn initiated a Training Review Board (TRB) of the applicant, which recommended that the applicant is not fit to be a fighter

pilot and that he should be re-streamed into multi-cockpit stream, basically implying shifting of the applicant to transport or helicopter stream.

However, while examining the recommendations of TRB, the competent authority at Command HQ and Air HQ opined that a pilot who has a track

record of being weak in ground subjects cannot be absorbed in another stream of Flying Branch and needs to have a change of branch to a Non-

Flying Branch of the Indian Air Force i.e. Administrative Branch. The present O.A by the applicant is against the decision of respondents to change

his branch from Flying to Administration.

Arguments by Counsel for the Applicant:

3. Mr. Amit Kumar Singh, learned counsel for the applicant, at the outset, submitted that the impugned order dated 04.05.2018 is arbitrary and illegal, especially in view of the fact that the Col has not been concluded and no adverse findings against the applicant has been made. It has also been contended by learned counsel for the applicant that it was due to the pressure on account of the pendency of the Col against the applicant, he could not clear the AEB. The respondents ought to have intimated the applicant about the re-test sufficiently early, which is against the provisions of AO 48/2015. The applicant could not clear the AEB in the second attempt because at that time he was suffering from acute viral fever and was advised for bed rest. It is also his contention that nowhere in the AO 48/2015 specified the number of attempts a candidate has to clear the papers.

4. The learned counsel for the applicant further contended that the TRB initiated against the applicant as per CASI Part 01/01/2017 and HRP is illegal on account of the reason that the applicant never exceeded the maximum number of written warnings in clearing his ground subjects. Since the applicant was issued only four warnings, the maximum prescribed limit of four warnings was never exceeded. A TRB is to be constituted on a fifth warning, which was never issued to the applicant. Furthermore, the TRB does not have the signature of the applicant and the signature in the TRB is not of the applicant.

5. The respondents have already invested huge amounts for the training of the applicant and since the applicant has cleared all the tests, there is no justification on the part of the respondents in transferring the applicant to an entirely new wing of service. Therefore, the action of the respondents in seeking the willingness/unwillingness for transfer is legally not sustainable and the impugned order dated 04.05.2018 is liable to be quashed.

Arguments by Counsel for the Respondents:

6. On the other hand, Mr. Rawat, learned counsel for the respondents contends that there is no illegality or irregularity in the impugned order, in view of the fact that the order under challenge is not a final order, which is only a proposal for transferring of Branch of the applicant from Flying to Adm/FC. His willingness/unwillingness has been sought only for processing the case and as such, the instant O.A is bereft of bona fides. The applicant

has not availed the remedy available under the Air Force Act before filing the instant O.A.

7. According to the learned counsel for the respondents, the performance of the applicant during the basic stage was 'high average' in air and ground

subjects and in Stage II, his performance was 'average plus' in air. In Stage III training, his performance was 'high average' in air and ground subjects.

He was administered two letters of caution in ground training in Stage I and two letters of caution and one written warning for poor performance in

flying in both Stages II and III. His performance during Stage I training was 'high average' in ground subjects and 'high average' in flying. He was

awarded two letters of caution for failing in Aero-engine and Instrument FTs. In Stage II(F), his performance was 'average plus' in both ground

subjects and flying. He was awarded two letters of caution and one written warning in conversion phase. He was cautioned on being found wanting in

ground preparation. In Stage III (F) Sem-I, his performance in ground subjects and flying was 'high average' and he received two letters of caution

and one written warning. His performance in Stage III (F) Sem II in ground subjects and flying was 'average'.

8. For type training in Jaguar, the applicant started flying on 15.05.2017. His performance in MCF was average. After completion of ground training

and simulator training, his performance in pre-solo gen test was satisfactory. On 24.07.2017, he appeared in the unit AEB Inspection and appeared in

the written test with all other pilots of the Sqn. He failed in Gen 1, Gen 2 and Tech 1 and again failed in the full re-test conducted by AEB after a gap

of 30 days. He was administered two written warnings each for both the failures, while in the conversion phase, his progress was satisfactory. He

was checked for the tendency to forget checks and was asked to improve on procedural aspects. In the second sortie (fifth solo on type) of the

consolidation phase, he was blamed by the CoI for an incident wherein he went off the RW during the landing roll. He also submits that the course

reports of the three stages of training mentioned that the officer requires continuous guidance and supervision to channelize his efforts. He was found

weak in ground subjects and showed a lackadaisical approach towards ground subjects and sortie preparation. The applicant was finding it difficult to

cope up with the pressure and demand of fighter flying and was not able to strike balance between flying related activities and ground subjects. He was not able to prioritise the requirements of a single cockpit fighter ac and could not cope up with dynamic fighter fleet demands and dedicate necessary attention to ground subjects and AEB tests. Hence the applicant was recommended by training review board (TRB) to be re-streamed to multi-crew cockpit. Since even in the multi-crew transport ac and helicopters, minimum standards of performance in ground subjects and knowledge of SOPs and procedures would need to be adhered to, which the applicant seemed incapable of. Therefore, the applicant was considered unfit for multi- crew ac also and recommended for a change of branch by Command HQ, which was approved by VCAS on 26.02.2018 and forwarded to the Personal Branch. On a pointed question to the learned council as to why command HQ decided to differ from the recommendations of TRB, he replied that TRB is initiated at Sqn level. In this case the Sqn of applicant was a fighter squadron hence while their first recommendation in TRB that applicant is not fit to cope up with dynamic fighter fleet demands, was accepted, however, their second recommendation for restreaming the applicant into a multi cockpit stream i.e. transport or helicopters was not accepted because a fighter Sqn doesn't have the best expertise to recommend as to who is suitable for transport and helicopter stream. In this case the AOC-in-C of command HQ, who has the advice of senior level experts from transport and helicopter stream, has recommended for change of branch. The same has been approved by VCAS at Air HQ who again has a team of very senior advisors from transport and helicopter stream. He clarified that as per policy on the subject, AOC-in-C of controlling Command HQ is required to give his opinion on the recommendations of TRB and the final approval is by VCAS at Air HQ. Both these officers are at the apex of IAF organisational leadership and have a larger and better picture of the IAF hence the decision to change the branch of applicant is in line with the policy on the subject.

9. Learned counsel for the respondents further submitted that the power of Courts/Tribunals to judicially review administrative orders/decisions is

limited. In this regard, placing reliance on the decision in Jayrajbhai Jayantibhal Patel v. Andbhai Jayantibhai Patel in C.A No. 4056 of 2006, he

contended that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety

or it shocks the conscience of the Court in the sense that it is in defiance of logic or moral standards. The learned counsel for the respondents also

relied on the decision of this Tribunal in Flt Lt Gowni Shankar v. Union of India and others (O.A No. 363 of 2017 decided on 01.06.2018), wherein the

Tribunal found that the selection of officers for various streams in the Indian Air Force is being done in a very fair and efficient manner, bereft of any

bias in any form. It also held that in addition to organisational interest of the Air Force, aspirations of individual flight cadets are also being given due

weightage and consideration while taking decision on allotment/re-allotment of streams. When organisational interests clash with individual aspirations,

the former will have to prevail. Having said so, the Tribunal found that the decision to re-stream the applicant therein into the navigational stream was

taken fairly after due process and there was nothing mala fide involved in the decision, which warrant interference. On the basis of the aforesaid

finding of this Tribunal, the learned counsel for the respondents argued that there is no illegality or irregularity in the impugned order and as such, the

instant O.A deserves dismissal.

Consideration:

10. After hearing both the sides and going through all the records, including the relevant policy letters, TRB and the relevant notings on file, the

following questions need to be answered by us:

(a) Whether the respondents have followed the due policy and process while dealing with the applicant's case?

(b) Whether the decision of the competent authority at Command HQ and Air HQ overruling the recommendation of the TRB for re-streaming of

applicant within Flying Branch and changing the applicant's Branch from Flying to Administration is valid?

11. Before we proceed to answer the above mentioned questions, we would like to put it on record that the field of aviation has historically close

encounters with accidents, incidents, deaths, injury and claims for compensation by accident victims. Thus, the prime motto of Aviation Industry is that

'what goes up in the air must come down safely'. Hence strictest quality control standards of industry, all over the world, are used to certify

airworthiness of the aircraft and its spare parts. Similarly, training of pilots, engineers and technicians is a demanding and a long-drawn process with

strict quality control at every stage. While military aviation has all the challenges which are inherent in Civil Aviation, however, it additionally has the

challenges of managing weapon systems, electronic warfare systems and mission planning in hostile territory with no ground-based support. In this

backdrop, we have noted certain relevant facts about pilot training in IAF, which are as under:

(a) The Indian Air Force trains its pilots initially in three stages i.e. Stage-1 or Basic is for basic flying training for six months in a basic trainer aircraft,

Stage-2 is again for six months, however, it is advanced flying training in a faster and more demanding aircraft and after successful completion of

Stage-2, the cadets are commissioned as officers in the Air Force. Stage-3 training, after commission for fighter stream, is applied flying training and

involves a high-end jet trainer which can carry rockets and bombs. After successful completion of Stage-3, the pilots are posted to Operational

Squadrons of the Air Force where again they have to undergo type training for the type of aircraft in that squadron.

(b) In this case, the applicant was in Fighter Stream after Stage-2 and after completion of Stage-3, he was posted to 224 Sqn (a type training Squadron

for Jaguar aircraft) with effect from 07.11.2016. This being a type training Sqn was imparting type training i.e. Jaguar Operational Flying training.

(c) It is well known that, without adequate theoretical knowledge of the aircraft and its associated systems, a pilot can unwittingly cause accidents

which could not only result in killing him, his crew and passengers but could also result in the death of innocent people on ground. Additionally, a pilot

who does not have full knowledge of his aircraft and related systems is bound to fail in the operational exploitation of the aircraft in war like

conditions. Thus, passing marks for ground subjects are historically on the higher side for pilots in the field of Civil Aviation as well as Military

Aviation. As per the existing policy of the Air Force, on post Stage-3, Jaguar Operational Flying training for under-training pilots, the minimum marks required to pass are 90% in emergencies, 85% in checks and procedures and 60% in general theory.

(d) It is in this backdrop that the applicant initially met with a landing incident, in his fifth solo sortie on 08.06.2017 while undergoing the Jaguar

Operational Flying training in 224 Sqn. In this accident, the supervisors and the Col were of the prima facie opinion that the accident was due to failure

of the applicant in correctly carrying out checks before landing in terms of ensuring correct position of 'RUDDER TRIM'.

(e) After about one and half months of the landing accident, in an unrelated development, 224 Sqn was routinely visited by the centralised team of Air

HQ called AEB to check the quality of air crew performance and flying environment related to 224 Sqn. The AEB routinely plans visit to all Flying

Sqns of the Air Force and continues with this job of checking the quality of aircrew throughout the year. In this visit of AEB, the applicant was tested

along with all other pilots of 224 Sqn, however, he failed in three papers i.e. Gen-1, Gen-2 and Tech-1. Thereafter, he again failed in the re-test

conducted after one month by the AEB.

(f) His two consecutive failures in a test conducted by an outside agency i.e. AEB, which is primarily meant to ensure quality control on the Air Force

aircrew resulted in initiation of action as per policy on the subject by Air HQ and Command HQ, which resulted in initiation of Training Review Board

(TRB) at Sqn level and a final decision by the respondents to change his branch from Flying to Administration.

12. In view of the above-mentioned factual backdrop, so far as the answer to the first question i.e. whether the respondents have followed due policy

and process while dealing with the applicant's case, is concerned, we are of the opinion that the respondents have followed the relevant policy on the

matter. We understand that aviation and training of pilots is a specialised field and that behind the policy guidelines of the Air Force on this matter,

there is decades of experience and consideration of recommendations by hundreds of Cols on aircraft accidents. At the same time, we are not

convinced by the logic advanced by the learned counsel for applicant that because the applicant was under pressure of CoI after landing incident,

therefore, he failed in the written test by AEB. We are also not convinced by the logic that the applicant failed in the re-test because he was not given

30 days' time as per the policy to prepare for re-test or that he was not keeping well at the time of retest. We are convinced that the applicant has got

more than 30 days from his failure to subsequent re-test by AEB in accordance with policy on the matter. We are also not convinced by the hyper

technical arguments advanced by the learned counsel that the TRB was illegal and that the applicant should have been given more warnings and

chances and that the applicant had not signed in his TRB remarks and somebody else has signed for him. We have gone through the proceedings of

the TRB and other records and it is clear that the applicant was showing clear signs of weakness in ground subjects and sortie preparation.

Applicant's statement in the TRB is matching with ground realities and sums up the factual position i.e.: Statement by 1.1/7"" Pilot. I have made sincere

attempts to achieve the requisite proficiency in flying the Jaguar ac to the best of my ability. I appreciate that I have been given adequate opportunities

in terms of preparatory time for AEB ground subject's examinations. There is a lot desired out of me to be able to cope up with the challenges of

flying in fighter ac and somehow I am not able to dedicate balanced attention to both facets of flying and ground subject's preparation. The same has

been brought to my knowledge and explained at length by my Commanding Officer, JO and Sqn supervisors. I shall continue to put in my best efforts

to be an asset to the IAF.

13. Additionally, the fact that the applicant was weak in ground subjects is confirmed by a series of remarks of the Commanding Officer and other

senior supervisors in the Sqn and the Air Force Station in the Training Review Board (TRB) records. The entire picture in totality is summed by the

concluding remarks of the TRB i.e.: Remarks by TRB. He was marked as weak in ground subjects with lack of interest towards ground subjects and

sortie preparation at times. In addition, he has also been involved in flying incident on type prior to AEB test and subsequent retest. It was noticed that

he was finding it difficult to cope up with the pressure and demand of fighter flying and was not able to strike balance between flying related activities

and ground subjects. Details of the Letters of Caution and Written Warnings are given at remarks by TRB. The officer has not been able to prioritise

the requirements of a single cockpit fighter ac. Also, he could not cope up with dynamic fighter fleet demands and dedicate necessary attention to

ground subjects and ASS tests. In view of the above, board recommends that the officer may be re-streamed to multi-crew cockpit.

Thus, we are of the considered opinion that as far as the first question is concerned, the respondents have followed the due process and current policy

in dealing with the applicant's case.

14. As far as the second question is concerned i.e. whether the decision of the competent authority at Command HQ and Air HQ overruling the

recommendation of the TRB for re-streaming of applicant within Flying Branch and changing the applicant's Branch from Flying to Administration is

valid, we have noticed that the complete process is based on Air HQ human resources policy Part 1/PO/FA/11/2015 dated 23 Dec 2015, as amended

vide Air HQ letter Air HQ/S98801/1/P0-5 dated 08 Jan 16 and Command Air Staff Instructions CASI part 1/01/2017 dated 28.04.2017. We have

scrutinised both these policy letters in detail. The Air HQ policy letters heading is self-explanatory i.e. ""DISPOSAL OF AIRCREW FOUND

PROFESSIONALLY/ MEDICALLY UNFIT ON ANY TYPE OF AIRCRAFT OR DISPLAYING LACK OF INTEREST/ CONFIDENCE in

FLYING"". This policy letter of Air HQ vide para 3 (f) specifically covers the case of applicant i.e. 'Aircrew found unfit during conversion training in

type training squadrons'. This policy letter specifically covers, vide para

9, 'Procedure to be followed for change of type/ stream/ branch of an air crew'. Similarly, the above mentioned policy letter of Command HQ i.e.

CASI part 1/01/2017 dated 28.04.2017 is in line with the Air HQ policy letter and specifically deals with type training which is relevant to the case of

the applicant.

15. A perusal of above-mentioned policy letters issued by Air HQ and Command HQ give clear directions on procedure to be followed for 'aircrew

found unfit during conversion in type training Sqns'. Both these policy letters are self-explanatory and clearly state that the TRB initiated at Sqn level

will have recommendations of AOC-in-C at Command HQ and will finally be approved by Vice Chief of Air Staff (VCAS) at Air HQ.

16. Thus, in the above mentioned background of policy on the subject, we have noticed that the AOC-in-C at Command HQ has made the

following recommendations:

Remarks by AOC-in-C SWAC .The performance of the officer in flying as well as ground subjects ranged between Averages to Hi Average

throughout his flying training. AEB vide AEB/S 13/2/33 W/Air dated 31 Aug 17 recommended suspension of flying training and initiation of

suitable action. Additionally, the officer was involved in a flying incident attributable to improper checks and procedures. The traits and

attitude displayed by the officer do not merit a change of stream but a change of branch and endorsed the recommendation of the TRB

proceedings.

We have also noticed that the VCAS at Air HQ has agreed with the recommendations of AOC-in-C and approved the change of branch for the

applicant on 26.02.2019.

17. Thus, looking at the complete sequence of events, we are clear that the Indian Air Force is a professional fighting force and has evolved its policy

on training of Pilots over decades of experience. Thus, based on the policy, the decision as to who should continue in Flying Branch and which under-

training pilot should be removed from Flying Branch into a Non-Flying Branch is an administrative decision of the Indian Air Force. In this particular

case, we are clear that the AOC-in-C of Command HQ and the VCAS at Air HQ being very senior and experienced officers of the Flying Branch

have the competence as per existing policy, to overrule/modify the recommendations of the TRB and we have not been able to find any valid ground

to interfere with this decision. We are also clear that if there is a conflict between individual aspirations and organisational interests, the latter would

always prevail over the former and hence, we cannot find fault with the respondents in their decision making merely because it goes against the

individual interests and aspirations. Unless the decision taken by the respondents is illogical or suffer from any bias or procedural impropriety, no

interference is called for, so far as the impugned order is concerned.

18. Viewed thus, we are of the considered opinion that the applicant has failed to make out a case for himself hence the instant O.A is liable to be

dismissed. We do so. However, the respondents are directed to grant another opportunity to the applicant afresh, within a reasonable time, to exercise

his option for change of branch.

19. No order as to costs.

20. The order dated 07.12.2018 is hereby vacated. Miscellaneous application pending, if any, shall stand closed.

Pronounced in open Court on this 19th day of June, 2020.