

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

O.A. No. 15 of 2010

Subedar Charanjit Singh

..... Petitioner.

Vs.

UO.I & ors.

..... Respondents

**JUDGMENT
14-5-2010**

**Coram: Justice Ghanshyam Prasad, Judicial Member.
Lt Gen H S Panag (Retd), Administrative Member.**

For the applicant (s) : Petitioner in person.

For the respondent (s) : Mr. Mohit Garg, CGC.

JUSTICE LGHANSHYAM PRASAD:

This application under Section 14 of the Armed Forces Tribunal Act, 2007, has been filed by the petitioner for the grant of Permanent Commission (NT) AMC 1987 quota from the same date his juniors in the SSB merit list were granted with all consequential pensionary benefits after setting aside the order denying the petitioner permanent commission for 1987 quota.

The facts of the case are as follows:-

The petitioner joined the Army Medical Corps on 20th March 1969 and after undergoing Military and Technical training he was directed to serve in various medical units. Ultimately, he retired on 31st March 1997 at the age of 45 years on superannuation after rendering 28 years of reckonable service as Sub/Sub/Major (Hony). The petitioner while serving with 324 Field Ambulance, he appeared before 24 Service Selection Board, Bangalaoe, for the grant of Permanent Commission for vacancies of 1987 quota notified vide DGAFMS letter No. 32433/PC/NT-87/DGAFMS/DG-1A dated 5th May, 1987 (Annexure-F). The SSB, Bangalore, found the petitioner suitable and recommended his name with grading for grant of PC (NT) AMC 1987 quota after comprehensive tests held for 4-5 days. However, the DGAFMS later on illegally conducted interview after SSB grading and denied Permanent Commission to the petitioner against Hon'ble Supreme Court judgment passed in Civil Appeal No. 2563 of 1988 (Annexure-K) in the case titled **Hav.Clerk Hans Raj Sharma versus Union of India**, decided on 9th September, 1994.

It is further averred that in the Army Instruction 69 of 1976, there is no provision for conducting interview by DGAFMS after SSB grading and the concerned authority has to accept the recommendations of the SSB.

The petitioner while serving with 154 General Hospital submitted a statutory complaint dated 16th December, 1995 against the above illegal action, which was turned down vide DGMS (Army) letter dated 7th March, 1997 (Annexure-A) with the remarks that

the Supreme Court judgment dated 9th September, 1994 is restricted to only 1986 quota and not applicable to 1987 batch of AMC (NT).

The petitioner filed the revision dated 5th February 2009 to the respondents, which has also been rejected on merit vide order dated 15th July, 2009 (Annexure-B) with the remarks that the petitioner belongs to AMC (NT) 1987 quota, whereas the Supreme Court order is restricted to 1986 quota only. Thereafter the petitioner has filed the present application.

Respondents have filed reply opposing the claim of the petitioner. It is averred that the petitioner appeared before the SSB for the year 1987 quota along with 193 other serving JCOs/Ors for grant of Permanent Commission against 11 vacancies available for that year. 18 candidates were shortlisted after interview by SSB. Those shortlisted candidates were interviewed by the AMC Selection Board on 17th May, 1988 and 11 candidates were granted Permanent Commission in the order of merit. The petitioner was placed at 15th position at the end of the interview by the AMC Selection Board. As a result, he was not granted Permanent Commission.

It is further averred that in the aforesaid DGAFMS letter dated 5th May 1987 it was clearly delineated eligibility criteria as well as impending selection process for grant of Permanent Commission which included further interview by AMC of the candidate recommended by SSB. There is nothing illegal. The letter dated 5th May, 1987 was validly issued after amendment of the original Army Instructions. The Hon'ble Supreme Court, in fact, had endorsed the same procedure in its

judgment in **Hans Raj Sharma's case (supra)** for the future selection process i.e. from the year 1987 onwards.

The other ground taken by the respondents is that the petitioner was denied Permanent Commission in the year 1987-88 whereas he approached this Tribunal after lapse of more than 20 years. This ground itself is sufficient for refusal to entertain this application.

Heard the submissions of the petitioner as well as the learned counsel for the respondents.

The only submission of the petitioner is that in the original Army Instructions of 1976, there was no provision for future interview by AMC after SSB grading. The Authorities had illegally conducted the second interview and declined to grant promotion to the petitioner who was within the criteria laid down for the grant of Permanent Commission in grading given by the SSB. In support of his claim, the petitioner has also relied upon the decision of the Hon'ble Supreme Court referred to above.

On the other hand, learned counsel for the respondents submitted that Annexure-F dated 5th May, 1987 itself would go to show that at the time of calling the applications from the JCOs for grant of Permanent Commission, the procedure for second interview by selection team as constituted by DGAFMS was provided. The petitioner being fully aware of the procedure appeared before the Service Selection Board as well as before the selection team as constituted by DGAFMS.

Now he cannot raise any objection against the procedure laid down in the letter dated 5th May, 1987.

It was further submitted by the learned counsel for the respondents that the letter dated 5th May, 1987 was issued superseding the previous procedure.

It was also contended by the learned counsel for the respondents that the aforesaid decision of the Hon'ble Supreme Court is restricted to the quota of 1986 as at that very time, there was no procedure for second interview by a selection team and in fact the Hon'ble Apex Court approved the second interview by selection for filling the future vacancies.

The last submission of the learned counsel for the respondents was that the petitioner retired from service in 1997 and his case for Permanent Commission was rejected as back as in the year 1988. He sat over the matter for more than 20 years. He never bothered to approach the Hon'ble Court for redressal of his grievance. In a matter of promotion, delay is fatal. There is no explanation from the petitioner side as to why he sat over the matter for over 20 years. Therefore, now he cannot take any advantage of his own laches.

We have perused the letter dated 5th May, 1987. In paragraph 9 of the letter, it has clearly been mentioned that eligible JCOs/Ors will be called for interview for Permanent Commission by Service Selection Board under the arrangements of A.G.'s Branch.

followed by an interview selection by selection team as constituted by DGAFMS.

The admitted fact is that the petitioner applied for grant of Permanent Commission fully knowing the conditions laid down in the aforesaid letter dated 5th May, 1987. The aforesaid letter was issued after superseding the previous letter dated 19th May, 1986 by Raksha Mantralaya. Now the petitioner is precluded from raising any objection against the second interview. The procedure for second interview was laid down under the orders of appropriate authorities of the Ministry.

As far as the judgment of the Supreme Court dated 9th September, 1994 is concerned, it is apparent that it is restricted to quota of 1986 only as at that very time there was no procedure for holding second interview.

So far as the delay is concerned, it has been consistently held that in promotional matters, the delay is fatal. In the case in hand, the petitioner has approached the Tribunal after lapse of more than 20 years of the rejection of his claim for grant of Permanent Commission.

In this view of the matter also, the petitioner does not deserve to be granted any relief regarding his promotion. In this regard, the decision of the Hon'ble Supreme Court in the case **S.S. Balu & another vs. State of Kerala & Ors, reported in 2009 (3) RSJ 158** is relevant. In paragraph 18 of the judgment, It has been held as follows:-

“It is also well settled principle of law that “delay defeats equity.” Government order was issued on

15.1.2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal thereagainst, they impleaded themselves as party respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.”

In view of the above discussion, we find no merit in the application. Accordingly, the same is dismissed.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag (Retd))

May 14, 2010
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