

(2020) 09 AFT CK 0014

In the Armed Forces Tribunal

Case No : Original Application No. 1022 Of 2015, Miscellaneous Application 3239 Of 2019

K.K. Jha

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-09-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 22(b)

Citation : (2020) 09 AFT CK 0014

Hon'ble Judges : Rajendra Menon, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : K. Ramesh, Archana Ramesh, J.S. Rawat

Final Decision : Dismissed

Judgement

M.A. No. 3239 of 2019:

1. No orders are required to be passed in this application as the same has already been disposed of vide order dated 20.12.2019.

O.A, No. 1022 of 2015:

The applicant, who was inducted into the Indian Air Force on 07.01.2002 as a Short Service Commissioned (SSC) Officer in the rank of Squadron

Leader (`Sqn Ldri, has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as

the AFT Act') challenging the action of the respondents in denying him consideration for grant of Permanent Commission (PC). The prayers made by

the applicant in Para

8, A and B of the application read as under:

A. Issue directions to quash and set aside the Air Headquarters Letter dated 28

Sep 2015 and reinstate the Applicant back in the Indian

Air Force with full back wages, seniority and service at par with his own batch mate Sqn Ldr Rahuldev S Badhe in the light of the Judgment

of the Hon'ble Armed Forces Tribunal in Re Squadron Leader Rahul Dev S Badhe Versus Union of India in OA No. 113/2012 dated 17

Mar 2015 placed as Annexure A-6 (Cony).

B. Pass such other and further orders/directions to the Respondents for adequate compensation as may be deemed just and proper by the

Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case.

2. Initially when this application was filed on 30.11.2015, it came up for consideration before a Bench of this Tribunal and on 06.09.2017, the Bench

came to a conclusion that the application filed by the applicant is beyond the period of limitation prescribed under sub-Section (b) of Section 22 of the

AFT Act and, therefore, the application was dismissed on the ground of delay without advertent to consider the merits. Subsequently, challenging the

aforesaid order passed by this Tribunal, applicant filed a Special Leave Petition before the Hon'ble Supreme Court in Civil Appeal No(s). 1209-1210 of

2018 [Ex Squadron Leader KK Jha Vs. Union of India and Another] and on 26.11.2019, the Honble Supreme Court set aside the order dated

06.09.2017 passed by the Tribunal in the O.A. No. 69 of 2017, directed this Tribunal to hear the parties concerned, grant them permission to file

additional documents and thereafter decide the dispute on merits in accordance with law afresh.

3. After the aforesaid orders were passed by the Hon'ble Supreme Court, in a Miscellaneous Application bearing M.A. No. 3239 of 2017 filed by the

applicant, vide order passed on 20.12.2019, the Original Application was restored to its original number and after hearing all concerned, we propose to

dispose of the matter on merits by this order.

4. Facts in nutshell, which are relevant and necessary for disposal of the application, goes to show that the applicant was commissioned in the Indian

Air Force on 07.01.2002 in the Course Serial No. 33 as a Short Service Commissioned (SSC) Officer. Along with the applicant, one Sqn. Ldr.

Rahuldev S Badhe was also commissioned as a SSC Officer on the same day in the same batch. Both, the applicant and Sqn Li& Badhe, are said to

have given their willingness to participate in the selection process for considering their cases for grant of Permanent Commission sometime in March,

2011 and it is the case of the applicant that the consideration was to be made by the Selection Board, which was to be constituted in accordance to the

Air Headquarters (Air HQ) Policy letter dated 19.11.2010, wherein the requisite benchmark prescribed for grant of Permanent Commission was '6.5'

to be evaluated based on the three Annual Confidential Reports (ACRs), which were initiated in March, 2009, March, 2010 and March, 2011

respectively. However, grievance of the applicant and Sqn Ldr Badhe is that the Air HQ issued a new Policy letter on 02.08.2011, much after the

ACRs were initiated and prescribed a new benchmark of '7' points. According to the applicant, this was an arbitrary, discriminatory and ultra vires

action violative of all norms. However, as both the applicant and Sqn Ldr Badhe did not fulfil this criteria of meeting the benchmark, it is said that both

of them were released from service on 06.01.2012, on completion of their tenure as SSC Officers, vide order dated 12.12.2011 at Annexure A-5. As

far as Sqn Ldr R.S. Badhe is concerned, it has come on record that after the action of terminating his tenure was undertaken, he immediately

approached this Court in the year 2012 itself by invoking jurisdiction under Section 14 of the AFT Act and in the Original Application filed by him i.e.

O.A. No. 113 of 2012 [Sqn Ldr R.S. Badhe Vs. Union of India & Ors.], a Bench of this Tribunal on 17.03.2015, based on an earlier decision in O.A.

No. 284 of 2013 [Sqn Ldr Ravi Jain Vs. Union of India & Ors./ decided on 07.11.2014, allowed his application, quashed the action of discontinuing

him and directed the respondents to consider his case for grant of Permanent Commission in accordance with the original HR Policy dated 19.11.2010

read along with Policy dated 10.09.2004 within a period of three months. Thereafter, Sqn Ldr Badhe's claim was considered and it is an admitted

position now that after such consideration, he was reinstated in service and joined duties in the year 2015 itself. However, as far as present applicant

is concerned, after his termination along with Sqn Ldr Badhe on 06.01.2012, he did not take any action, kept quiet and it was only after Sqn Ldr Badhe

was reinstated in service in pursuance to the order passed on 17.03.2015 in O.A. No. 113 of 2012, that in September, 2015 i.e. on 2nd & 24th

September, 2015, when the applicant herein submitted an application seeking grant of Permanent Commission at par with Sqn Ldr Badhe and

consideration of his case as per the Policy letter dated 19.11.2010. However, on the ground that the application was submitted belatedly, the same was rejected by the Competent Authority on 28.09.2015 and hence, this petition.

5. As already indicated hereinabove, due to the delay of 3 years on the part of the applicant in impugning the action, which took place in 2012, a

Coordinate Bench of this Tribunal dismissed his application on 06.09.2017 and now on remand of the matter by the Hon'ble Supreme Court on

26.11.2019, we are required to reconsider the matter on merits.

6. The case of the applicant is that he and Sqn Ldr Badhe were recruited as SSC Officers on the same date i.e. 07.01.2002; both belong to the same

batch; they were recruited in the same Scheme, namely, 33 SSC (T) as AE(M); both had identical tenure of service as SSC Officers i.e. 10 years +

04 months; both were considered initially as per the Policy letter dated 02.08.2011; their claim for grant of Permanent Commission was rejected on

12.12.2011 and both were released from the Indian Air Force on 06.01.2012. However, Sqn Ldr Badhe challenged the impugned action immediately

within two months in March, 2012 itself and the applicant challenged the same after about three years by filing this application on 30.11.2015.

7. It is the case of the applicant now before us on merits that as he and Sqn Ldr Badhe were identically placed and when in the case of Sqn Ldr

Badhe, relief has been granted by this Tribunal and when the case of Sqn Ldr Badhe has been considered as per the Policy letter dated 19.11.2010

taking the benchmark of 6.5, the applicant is also entitled to similar consideration and, accordingly, the only prayer made before us is that the applicant

may be granted the same relief as has been granted to Sqn Ldr Badhe and in support thereof, it is pointed out that not only in the case of Sqn Ldr

Badhe, but even earlier a Bench of this Tribunal in O.A. No. 284 of 2013 [Sqn Ldr Ravi Jain Vs. Union of India & Ors.1 on 07.11.2014, have held

that the officers, who were inducted as SSC Officers prior to the year 2006 are entitled to consideration of their cases for grant of Permanent

Commission in accordance with the Policy of 2010 i.e. Policy dated 19.11.2010, read along with Policy of 2004 i.e. Policy dated 10.09.2004, and not in

accordance with the Policy which was issued subsequently in the year 2011 i.e. on 02.08.2011. It is stated that the applicant, being an SSC Officer,

who was inducted prior to 25.05.2006, is entitled to the same benefit as has been granted to various persons like Sqn Ldr Badhe, Sqn Ldr Ravi Jain

etc. Reliance is also placed on an earlier judgment of this Tribunal passed in O.A. No. 606 of 2010 [Sqn Ldr Lalit Kumar Tandon & Ors. Vs. Union

of India & Ors./ and other case decided on 22.02.2011, wherein it has been held by the Bench that both female and male SSC Officers, who are

inducted with the same terms and conditions, are entitled to similar treatment in the matter of application of a policy for their consideration for grant of

Permanent Commission.

8. Accordingly, based on the aforesaid analogy, Shri K. Ramesh, learned counsel for the applicant, took us through various materials available on

record to highlight and indicate that both the applicant and Sqn Ldr Badhe are identically situated and now in the light of the fact that the Hon'ble

Supreme Court has directed re-consideration of the applicant's case on merits, the applicant should also be granted similar consideration.

9. Respondents had filed a detailed reply in the earlier set of proceedings and they say that the cases are not similar and the cases of the applicant

and the other officer are entirely different. They had raised objections with regard to the delay in approaching this Tribunal after three years and they

only say that the applicant cannot compare his case with that of Sqn Ldr Badhe.

10. After the case was remanded by the Hon'ble Supreme Court, the respondents filed additional counter affidavit along with additional documents to

say that the applicant is not entitled to any benefit and they contended that the applicant's claim is liable to be rejected even on merits.

11. As far as the claim made by the applicant in comparison of Sqn Ldr Badhe is concerned, even though nothing specific is pointed out in the counter

affidavit, during the course of hearing, a submission was canvassed before us to say that the issue with regard to grant of Permanent Commission to

SSC Officers was subject-matter of adjudication before the Delhi High Court at the instance of certain female SSC Officers in W.P. (C) No. 1597 of

2003 and the Delhi High Court gave a direction to consider the case of female SSC Officers recruited prior to May, 2006 in accordance with the

Policy that was in existence in the year 2010. It is said that the judgment in the case of Sqn Ldr Ravi Jain (supra) is based on this principle laid down

by the Delhi High Court. However, the question as to whether the same principle

as is applicable to female officers will apply to male officers, has not been considered by the Delhi High Court and, therefore, as already indicated hereinabove, without specifically raising this ground in the counter affidavit, learned counsel for the respondents, Shri J.S. Rawat, vehemently argued that, in fact, the law laid down in the case of Sqn Ldr Ravi Jain (supra) is not correct. It did not take note of the fact that the female officers and the male officers stand on different footing and the law laid down by the Delhi High Court for female officers will not be applicable to male officers. It was said that, without considering all these aspects in the case of Sqn Ldr R. S. Badhe (supra), by following the law laid down in the case of Sqn Ldr Ravi Jain (supra), relief has been granted. However, now it is stated that the case of Sqn Ldr Ravi Jain wrongly decides the legal issue and, therefore, this Tribunal can take note of these facts and deny the benefit to the applicant. That apart, an alternate submission was made before us, at the time of hearing, to say that even if the case of the applicant is allowed and he is permitted to be considered as per the earlier Policy dated 19.11.2010, it would be an exercise in futility, for the simple reason that he does not meet the medical criteria laid down in the policy and, therefore, he cannot be granted Permanent Commission. It is stated that for being granted Permanent Commission, requirements of the Policy not only meeting the QR and ACR criteria but certain medical criteria is also required and as the applicant does not fulfil this medical criteria, no relief be granted to him.

12. Shri Ramesh, learned counsel for the applicant, refuted the aforesaid contention and invited our attention to the earlier judgment of the Division

Bench of this Tribunal in the case of Sqn Ldr Lalit Kumar Tandon (supra), relied upon in the case of Sqn Ldr Ravi Jain (supra) in Para 9, and argued

that the Tribunal has clearly laid down the principle that in the matter of considering the male and female SSC Officers for grant of Permanent

Commission, there cannot be any discrimination and both are entitled to be considered as per the same Policy of 2010 i.e. Policy dated 19.11.2010.

Accordingly, learned counsel had argued that the respondents' argument now canvassed is unsustainable and the law laid down in the case of Sqn Ldr

Ravi Jain (supra) is the correct one, which does not warrant any reconsideration. It was argued that many identically situated employees have been

granted the benefit following the judgments rendered not only in the case of Sqn

Ldr Ravi Jain (supra) and Sqn Ldr Lalit Kumar Tandon (supra) but in various other cases also.

13. Various submissions were made before us in the matter of grant of similar benefit, applicability of the law laid down and its implementation, effect

of erroneous decision being implemented in the case of some employees, so also the law applicable in service jurisprudence in the matter of granting

similar benefit to similarly situated employees and the principle governing judgement in rem and judgment in personam. However, taking note of the

peculiar facts and circumstances of this case and the alternate submission that was canvassed by the respondents, we are of the considered view, that

we need not go into the details of these submissions made before us in the matter of grant of similar benefit to the applicant as has been granted to

Sqn Ldr Ravi Jain or Sqn Ldr R.S. Badhe. Even though, prima facie, after taking note of the judgments produced before us, particularly the judgment

in the case of Sqn Ldr Lalit Kumar Tandon (supra), we may observe the objections raised by the respondents may not be sustainable but we deem it

appropriate not to go into this question in detail any further. We leave it open to be considered as and when required in an appropriate case.

14. From the additional documents filed by the respondents in pursuance to the liberty granted to them by the Hon'ble Supreme Court, we find that for

grant of Permanent Commission to SSC Officers, the consistent directions issued by the Hon'ble Supreme Court, Delhi High Court and this Tribunal

had been that all officers recruited prior to 25.05.2006 as SSC Officers, should be considered for grant of Permanent Commission in accordance with

the HR Policy No. 04/2010 dated 19.11.2010 read along with earlier Policy of 2004, namely, HR Policy No. 04/04 dated 10.09.2004. In HR Policy

04/2004, vide Para 9(b), certain medical criteria for selection have been stipulated, namely, for grant of Permanent Commission, an SSC Officer

should have medical categorisation of '214G2 (PIT) or above' and until and unless the candidate fulfils this medical criteria, he is not entitled for grant

of Permanent Commission. Annexure-R3 is this Policy dated 10.09.2004 filed along with the additional counter affidavit and documents by the

respondents and a perusal of Para 9(b) thereof indicates that the medical category required for the purpose of grant of Permanent Commission, both

in the Ground Duty Branch and Flying Branch, is 'A4G2 (P/T)' or above'.

Respondents, along with this counter affidavit, have brought on record Annexure R-2 (Collectively), which are the Medical Board proceedings of the case of the applicant held on 10.01.2011, wherein he has been categorised as 'A4G3(P)' and his categorisation done in a previous Medical Board held on 11.01.2010 was 'A4G4(P)'. It has been indicated that the applicant does not fulfil the medical criteria for being granted Permanent Commission as on 15.02.2011, he was granted a lower medical category 'A4G3(P)'. According to the respondents, the applicant having granted A4G4(P) in 2010 and A4G3(P) in 2011 vide Annexure-R2, this being below the 'A4G2 (PIT)' Category prescribed in the Policy, he does not fulfil the medical criteria and, therefore, even if the applicant's case is considered by lowering the benchmark to 6.5, the applicant cannot be granted Permanent Commission because of his low medical category as specified in the HR Policy No. 04/04 dated 10.09.2004.

15. There is no rebuttal to this counter affidavit filed or factual assertions made by the respondents after remand from the Hon'ble Supreme Court on 18.03.2020 and the in 2011. applicant does not dispute the medical categorisation indicated in the reports filed with the counter affidavit, however, it was tried to be submitted at the time of hearing that this categorisation may not be correct and even if the categorisation is correct, then the applicant is entitled to disability pension. In our considered view, this prayer for disability pension cannot be considered in the present application as no such prayer has been made in the application. Once the Hon'ble Supreme Court had granted opportunities to the parties to file additional documents and the respondents brought on record the additional documents, as indicated hereinabove, and there is no rebuttal to the same, we are of the considered view that, even if ultimately, we allow this petition on the grounds, as have been canvassed before us, and direct the respondents, as was done in the case of Sqn Ldr R.S. Badhe (supra) to consider the case of the applicant for grant of Permanent Commission in accordance with the Policy dated 19.11.2010 read along with Policy dated 10.09.2004 and even if the applicant is considered by granting him the benefit of benchmark of 6.5, the applicant admittedly does not fulfil the medical criteria, he being in the lower medical category of A4G4(P) in 2010 and thereafter A4G3(P). Therefore, as argued by the learned counsel for the respondents, Shri Rawat, no

fruitful purpose will be served by referring the matter back to the

Selection Board. The applicant being in the lower medical category, as on the date when consideration was to be made, cannot be granted Permanent

Commission and, therefore, we are of considered view that in the facts and circumstances of this case now in the light of the materials that have

come on record, we cannot grant any relief to the applicant. The application is, therefore, dismissed. However, liberty shall be available to the

applicant to seek any further relief in the matter of claim for disability pension etc., if permissible in accordance with law.

16. There is no order as to costs. Pronounced in open Court on this day September, 2020.