

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. NO.D-2785/2012

Date	Order with signature of Judge
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Present:

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Muhammad Iqbal Mahar.

Tayyab Javed..... Petitioner

Vs.

Federation of Pakistan

Through Secretary Defence & Ors.....Respondents

Mr Imdad Khan , Advocate for the petitioner.

Mr. Liaqat Hussain, Standing counsel along with Sub-Lieutenant Zeeshan Zuberi.

Date of Hearing 11.05.2016

Muhammad Iqbal Mahar J:- The petitioner has approached this Court to seek following relief(s) :-

- a. To declare that the orders of Naval Headquarters dated 06 May 2011 for Discharge of Petitioner from service is discriminative, unjustified and illegal and the same be declared as null and void.
 - b. To re-instate the Petitioner in service with all back benefits and with the same seniority and direct the Respondents by accepting the joining report of the Petitioner and thereafter convert to Pak Marines Pool as per Naval Headquarters Policy like conversion of others officers of the same category.
 - c. To direct the respondents to issue the B.Sc Degree as per law.
 - d. Any other relief/s may also be granted, which this Honourable Court may deem fit and proper in the circumstances of the case.
2. The case of petitioner is that he was inducted as Cadet in Pakistan Naval Academy Karachi for training. He passed the B.Sc and qualified the basic training and got commission as

Acting Sub/ Lieutenant in Operation Branch of Pakistan Navy on 3.7.2008. The petitioner was required to undergo professional training for four years therefore he joined Pakistan Navy Engineering College (PNEC) at Karachi. He completed 05 semesters but could not qualify in 6th semester as he failed in one subject “Communication System”. The petitioner submitted an application to respondent No. 5 for his conversion to Pak Marines Pool who forwarded it to Respondent No: 3 for approval but same was rejected and the petitioner was discharged on academic ground. His request for issuance of B.Sc Degree was also rejected. He filed appeals to Respondent No: 2, which were dismissed thereafter he filed instant petition.

3. In response to the Notice of this Court Respondent No: 1 to 6 filed their parawise comments and refuted the claim of the petitioner by raising certain legal as well as factual grounds and stated that the petitioner has failed in two subjects “Microprocessor Architecture and Programming” and “Net Work Analysis” in 4th semester therefore he was discharged and was declined B.SC Degree.

4. Learned counsel for the petitioner contended that the impugned order Dated 6.5.2011 is illegal and against the law; that the petitioner qualified for conversion to Pak Marines Pool as per policy but his appeals were rejected without showing any reason. He further contended that on similar recommendations of Respondent No. 4 some other candidates were converted to

Pak Marines Pool but the Respondents did not consider the case of Petitioner malafidely, therefore, according to him the order passed by Respondents is discriminatory and unjustified. In support of his argument he relied upon **PLD 1996 Supreme Court 632 and PLD 2007 Supreme Court 498.**

5. Conversely, the learned Standing counsel argued that the instant petition is not maintainable as there is bar under Article 199(3) of the Constitution of Pakistan and that the petitioner has not come with clean hands. He further submitted that the petitioner has failed in two subjects in 4th semester and his application for conversion to Pak Marines Pool was processed but same was not acceded to in the light of Policy. He also submitted that the petitioner did not complete phase-III training, which was prerequisite condition for issuance of B.Sc Degree, therefore he was declined the Degree and that none was converted to Pak Marines Pool in similar circumstances. Lastly, he submitted that the petitioner is not entitled for any relief, therefore, instant petition may be dismissed.

6. We have heard the learned counsel for petitioner, learned Standing counsel for the Government of Pakistan and have gone through the material available on record. Both the learned counsel have extensively advanced their arguments and requested that this petition may be disposed of at katcha peshi stage.

7. Perusal of record reflects that the induction of the petitioner as cadet and training in Pakistan Naval Academy has been admitted by the respondents in their comments but our attention has been drawn to Annexure “F” a summary of the petitioner’s academic record at PNA and PNEC filed by respondents which reveals that while studying at Pakistan Navy Engineering College the petitioner failed in two subjects “Microprocessor Architecture and Programming” and “Network Analysis” in 4th semester therefore he was relegated. However, he was provided an opportunity to improve and appear in retest examination of the failed subjects but he again failed therefore impugned letter for withdrawal from training and discharge from service was issued. As regards prayer clause ‘c’ for direction to respondents to issue B.Sc Degree, the learned Standing counsel relied upon a letter placed at Annexure “E” of the comments whereby the petitioner was informed that his request for issuance of B.Sc Degree was given due consideration during 34th ACM held on 31.10.2011, however the same has not been approved due to absence of phase-III training, which was prerequisite condition for qualifying B.Sc degree.

8. The perusal of record further reveals that the petitioner had filed Appeals before Respondent No.2 but the same were not acceded to and the petitioner was informed accordingly.

9. We have also gone through the Statute of National University of Science and Technology (NUST) filed by respondent in which relegations and withdrawal are defined and for the sake of convenience the relevant clauses are reproduced hereinbelow:-

“6. Relegation

(c) A student is recommended for relegation by the Faculty Board of Studies for approval by main office, NUST in case of NUST students and by respective HQs/Directorates in case of military / paying cadets, subject to any of conditions listed below, namely :-

(v) if the student fails in repeat / retest of a failed course.”

7. Withdrawal.

(a) Definition. “Withdrawal” means that a student is considered unsuitable for further studies at NUST and is withdrawn from the program.

(b) Policy. A student is recommended for withdrawal as per latest policies of the University by the Faculty Board of Studies for approval by Main Office, NUST in case of NUST students and by respective services HQ/Directorates in case of military students, subject to any of the condition listed below, namely;

(i) if the student has been previously relegated (not technical relegation) and earns another relegation.

10. From the plain reading of above Statute, it appears that the Authority has acted in accordance with Statute after compliance of all legal formalities and there seems no illegality in the impugned order. Even otherwise, there appears factual controversy involved in the instant case as the petitioner claims that he could not succeed to pass one subject in 6th semester

whereas the respondents state that he failed in two subjects in the 4th semester. Apparently this is a factual controversy and it is settled law that controversial questions of fact could not be decided in exercise of powers under Article 199 of the Constitution of Islamic Republic of Pakistan but it can only be determined by competent forum after recording of evidence. So far the case law relied upon by learned counsel for the petitioner is concerned, the same has no relevancy with the facts and circumstances of the instant case. In the case laws cited supra, the honourable Apex Court held that Article 199(3) of the Constitution of the Islamic Republic of Pakistan had to be strictly construed where in action of authority was in colourful exercise of power and was tainted with malice but the learned counsel for the Petitioner has not been able to show that the action of authority is malafide or without jurisdiction hence Petition is barred under Article 199(3) of the Constitution of Pakistan.

11. In view of the above discussion instant petition is dismissed along with the listed application with no order as to costs.

Karachi;

Judge

Dated:

Judge