

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

O.A. No. 677 of 2021

In the matter of :

Maj Bhavna Verma

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act 2007 by the applicant who is a serving Short Service medical officer in the Army and is aggrieved by the fact that she has not been granted extension and had been ordered to be released from service on 30.04.2021. The officer has made the following prayers :

- (a) Call for the records based on which the respondents have retained the impugned ACR covering the period 01.06.2016 to 31.05.2017, use the same to deny extension by applying the wrong policy as also rejecting her Statutory Complaint vide impugned order dated 02.02.2021 and

issued the order for her release vide impugned orders dated 19.03.2021 and thereafter quash the same

(b) Direct the respondents to follow the policy as applicable in the case of the applicant and reconsider the case of the applicant for extension of SSC on the basis of last three ACRs including NIR and remove the impugned ACR from any such reconsideration of the case of the applicant for extension and grant her extension on that basis with all consequential benefits of continuity of service, pay and seniority etc.

(c) Direct the respondents to remove the impugned ACR covering the period 01.06.2016 to 31.05.2017 from the service Dossier of the applicant

(d) Issue such order/direction as may be deemed appropriate in the facts and circumstances of the case

(e) In the interim stay the release order dated 19.03.2021 till the final disposal of the OA.

Brief facts of the case

2. The applicant was commissioned in the Army Medical Corps (AMC) on 08.01.2015 as a SSCO. From August 2015 till August 2017 the applicant was posted at 426 Field Hospital near Jammu. While serving with this unit she came to know about certain irregularities in the unit and this was brought to the notice of the CO of the unit who was also her IO and FTO. It is

the case of the applicant that while serving with this unit she was given counselling on issues other than the normal official duties possibly with the only intention of spoiling her CR. Subsequently based on such counselling the IO/FTO not only gave a below benchmark CR but also endorsed certain adverse comments in her CR covering the period 01.06.2016 to 31.05.2017. It is also the applicant's case that while the respondents normally follow the closed system in which an ACR is not shown to the ratee, but in the applicant's case she was surprised to receive a communication dated 13.07.2017 vide which she was informed about the average grading by the IO/FTO and the adverse remarks in the CR 8/15 - 5/16.

3. Aggrieved by the circumstances the applicant represented the case vide letter dated 21.08.2017. However instead of acting on the complaints the applicant was issued a reproof dated 07.04.2018 by GOC 26 Inf Div for making a representation without following the laid down channel of communication. In July 2018 while the applicant was due for a time scale promotion to the rank of Major she was not promoted on the due date and it was only after submitting a statutory complaint against the denial of promotion on which she was granted the time scale

promotion to the rank of Major. It is also the applicant's case that in July 2019 she was considered for grant of extension as per the policy letter dated 01.08.2017 whereas she ought to have been considered for extension as per the policy dated 31.07.2012.

4. On being intimated that she had not been granted extension the applicant submitted a statutory complaint in which the impugned ACR 6/16 - 5/17 was assailed. Since the applicant was due for release on 08.01.2020 on completion of 5 years' service and the fact that the statutory complaint was yet to be disposed of, she was granted short spells of extension till the disposal of a statutory complaint. The statutory complaint was finally disposed of vide MoD letter dated 02.02.2021 and vide the impugned order dated 19.03.2021 (Annexure A-1) the applicant was to be released on 30.04.2021. Aggrieved by not being granted extension and by the fact that the statutory complaint was rejected the applicant filed the present OA.

Arguments by the counsel for the applicant

5. The counsel briefly gave out the salient aspects of the service profile of the applicant and stated that the case was based on two issues; first, subjectivity and inconsistency in the CR; second, criteria of assessment. The Counsel stated that the

applicant ought to have been considered for extension as per the criteria as was applicable vide policy dated 31.07 2012 and not as per the policy dated 01.08.2017. In this connection the Counsel relied on the order of AFT (PB) dated 29.11.2013 in **O.A. No. 38/2013 Sqn Ldr Arpita Jain Vs. UOI and other connected matters**, wherein under similar conditions, the petitioner there had been granted extension of service, since the Respondents there had been denied extension based on a revised policy which was retrospectively applied. Though the Union of India appealed against this in the Hon'ble Supreme Court, the appeal was dismissed based on the fact that Union of India had already granted extension to the petitioners there. The Hon'ble Supreme Court while dismissing this appeal maintained that the question of law was kept open.

6. Then the Counsel explained the period covered by the impugned CR covering the period 01.06 2016 to 31.05.2017, when the applicant had reported certain irregularities in the Unit and had also submitted a written complaint about the issues. The Counsel further added that the Statutory complaint dated 28.09.2019 submitted by the applicant had been rejected as the competent authority had failed to consider the relevant issues.

The Counsel also touched upon other issues and the animosity between the CO and the applicant and the various counselling issued. The Counsel further added that the CR covering the period 01.06 2016 to 31.05.2017 was vitiated by the biased reporting by the IO/FTO due to his personal animosity towards the applicant and that it ought to have been set aside.

7. Referring to the policy for grant of extension, the Counsel stated that when the applicant was commissioned in January 2015, the policy in vogue was the letter dated 31.07.2012. However, when she was considered for extension in 2020, the policy dated 01.08.2017 had been introduced. Referring to Para 6 (c) of the policy letter of 2012, the Counsel stated that for grant of extension from 5 to 10 years, the last three CRs including NIR was to be considered. The Counsel further elaborated that when the applicant had sought the 2017 policy through RTI, it was seen that though the 2017 ACR policy was identical to that of 2012 policy, it had been amended by hand to read 'ACR for the last three years', rather than what was printed in the 2017 policy, (ie) 'last three ACR including NIR'.

8. The Counsel further stated that the Respondents had incorrectly applied the policy of 2017 in considering the applicant

for extension and had therefore included the impugned CR in the CRs under consideration for grant of extension. The Counsel emphasised that since the policy was to consider the last three CRs including NIR, the Respondents should have only taken the two CRs of 6/18-5/19, 2/18-5/18 and the NIR 8/17-01/18 and should not have taken the impugned CR of 6/16-5/17 into consideration.

9. The Counsel stated that considering all the issues connected with the case, it is prayed that the OA be allowed; the impugned CR be set aside; consider the applicant afresh for extension and be granted requisite extension admissible under the policy.

Arguments by the Counsel for the Respondents

10. The Counsel explained the policy on grant of extension and added that the service contract for those SSCOs who join the AMC after completing their MBBS from civil medical colleges was 5 years, followed by two extensions of 5 and 4 years each, totalling a total of 14 years. He then explained that the policy of 2012 and 2017 were identical including the ACR criteria, in that for the first 5 year extension, the last three CRs including NIR were to be considered.

11. Further elaborating on the applicable CRs in respect of the applicant, the Counsel stated that each year two Boards are held for granting extension to SSCOs. The first Board is held in March-April to consider all the officers who are due to complete their first five year tenure between 01 July and 31 December of that year. The Second Board held in September-October of the year to consider the officers who are due to complete their first five year tenure between 01 January to 30 June of the next year. In order to maintain uniformity, CRs covering the same period are considered by the Board in Mar-Apr and September-October Boards each year.

12. The Counsel further added that since the applicant would complete five years in January 2020, she was considered by the Board held in September-October 2019. This Board considered the CRs for the last three years covering the period 2015-16, 2016-17 and 2017-18. The Counsel further elaborated that the applicant had one CR each for the three periods and in addition, the period 2017-18 also had a NIR; thus in the case of the applicant, the ACRs of the last three years including NIR consisted of three CRs and one NIR which were considered by the

Board. Based on the comparative merit, the applicant was not granted extension.

13. The Counsel further added that since the applicant had submitted a statutory complaint dated 28.09.2019 against the ACR 2016-17, she was granted provisional extension. The statutory complaint was rejected vide MoD letter dated 02.02.2021; the Release Order was issued vide letter dated 19.03.2021, to be released earliest but not later than 30.04.2021. However, since the applicant had filed the present OA by then, her release was stayed vide the AFT (PB) Order dated 01.04.2021 and the stay has continued till date. The Counsel concluded by stating that the applicant had been considered for extension as per the policy in vogue having taken the CRs of the last three years including NIR and had not been granted extension since she did not meet the ACR criteria. Moreover, her statutory complaint too had been rejected being void of any merit. Thus, it was imperative that the OA was dismissed being bereft of any merit.

Consideration of the Case

14. Having heard both parties at length, the only issue is to examine if the statutory complaint had been correctly examined

and whether the Extn Board had considered the applicant fairly.

Policy

15. Vide MoD letter dated 12.12.1972 (Annexure R-3) the authority to grant extension of service beyond the initial contract period of AMC SSCOs granted commission under AI 208/59 as amended from time to time is vested with DGAFMS, provided the sanctioned and authorised establishment is not exceeded. AI 208/59 was superseded by AI 75/81 (Annexure R-1) wherein the initial contract was for 5 years, extendable by a further 5 years. The initial contractual period and extension was further amended vide MoD letter dated 02.11.2007 (Annexure R-2) where by those graduating from AFMC had initial period of 7 years and a further extension of 7 years; and those graduating from civil had 5+5+4 years of total tenure. In order to implement the extension, the competent authority formulated requisite policy from time to time. The first SOP for grant of extension was promulgated vide DGAFMS letter dated 31.07.2012. This was subsequently replaced by SOP dated 01.08.2017. *We have examined the policy letters of 2012 and 2017 and conclude that both are identical in content, except that the policy letter of 2017 has an additional para on extension of service of medical officers who have done*

DNB/PG during SSC service (at Govt expense). It is pertinent to state that the executive is entitled to issue policy and change the policy as per the requirement. The Apex Court in **Hardev Singh Vs. Union of India [(2011) 10 SCC 121]** dated 14.09.2011 held the following :-

“25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in Virender S. Hooda v. State of Haryana where this Court had held in para 4 of the judgment that: (SCC p. 699)

‘4. ... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.’

26. Similarly, in Balco Employees' Union v. Union of India, it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition.”

Statutory Complaint

16. The applicant's statutory complaint dated 28.09.2019 was initially against the impugned CR covering the period 01.06.2016 to 31.05.2017 and not being promoted to the rank of Maj. However, since she was later promoted as Major based on her other representations, the statutory complaint was considered

against the CR. The main points of the complaint are that the IO/FTO had mentally harassed her during the period of the CR; the extracts of the adverse remarks of the IO/FTO received for acknowledgement was a big blow; that the remarks of RO/STO were never shown to her; justified her action/ lapses for which she was given multiple professional counselling letters and that these counselling letters was only done to trouble the applicant; and that she had forwarded a complaint directly to the higher authorities for which she was given a 'Reproof' by GOC 26 Inf Div. In the light of these complaints, the applicant had sought that the CR for the period 01/16-05/17 be reviewed against her overall performance and technical validity, and be set aside.

17. The complaint was first considered by GOC-in-C Central Command and rejected since the impugned CR did not merit any interference, since it was performance based and mutually corroborated. The complaint was then analysed in detail at the level of the DGMS (Army), DGAFMS, AG's Branch and the CAB prior to being forwarded to the competent authority at the MoD. The comments of the IO/FTO and the RO were also sought and examined in the process. Analysis of this CR indicates that the average rating of this CR is 5.11 with the IO/RO/SRO having

rated the applicant 5/5.20/5 and the FTO/STO/HTO having rated her 5/5.50/5, with adverse remarks by all the Reporting Officers.

18. As per the comments received from various reporting officers on the complaint, all reporting officers have strongly justified their weak assessment and adverse remarks in the pen pictures. The comments state that the applicant has certain inflexible personality traits resulting in maladaptive behaviour, causing recurrent administrative difficulties for the Unit and that the applicant's professional behaviour was undesirable and was therefore unsuitable for retention. The SRO too has endorsed all the actions taken by the IO and the assessment of both the IO and RO.

19. The examination of the Statutory complaint indicates that the applicant was assessed in the CR covering the period 01.06.2016 to 31.05.2017 after repeated counselling, show cause notice and warnings. The pen pictures of all the reporting officers are mutually corroborative and there is no variation between the endorsement of different reporting officers. Since the CR is well corroborated, consistent and performance based, the

examination of the statutory complaint concluded that the impugned CR does not merit any interference.

20. Having examined the records the Tribunal is also of the opinion that the Respondents were justified in rejecting the statutory complaint and upholds this decision. The Tribunal too does not see any grounds for interference in this CR.

CRs to be Considered

21. The Counsel for the applicant had argued that the CR covering the period 01.06.2016 to 31.05.2017 should not have been considered as per the policy. The policy, both of 2012 and 2017 which are identical state that '*For extension from 5 to 10 years (Civil entry) last three CRs including NIR will be considered*'. It implies that the CRs for the last three years will be counted. The rendition of CR is governed by AO 01/2020/DGMS. Para 2.2 of this AO states that the appraisal system is based on the principle of obtaining one annual CR, and additional reports may be required to be submitted under special circumstances. Also, as per Para 5.1.1.1. the date of initiation of Maj and below is on 01 June each year. Since the Board was being held in October 2019, and the fact that the same cycle of CRs are considered by both Boards in a year, the Board considered the CRs of the last three years (ie) 2015-2016, 2016-17 and 2017-2018 for all the

officers who were being considered for 5 year extension in 2019. Thus, from the records it is seen though the applicant has earned 04 CRs and 01 NIR from 2015 to 2019, based on the criteria adopted for all consideration in 2019, only the CRs of 8/15 - 5/16, 6/16-5/17, NIR 8/17-01/18, and CR 2/18-5/18 were considered. Thus the applicant's contention that the Respondents should have only taken the two CRs of 6/18 - 5/19, 2/18 - 5/18 and the NIR 8/17 - 01/18 and should not have taken the impugned CR of 6/16 - 5/17 into consideration is grossly misplaced, and is only an argument to support the plea that the impugned CR 6/16 - 5/17 is not taken into consideration. We therefore have no hesitation in upholding the consideration undertaken by the Extn Board of October 19.

Conduct of Extension Board

22. As seen from the records , each year two Boards are held for granting extension to SSCOs. The first Board is held in March-April to consider all the officers who are due to complete their first five year tenure between 01 July and 31 December of that year. The Second Board is held in September-October of the year to consider the officers who are due to complete their first five year tenure between 01 Jan to 30 June of the next year. In order

to maintain uniformity, CRs covering the same period are considered by the Board in Mar-Apr and Sep-Oct Boards each year. The tentative list of those officers who would complete their contractual period of 05, 07 and 10 years between 01.01.2020 and 30.06.2020 and were scheduled to be considered for extension in September 2019 was issued vide DGAFMS letter dated 11.07.2019. This included the applicant at serial (ah). The Various inputs listed at Para 2 of this letter was sought by 31.07.2019.

23. The Extn Board in which the applicant was considered was ordered vide DGAFMS/DG-1B(ii) Convening Order dated 21.10.2019. The officers were to be considered for extension under the provisions of AI 75/78, GoI letter 4(3)2007/D(Medical) dated 01.11.2007 and the SOP dated 01.08.2017. Accordingly, the Board assembled on 22.10.2019 and considered a total of 326 officers, of which 135 were considered for extension of 5 years; 21 for extension of 07 years and 101 for extension of service to 10 years. Of those considered, 264 were granted extension including 07 officers who were granted provisional extension being in temporary LMC. Of the 62 who were not granted extension, 13 lacked CR inputs, 26 were unwilling; 05

were in permanent LMC and 18 including the applicant who did not meet the CR criteria.

Conclusion

24. In the light of the above considerations we conclude the following:-

- (a) Since the impugned CR 6/16-5/17 is a well corroborated, consistent and performance based CR, it does not merit any further interference.
- (b) We uphold the rejection of the statutory complaint dated 28.09.2019 by the competent authority.
- (c) The Extn Board has been conducted as per the policy of 2017 and the CRs of the applicant considered by the Board are consistent with the policy. The applicant has not been granted extension since she lacked the requisite CR criteria. We do not find any mala fide in the conduct of the Extn Board.

Direction

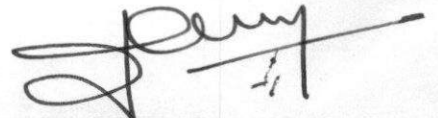
25. In view of the above, the interim stay granted vide order dated 01.04.2021 is hereby vacated and the OA is dismissed being bereft of merit and Respondents are directed to release the applicant with 30 days' notice.

26. No order as to costs.

Pronounced in open Court on this 23rd day of September,
2022.



**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**



**[LT GEN P.M. HARIZ]
MEMBER (A)**

/ng/