

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 703/2016

Wg Cdr Pooja Thakur

Vs.

UOI & Ors

.....Applicant

.....Respondents

For Applicant

:Ms. Jyoti Singh, Sr. Advocate

with Mr. S S Pandey & Ms. Tinu Bajwa, Advocates

For Respondents

:Mr. Harish V Shankar, Ms. Nisha Mohandas, Advocates

CORAM:

HON'BLE MR. JUSTICE V. K. SHALI, MEMBER

HON'BLE LT. GEN. S.K. SINGH, MEMBER

Pronounced on 14.07.2017

ORDER

1. This is an OA under Section 14 of the Armed Forces Tribunal Act, 2007 wherein the Applicant is aggrieved by denial of consideration for Permanent Commission in Indian Air Force (IAF), vide their impugned order dated 16.06.2016.

2. Briefly stated, the facts of the case are that the Applicant joined the Indian Air Force as Short Service Commissioned Woman Officer on 16.06.2001 in pursuance to the circular dated 25.11.1991 issued by the Respondent No.1. Her term of engagement as mentioned in the said instruction relevant for the present case reads as under:-

"5. Tenure of Engagement: Initial engagement period would be for 5 years from the date of commissioning. On completion of this period, the officer may opt for Permanent Commission (PC) or another Short Service Commission (SSC) Tenure of 6 years. The Officer seeking such extension will not be considered for permanent commission. Grant of extension or PC would be subject to suitability and requirement of the Air Force.

6. Permanent Commission: SSC Officers granted PC will be eligible for all benefits/privileges which are admission to the regular PC Officers."

3. It is alleged that as per the instructions, the Applicant ought to have been given the consideration for permanent commission in 2005-06 as she was completing her five years of SSC on 16.06.2006 but admittedly the Respondents

did not allow the Applicant to opt for Permanent Commission and forced her to opt for extension. The Respondents in order to derive undue advantage in the matter in 2006 came out with a new instruction by which the Male Officers also were denied permanent commission in future.

4. Its is alleged that the Respondents backed out from the promise held to the Applicant and other similarly situated officers and it is only when Hon'ble Delhi High Court vide its judgement dated 12.03.2010 directed the Respondents to treat the Women Officers at par with the male officers that the option for Permanent Commission was given to the Applicant in July 2011.

5. It is alleged by the Applicant that she was confronted with grave domestic problems as her husband who was the only child of his parents was required to look after his old and ailing parents and the Applicant was taking care of them. The father in law of the Applicant ultimately passed away in June, 2011. The Applicant submitted her option seeking extension, as she wanted to take a final decision on this issue after some time, as she was not in a proper mental frame at that time.

6. It is alleged that the Applicant was compelled to send her option again as she was not allegedly clear in her option for Permanent Commission and in Jan 2012, she was forced to submit an option in wherein also she mentioned that her present domestic situation is not allowing her to opt for Permanent Commission. She at no point of time was told that she will not be allowed to revise her option at a later stage.

7. The Applicant continued to serve the Respondents with the same zeal and enthusiasm, despite her personal commitments which is evident from the fact that she was awarded two AOC-in-C commendations and one Chief of Air Staff Commendation during her tenure. She topped all the service courses she was detailed and had every reason to believe that her Appraisal Report assessment till

date also must be highest amongst her peer group which can be verified from the records. She also represented the services in World Parachuting Championship in 2011. Applicant served the Respondents in a most exemplary manner and she has the rare distinction of being selected amongst contemporaries and successfully commanding a tri service contingent for the first time in Indian history which was detailed to present the guard of honour to US President Mr. Barrack Obama which was acclaimed as a historical event and recognized as a major step towards gender equality and women empowerment.

8. In July, 2015, the Applicant requested for permanent separation from service as it was becoming very difficult for her to maintain a balance in her all commitments. It is alleged that her mother in law joined her to help, during the difficult time because of which she was able to continue further, thus the Applicant withdrew her application -Premature Separation from Service. It is stated that it is clear from this that she was keen to continue and was taking such step for getting relieved permanently only against her will, driven by the circumstances. Therefore having found an alternative for her small school going daughter, she withdrew her requests for Premature Separation from Service (PSS).

9. The Applicant was to be relieved from the duties on 16.06.2016 in terms of the order dated 20.01.2016 with the option of availing annual leave and terminal leave while still on the rolls of Air Force, the Applicant finally exploring all her option as well as the prevailing Rule position wherein in absence of any situation that option once exercised cannot be withdrawn and this Tribunal has been applying the same principle as applied in case of pre mature retirement finally submitted her option for reconsideration for PC on 06.06.2016 but the Respondents informed the Applicant since she has earlier rendered her unwillingness, she cannot be

considered on the basis of the impugned HRP 3/2011 when the said HRP did not have any such stipulation.

10. The Applicant challenged non-consideration of her case for grant of Permanent Commission and discharging her after completion of her tenure.

11. The Respondents filed their detailed reply and contested the claim of the Applicant by way of preliminary objection as well as on merits.

12. The Respondents have contended that the present OA is a serious abuse of the process of this Hon'ble Tribunal. The Applicant has approached this Hon'ble Tribunal with unclean hands and has indulged in acts of "*suppressio veri suggestio falsi*," and hence abused the process of this Hon'ble Court, as laid down by the Hon'ble Supreme Court in various judgements including that of **Kishore Samvrite Vs State of UP & Ors (2013) 2 SCC 398**. The present OA deserves to be dismissed with exemplary costs not only for the reason that the Applicant is indulging in suppression of facts but also because Applicant is seeking to garner media attention to in some manner substantiate, what the Respondents believe are completely misconceived contentions.

13. The Respondents further contended that the Applicant herein has not mentioned the fact of her having opted for resettlement training sponsored course, which she is undergoing. This fact has been hidden by the Applicant even in her letter dated 06.06.2016. The same is even more serious in view of the fact that the Applicant has been undergoing the training since 04.04.2016.

14. The Applicant herein has also indulged in pick and choose, in so far she has chosen to come before this Hon'ble Tribunal seeking a relief which has a clear equitable element to it but only exhibited such documents which are perceived to be favorable to her. It is submitted by the Respondents that the Hon'ble Supreme Court has clearly laid down that it is the bounden duty of a litigant to disclose all

relevant and pertinent facts when approaching the Court. The Applicant has chosen not to exhibit a number of documents, inter alia, her request for Premature Separation from Service (hereinafter referred as PSS).

15. The Respondents contended that the Applicant is doing nothing but approbating and reprobating and the same is not permissible. The Applicant has been a member of a disciplined force and has exhibited numerous media clippings of her exploits in the force. As a member of a disciplined force, one is expected to understand and appreciate the rules and regulations applicable to her. One is also meant to honour the choices made during one's tenure. The disciplined forces of the country lay a lots of emphasis on "honour" and the choice having been made at the relevant time. Subsequent actions clearly show that there is an attempt to undo every single choice made by her. The Applicant opted for an extension in 2011. In January, 2012 she puts down her willingness for extension and unwillingness for permanent commission as then there would be no scope for premature retirement. The Applicant's intent is absolutely clear in the year 2011-12 itself that she did not want Permanent Commission. The Applicant opted for Permanent Separation from Service on 10th July 2015, with effect from 11 January 2016. However, on 04 Dec., 2015, the Applicant applied for withdrawal of approved Permanent Separation from Service and the same was granted to her and she was allowed to continue in service till 16.06.2016. It is pertinent to note that the Applicant did not apply for any reconsideration for Permanent Commission even at the time of withdrawing her premature retirement. The Applicant also opted for resettlement course and is undergoing the same since 04.04.2016. The Applicant suddenly just 10 days before her release requested for reconsideration for Permanent Commission apparently on the grounds of changed circumstances. It is stated that a person who is unable to make such important choices in their life, is in fact a person who is not fit to be granted the reliefs as sought for herein.

16. The Respondents have submitted that the Applicant has relied upon a number of events that have transpired in the recent history of the Armed Forces of the Country. What, however, the Applicant has failed to show is how she was deprived of the benefits of any of the said developments. The Applicant is simply showcasing various achievements without showing the gains she had made from the service.

17. The Respondents submitted that the Applicant has not exhausted all remedies before approaching this Hon'ble Tribunal. The Applicant has only made an application requesting for reconsidering option of Permanent Commission. In the application dated 06.06.2016, she has not challenged the release order dated 20.01.2016 of the Human Resource Policy 3 of 2011, which is being challenged by the Applicant. The Applicant has not sought any remedy against the orders dated 20.01.2016 and 16.06.2016 before approaching this Hon'ble Tribunal. The Applicant has also not challenged the policy for Resettlement Course as the same clearly underlines the eligibility criteria therein and a claim for Permanent Commission after availing the benefit of the scheme is clearly barred, inter alia, by doctrine of estoppel. It is stated that she herself admits that she has not made any complaint and has not made any averments regarding the remedies exhausted by her before approaching this Hon'ble Tribunal.

18. The Respondents submitted that the present OA is nothing but an attempt on the part of the Applicant reneging of choices made by her, independently and without any criterion or force at any point at every stage of her career progression and to effectively set to naught every single choice made by an apparent mature officer of a disciplined force. There is absolutely no justifiable right on the part of the Applicant that can be enforced by this Hon'ble Tribunal.

19. So far as the facts of the case are concerned, they are not much in dispute. The only contention of the learned counsel for the Respondents is that the Applicant was indecisive with regard to the grant of Permanent Commission and as a matter of fact, she was not interested in Permanent Commission at all and, therefore, no wrong has been committed by the Respondents.

20. We have gone through the records. We have also considered the contentions made by learned counsels for the parties before the Tribunal. Before dealing with the contentions of the respective sides, it would be worthwhile to reproduce here the relevant policy dated 02.08.2011 issued by the Air Head Quarter known as

Human Resource Policy for grant of Permanent Commission.

"Air HQ/C 98807/4/PO-5 dated 25th May 2006

AIR HEADQUARTERS HUMAN RESOURCES POLICY PART I/PO/CM/21/2006

INTRODUCTION

1. *Short Service Commission (SSC) was first introduced for the AE Branch in the year 1985. In the subsequent years, SSC scheme was made applicable to other Branches and extended to women aspirants as well vide GOI Letter No. Air HQ/S 24745/PP(O)/PC-1/194/DS/D (Air III) dated 23rd April, 01. SSC officers are considered for grant of Extension of Commission, subject to the provisions laid down in above stated GOI letter. QRs laid down in this policy, suitability of an officer and requirements of Air force would determine the grant of Extension of Commission to SSC officers. The IAF at this stage does not have a requirement to grant permanent commission to SSC officers.*
2. *Extension may be granted to all officers subject to a maximum prescribed period laid down under various schemes. To promote professionalism in IAF, it is imperative that only the deserving officers are granted Extension of service. Hence, a need is felt to promulgate QRs and define methodology for grant of Extension to SSC officers, so that SSC officers can prepare themselves for future challenges.*

AIM

3. *Aim of this HRP is to lay down guidelines for grant of Extension to the SSC officers.*

GUIDELINES

4. *Extension of Commission will be granted to SSC officers subject to availability of vacancies in particular Branch/stream and imperatives of cadre management.*

ABOO, as per the composition given in para 13 below, will consider all relevant factors inclusive of officers suitability and requirements of IAF, before making its recommendations for grant of Extension to SSC officers.

5. Eligibility. Eligibility criteria for grant of Extension to the SSC officers only defines minimum acceptable QRs that an SSC officer must meet so as to qualify to be empanelled for the selection. This should not be construed as the only yardstick to qualify for the grant of extension of SSC.
6. Qualitative Requirements (QRs). QRs for grant of Extension of service are given below:-
 - (a) An officer coming up for first extension must have a minimum average of 6.5 in last three ARs.
 - (b) An officer coming up for second extension must have a minimum average of 7.0 in last three ARs.
7. The officer must have a minimum grading of 6.0 (in ARs under consideration), in each of the following professional and behavioural factors for grant of Extension.
 - (a) Professional Factors
 - (i) Professional Competence
 - (ii) Task Achievement and Quality of Output
 - (iii) Communication Skills.
 - (b) Behavioural Factors
 - (i) Integrity and Loyalty
 - (ii) Dependability and Sense of Responsibility
 - (iii) Capacity to withstand stress
 - (iv) Bearing, Demenor and Discipline
8. Medical Category:- Medical category required for the purpose would be as follows:-

(a) Flying Branch	- A ₂ G ₂ (P/T) or above
(b) Ground Duty Branch	- A ₄ G ₂ (P/T) or above
9. Promotion. SSC officers would be 'required to meet all applicable QRs with respect to promotion exams, courses, AR gradings, etc. for the promotion to the next higher rank as per the policy on the subject prevaent at the time.
Procedure
10. Time Frame Time frame for submitting the options for Extension is as follows:-
 - (a) All branches (except flying branch - 12 months before the date of release
 - (b) For extension of SSC in respect of flying branch - Eight year of service.

The form, complete in all respect, must reach Air HQ at the earliest.
11. Selection Process. JDPO-3(E), in consultation with DPP, will establish availability of vacancies for grant of extension of SSC, SSC officers, who have exeercised their option for extension of SSC, will be placed in the order of merit and a Provisional Merit List will be drawn.

12. Composition of the Selection Board. The Provisional Merit Panel will be considered by the Board. Composition of the board will be as follows:-

" (a)

(e)"

13. The BOO will assemble seven months before the date of release of SSC course under consideration. Preferably, the result of grant of Extn/Release will be declared six months before the date of release.

14. Favourable/unfavourable recommendations from the Units/Stations/Commands must be justified by the concerned authority. BOO may override a positive or a negative recommendation with due justification. Adverse reports from Dte of PS, Int and PM are to be given due weightage by the BOO before making its final recommendations to the ACAS(PO). If considered necessary, the BOO may call an SSC officer for interview before grant of Extension. The recommendations of BOO will be approved by the AOP.

CONCLUSION

15. This HRP lays down the guidelines for grant of Extension to the SSC officers and attempts to streamline the process by clearly defining the QRs and responsibilities of various sub-dtes. The procedures and guidelines, enumerated in this HRP, will ensure that the most deserving and optimum number of SSC officers are granted Extension of SSC. This will also ensure long term cadre management of IAF.

16. This HRP supersedes all previous instructions on the subject.

SD/-

(Y.R. Rane)

Air Mshl

AOP"

21. The aforesaid policy was amended pursuant to the judgement of Division Bench of Hon'ble Delhi High Court whereby the gender inequality against the Women Officers for grant of Permanent Commission in respect of specialized branches of Air Force was removed. The branches in which Permanent Commission is granted are consist of logistics and education etc. which are essentially non combatative.

22. It has been laid down in the said policy that the option to seek Permanent Commission has to be applied by the incumbent one year prior to completion of initial or subsequent engagement period. However, due to delayed proceedings in

the case of Short Service Commissioned Officers whose tenure was getting over before June 2012, such officers were to immediately forward their willingness. This was done pursuant to the judgment of the High Court of Delhi when the policy was amended and certain officers were about to be relieved on completion of their SSC tenure.

23. Once the willingness for Permanent Commission is forwarded then only a Board duly constituted by the Respondents will consider the request of the Officers for Permanent Commission depending upon the availability of vacancies in the cadre, secondly, the officer must meet qualitative requirement as laid down by the policy and thirdly, the grants of permanent commission is to be done by the Board. While considering the qualitative assessment, various professional and behavioral factors like professional knowledge, job urgency, integrity, dependability, courage, bearing and demeanor of the officer concerned are to be seen.

24. Coming to the facts of the present case, one contention of the Respondents has been that the Applicant in the year 2011-2012 had only sought extension and when she was called upon to explicitly state as to whether she would be opting for permanent commission, the answer furnished by her was in negative and that is the reason, she was given only extension for 5 years in Short Service Commission only which expired on 16.06.2016. It is to be seen that according to clause 10 of the policy, only such officers were required to give their consent immediately, who had ceased to be employees before furnishing the consent or were likely to superannuate in the near future. It is nowhere stated that the Applicant who was already granted extension of Short Service Commission, was also required to give her consent for the Permanent Commission when the tenure of the Applicant was to end on 16.06.2016, that is almost four years later. The aforesaid necessity of giving consent by the officers had arisen on account of the judgment of the Hon'ble Delhi High Court which had granted Permanent Commission to lady officers who had just

finished their tenure or were likely to finish in the year 2012. The Applicant admittedly was not falling in that category at that point of time. Therefore, her exercise of the option at that point of time in only seeking extension cannot be held against her.

25. According to the policy, if her tenure was up to 16.06.2016, then according to the policy, her option was to be obtained one year prior to the date of demitting her office. This exercise was not carried out by the Respondents. On the contrary, the Respondents are relying upon the non exercise of option for grant of permanent commission by the Applicant in the year 2011-2012 with the request that in the year 2015, the Applicant had applied for premature release and therefore this clearly reflect her intention of not opting for permanent commission.

26. In our considered view, this contention of learned counsel for the Respondents is without any merit because request for premature release had been withdrawn by her before it was accepted. Further request for premature release could not be treated as substitute to the obligation which was to be discharged by the Respondents in seeking the option from the Applicant one year prior to her release as to whether she would like to be granted Permanent Commission. Similarly, the option given by her is for only extension in the year 2011-12 and not Permanent Commission was too distant in the present time to control her release on 16.06.2016 and deprive her from consideration of grant of Permanent Commission by the Board in accordance with law.

27. Moreover, the grant of Permanent Commission especially to the Women Officers must be given a liberal construction and it should be interpreted in a manner which would be beneficial to the women officers rather than the employer. Further such an interpretation would help them to be financially independent and given them greater equality with male counter parts so that gender equality does not remain only a lofty ideal only on papers.

28. The contention of the learned counsel for the Respondent is that the averments as well as the prayer of the Applicant clearly shows that she wants reconsideration of the grant of Permanent Commission or that there are averments in the application which shows that she had reconsideration of her option, clearly shows that she has been given an option once which she failed to exercise and therefore second option cannot be given to her does not cut much ice because of the aforesaid reasons. There has to be an effective option given to the incumbent and not a symbolic one.

29. We have considered this submission of the learned counsel for the Respondent but in our considered view this is only semantics of language of which the advantage is sought to be taken by the respondent. We feel that the Respondents are only finding the technical alibis while as the core issue is, whether the option exercised by the Applicant in the year 2011 for not seeking grant of Permanent Commission was valid and legal and even if it was so, could it would have or could have been changed by the Applicant before the actual discharge.

30. It may be pertinent here to mention that till 2010 the Respondents were not granting any Permanent Commission to any lady officer whatsoever. It was only a consequence of the judgment of the Division Bench in **Babita Punia vs The Secretary, Ministry of Defence & Ors.(SLP (C) No.1597/2003)**, the Respondents changed their policy for grant of Permanent Commission to lady officers in some of the special branches. This was followed by other judgment where the Permanent Commission was given. Thus, as on date this is no mere integra as to whether the Applicant is entitled to consideration of Permanent Commission.

31. The second question arises that whether the option which was exercised in the year 2011 or 2012 as consequence to the amendment to the policy for grant of permanent commission as a consequence of the judgment of Division Bench of

Delhi High Court, can be considered as valid. In this context, we have already expressed over view in para 30 hereinabove and does not need any repetition.

32. It has been contended by the learned counsel for the Respondents that even at that point of time also she had not sought the grant of permanent commission and therefore, this was only an afterthought.

33. During the course of hearing we noted that the Respondents were opposing the Applicant tooth and nail rather than being gracious to consider the case of the Applicant sympathetically. This was reflected from the fact that as many as five officers of fairly senior rank from the department of JAG Branch were opposing the petition of the Applicant which gave a sense of vindictiveness as if at some point of time, being a female officer she had ruffled the feathers of her male counterparts.

34. There has to be a proximity of time between the exercise of option and the demitting the office, so as to make it relevant further, the exercise of option by an officer for grant of permanent commission is not in '*ipso facto*' resulting in grant of permanent commission. It only entitles the officer only for a fair consideration by an appropriate board for granting of permanent commission, which itself is dependent on number of factors like the branch in which permanent commission is sought, availability of vacancy and to top of all, the profile of the officer, whether he or she is meeting the requisite standard set by the Respondents. We are cognizant of the fact that the Tribunal can not direct the Respondent to grant applicant Permanent Commission. All that it is saying is that she must be given a fair consideration at least once as to whether she deserves to be granted Permanent Commission.

35. As regards the alleged indecisiveness, lack of alleged bonafides for grant of permanent commission and the fact that she was permitted to lead the part of her services of guard of honour to a visiting foreign dignitary as a part of *stree shakti* when another lady officer was kept in waiting for providing the said service are not

very material for deciding the legal issue in the instant case as to whether she was to be granted Permanent Commission or not.

36. Similarly the credentials of the officer having been recognized by the superior officer including the Chief of Air Staff by giving her commendation certificates are also not very relevant except that this may be a factor which may be relevant for taking into consideration by the board which has to consider as to whether the officer is meeting the requisite parameters for grant of permanent commission subject to availability of vacancy and other requisite merits being met. Obviously, the best must come to the top and get commission whereas the deadwood be weeded out.

37. So far as the allegation that the officer has the tendency to remain in and around Delhi nothing much can be said except the matters of transfer, postings, are incidents of service and under the AFT Act, they do not constitute even the service matters under Section 3 (o). The transfer and posting is the sole prerogative of the Respondents and any person refusing to obey the direction to this effect, cannot only be proceeded to adjust mentally but also shown the door finally. Even if we assume she had made a request to remain in Delhi or in and around Delhi, it is the Respondents who have been obliging her. As stated hereinabove transfer is an incident of service. Either the person accepts it or faces the consequences for its non-compliance, we have nothing more to say about this. Therefore, these submissions are in our view, totally irrelevant for deciding the question of grant of Permanent Commission.

38. For the above mentioned reasons we direct the reinstatement of the Applicant into service with the direction that she will be considered by the Respondents expeditiously as permissible by constituting a board for grant of permanent commission, subject to there being a vacancy and her meeting the other parameters prescribed by the policy. The learned counsel for the Applicant

had during the course of arguments had expressed her apprehension that she may not be given fair treatment.

39. It is made clear that although the Applicant shall be reinstated with continuity of service for consideration of grant of Permanent Commission, however, she will not be entitled to remuneration/back wages for the period when she is assumed to have remained out of service and has not worked.

40. We only hope and trust that the case of the Applicant shall be considered without any rancor and ill will for having approached the Tribunal for grant of Permanent Commission. It is further clarified that, this order is passed in view of the peculiar facts and circumstances of the case and shall not be quoted as precedent.

(JUSTICE V. K. SHALI)
MEMBER (J)

(LT. GEN. S. K. SINGH)
MEMBER (A)

18.05.2017/sp/vk