
(2008) 01 P&H CK 0124
In the Punjab And Haryana At Chandigarh

Dr. Mrs. Suparna Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Army Act, 1950 — Section 2

Citation : (2008) 01 P&H CK 0124

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has sought a writ in the nature of certiorari seeking the quashing of the order dated 30.11.2004 (P.6), whereby the candidature of the petitioner for consideration of permanent commission in the Army Medical Corps was declined. The petitioner has also sought a writ in the nature of certiorari for quashing of the order dated 6.10.2006 (P.8), whereby the claim of the petitioner for the grant of the rank of Lt. Col. was declined.

2. The petitioner graduated from Armed Force Medical College, Pune i.e. MBBS in the month of December, 1989. She joined as Short Service Commission Officer in the rank of Lieutenant with effect from 25.10.1989 in Army Medical Corps at Pune. The petitioner did her internship at Military Hospital Ambala and was promoted to the rank of Captain with effect from 1.12.1990. She remained posted at Hisar, Nasik and was released from Short Service Commission on 31.3.1995 upon completion of her Short Service Commission tenure.

3. The petitioner applied for Short Service Commission in pursuance of the advertisement issued in 1997. The petitioner was posted at Military Hospital at Panagarh, West Bengal in the rank of Captain vide letter dated 13.11.1997 after her selection. The petitioner was later posted at Jodhpur, Dimapur, Nagaland and in April, 2006, she has been transferred and posted at Military Hospital Ambala. The petitioner was due to be released from the service with effect from

December 7, 2007.

4. The case of the petitioner is that in advertisement (P.1), there was an unequivocal terms that on completion of two years of service of Short Service Commission Officer, the appointee would be eligible to apply for departmental permanent commission. Thus, it was alleged that the petitioner has a vested right to apply for permanent commission after completion of two years service thereof. It is pointed out that the terms and conditions of service are contained in Army Instructions 75 of 1978 for Officers granted Short Service Commission. It is the case of the petitioner that the Officer granted Short Service Commission are to be given three chances for taking up departmental examination for permanent commission at any time after completion of second year of Short Service Commission and before completion of 8 years service (third chance after completion of 5 years).

5. It is the admitted case of the petitioner that she has availed two chances for departmental permanent commission examination, but remained unsuccessful. The petitioner claims third chance in her second tenure i.e. commencing in December, 2002, of Short Service Commission to appear in the departmental examination for permanent commission. The same was declined on 30.11.2004. Subsequently, vide Annexure P.8 dated 6.10.2006, the mother of the petitioner was communicated in response to her communication dated 15.9.2006 that the petitioner is not eligible to appear in the test in the second or subsequent tenure and that the highest rank which can be granted to the Short Service Commission Officer is the Major, in terms of the Army Instructions 75 of 1978.

6. In the written statement filed, it has been pointed out that the petitioner has communicated on 1.10.1994 (R.3) that she is not desirous for being granted permanent commission and she be released from service on termination of her contractual period. It has been pointed out that the petitioner was granted Short Service Commission vide letter dated 22.12.1989 for a period of 5 years in the first instance extendable upto a total period of 10 years, subject to the condition that such extension will not be extended beyond the age of 55 years. The petitioner was granted extension of service vide letter dated 27.6.1994 for a period of five years from 26.12.1994. However, the petitioner sought termination of her contractual period and she was released vide letter dated 31.1.1995. The petitioner sought a fresh tenure of Short Service Commission vide application dated 9.6.1997 and she was granted Short Service Commission vide letter dated 28.8.1997. Such Commission was only for a period of five years. The petitioner reported for duty on 7.12.1997 under the authority letter dated 13.11.1997. The petitioner was granted ante-date seniority on her application dated 8.9.1998. It has been pointed out that the petitioner was granted seniority for pay and promotion with effect from 4.10.1992 which includes her five years and 64 days previous full pay commission. The petitioner was promoted as Major with effect from 8.9.1998 and continued to draw pay and allowances as applicable to a Major as applicable to Major. It is also pointed out that the competent authority

i.e. Director General, Armed Forces Medical Services has directed that no Short Service Commission Officer will be given extension beyond 10 years of service. Hence, the petitioner and similarly placed six others, who have completed 10 years of Short Service Commission have not been granted any further extension. It was reiterated that the total service in terms of para 4 of the Army Instruction 75 of 1978 is 10 years whether in one span or more than one. Therefore, the petitioner is not entitled to any extension beyond 10 years of short service. It was also pointed out that the petitioner never applied for grant of permanent commission during her first spell of Short Service Commission Officer. During her second tenure with effect from 7.12.1997, she was never considered for permanent commission as the same was not applicable to her. In fact, vide letter dated 11.5.2006, the petitioner sought her second commission with effect from 7.12.1997 to be considered as a fresh tenure so as to entitle her to sit for fresh chance for departmental permanent commission.

7. Having heard the learned Counsel for the parties, we are of the opinion that the following two questions require determination:

1. Whether the petitioner is entitled for more than 10 years as Short Service Commission Officer?

2. Whether the petitioner is entitled to 3rd chance to appear in the departmental examination for permanent commission?

8. As per the facts on record, the petitioner has availed her first tenure of Short Service Commission with effect from 26.12.1989 to 29.4.1995 and second tenure from 1.12.1997 to 7.12.2002.

9. The relevant extracts of the Army Instructions 75 of 1978 are being reproduced hereunder:

Army Instructions Nos. 75 of 81

75. Terms and Conditions of Service for Officers Granted Short Service Commission in the Army Medical Corps.

xxx xxx xxx

LENGTH OF COMMISSION AND FURTHER EXTENSION.

4. Commissions will be granted for a period of 5 years in the first instance and will be extended for such periods as the DGA-FMS may decide subject to the conditions that the total SSC service of the officer does not exceed 10 years or beyond the age of 55 years. On being granted a commission the officer will be subject to Army Act, 1950 (XLVI of 1950) u/s 2(1)(a) thereof.

10. On December 1, 1979 (R.17), the Army Instructions 68 of 1979 were issued amending para 12 of Annexure to Army Instructions 75 of 1978. The following para was substituted:

PERMANENT COMMISSIONS: Officers granted Short Service Commission will be

given three chances for taking up the departmental examination for permanent commission at any time after completion of 2 years SSC service and before completion of 8 years service (third chance after completion of five years) provided they fulfill the conditions of eligibility laid down in AI 74 as amended. During second or subsequent tenure no chance for Departmental Permanent Commission examination will be given. However, Officers already serving in second tenure will be given one chance for the departmental examination. Case No. 9184/1/DGAFMS/DG-18(i)/1131-S/D (Med) M of F (Def) u.o. No. 570-S/PA of 1979.

11. On the strength of the substituted para 12 of Annexure to the Army Instructions 75 of 1978, the petitioner seeks that she is entitled to one chance to appear in the departmental examination in the second tenure, which according to the petitioner commences in December, 2002.

12. It may be noticed that para 12 of the Annexures to Army Instructions 75 of 1978 was further amended on 5.5.2006. The substituted para 12 reads as under:

Officers granted SSC will be given three chances for taking up the departmental examination for permanent commission at any time after completion of two years of SSC service and before completion of 9-1/2 years service provided they fulfill the conditions of eligibility laid down in the year AI 74/76 as amended subject to the condition that not more than two chances will be given in one tenure of five years. During second or subsequent tenure, if not done in continuation of the first tenure, no chance for departmental permanent commission will be given.

13. However, for the purposes of the present case, the amendment incorporated on 5.5.2006 is not relevant.

14. Still further, vide circular dated 2.11.2007 (R.18), the total tenure of Short Service Commission has been extended to 14 years with initial period as that of 7 years and the first extension is that of another seven years in respect of post of Armed Medical Corps.

15. A perusal of para 4 of Army Instructions 75 of 1978 would show that the commission is granted for a period of five years in the first instance, but the total Short Service Commission period is not to exceed 10 years or beyond the age of 55 years. The petitioner, in fact, availed more than 11 years" period of Short Service Commission. In fact, from the record produced, it is apparent that a decision has been taken that no fresh extension beyond 10 years of service is to be granted and all those Officers, who are continuing in service beyond the period of 10 years should be permitted to complete their contractual period. The Officers, who are continuing beyond 10 years are six in number including the present petitioner. She has completed her contractual period on 7.12.2007.

16. The argument that some other Short Service Commission Officers have been granted extension beyond the period of 10 years and, therefore, the petitioner is

also entitled to extension, is devoid of any merit. The illegality once committed cannot be permitted to be perpetuated. Since the Rules do not contemplate extension beyond the period of 10 years, therefore, even if some Officers have been permitted to continue beyond 10 years, it will not be a ground to permit the petitioner to continue beyond the maximum period of 10 years as per the Rules applicable.

17. Though the petitioner has been permitted to join again in the year 1997. The same is her second tenure. She has completed her five years tenure from 26.12.1989 to 29.4.1995. In terms of para 12 of Annexure-A to the Army Instructions 75 of 1978, she is entitled to third chance upto third year of the second tenure of the Short Service Commission. Her third chance to appear for permanent absorption in the Short Service Commission expired in December, 2000 i.e. in the third year of second tenure even as per the arguments raised by the learned Counsel for the petitioner. Therefore, the petitioner is not entitled to the third chance, which could be availed by the petitioner after completion of five years i.e. after December, 2002. Even if the broken period from 1994 to 1997 is ignored, still the petitioner could avail third chance within three years of second tenure i.e. from 1997 to 2002. Having failed to do so, the petitioner is not entitled to any chance in the tenure commencing from 7.12.2002 as it is in fact, not the second tenure, but extension in commission, which was not even permissible under the Rule.

18. In view of the above, we do not find any illegality in the communication Annexures P.6 and P.8, which may warrant interference by this Court in exercise of its writ jurisdiction. Hence, the present petition is dismissed.