
(2022) 07 AFT CK 0001
In the Armed Forces Tribunal
Case No : OA 1973 Of 2021

Lt Cdr Vinita Chahal

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 01-07-2022

Acts Referred:

Armed Forces Tribunal Act 2007 — Section 14

Citation : (2022) 07 AFT CK 0001

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, Harish V. Shankar

Final Decision : Dismissed

Judgement

1. The application has been filed under Section 14 of the Armed Forces Tribunal Act 2007, by the applicant who is a serving SSCO of the Indian Navy (IN) and is aggrieved by the fact that she has not been granted Permanent Commission (PC)/pensionary benefits as admissible to her in the light of the Honble Supreme Court's judgement dated 17.03.2020 in Union of India & Ors. Vs. Lt Cdr Annie Nagaraja & Ors. [Civil Appeal Nos. 2182-87 of 2020] and the fact that she has only been granted two years of extension against the authorised four years of extension. The applicant has made the following prayers:

(a) Call for the records based on which the Respondents have acted in violation of the judgment of Honble Supreme Court by denying her permanent commission in terms of the order dated 18.12.2020 as well as pension and thereafter enforcing order dated 28.05.2021 whereby enhancing the Applicant's service unjustly till 04.07.2022 only till 12 years when the Respondents were duty bound to give her extension till 14 year as granted to all other similarly situated officers whose performance at least in the course etc. may not be even comparable to the Applicant and thereafter quash the impugned orders dated 18.12.2020 of denial of PC as well as the

impugned order dated 28.05.2021 to the extent the extension of tenure till 14 years was denied to the Applicant.

(b) Issue directions to the Respondents to consider and grant Permanent Commission to the applicant in accordance with the Judgement dated 17.03.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 2182-87/2020 in case titled "Union of India 86 Ors. Vs. Lt Cdr Annie Nagaraja & Ors.", in a time bound manner in view of her impending release on 04.07.2022.

(c) Without prejudice to the relief claimed above issue further directions to the Respondents to extend the service of the Applicant by quashing the impugned order dated 28.05.2021 till a period 14 years of service i.e. 04.07.2024.

(d) Without prejudice to the relief claimed above issue directions to the Respondents to grant pensionary as well as other consequential benefits as one time measure in case of the Applicant, as same as given to other Officers in accordance with the Judgement dated 17:03.2020 passed by the Honble Supreme Court who were not granted Permanent Commission, in case the Applicant is not granted with Permanent Commission

(e) Issue any other/direction as this Honble Tribunal may deem fit in the facts of the case.

And in the interim, since the applicant is due to be released from service in July 2022, applicant be permitted to move application seeking interim protection in case her OA is not decided till that time.

Brief Facts of the Case

2. The brief facts of the case as per the applicant are that she was commissioned into the Executive/ Logistics cadre (X/LG cadre) in July 2010 for an initial engagement period of 10 years, extendable up to 14 years of service. The applicant was considered for extension in 2019 for the first time and was not granted extension and her release orders were issued, effective 04.07.2020. In the meanwhile, the Honble Supreme Court judgement dated 17.03.2020 in Annie Nagaraja concerning grant of PC to Naval SSCOs was pronounced. Consequently, the applicant in May 2020 submitted an application for being considered for PC / pensionary benefits. The applicant also submitted an application seeking extension of service till the consideration for PC was held. The applicant was accordingly granted one year extension till July 2021. The applicant was considered for grant of PC in December 2020 and was not granted PC being low in inter-se merit. The applicant then submitted a fresh application seeking further extension on the grounds of her child's illness and was given a further extension of one year up to July 2022. The applicant then applied for further extension up to July 2024, which was examined and was not granted, and release order was issued in December

2021, effective 04.07.2022. Aggrieved by the fact that the applicant was denied PC/ pensionary benefits, and was not granted the complete four years extension, she filed the OA.

Arguments by the Counsel for the Applicant

3. The Counsel for the applicant took us through the service profile of the applicant and fairly stated that the grant of PC/ pension had already been adjudicated by the Order of the Tribunal dated 03.01.2022 in the case of Lt Cdr Tarun Vs. Union of India & Ors. [O.A. No. 432 of 2015 and other connected matters] and, therefore, any further relief with respect to grant of PC/ pension will be based on future decision of the Supreme Court. The Counsel then stated that for the present, the applicant would be satisfied if she was granted four years extension, as opposed to the two year extension presently granted to her. Referring to the letter dated 28.05.2021 (Annexure A-1/ page 56), the Counsel vehemently asserted that while 42 officers had been granted four years extension up to 2024, the applicant was the only officer granted two years extension up to July 2022. The Counsel then referred to the Delhi High Court judgement dated 04.09.2015 in Annie Nagaraja and Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 7336 of 2010] and asserted that the judgement had protected the interest of the SSCOs and those who had completed 14 years were also to continue in service, pending consideration of PC. Relying on the Supreme Court judgement dated 29.04.2019 in Lt Cdr Reshmi Shergill Vs. Union of India & Ors. [Civil Appeal Nos. 832 - 833 of 2019 etc.], the Counsel stated that once willingness was given by an officer, they should be given two years extension, and vehemently asserted that the applicant too had given willingness for extension, but had been granted a total of two years of extension only against a possible four year extension. The Counsel further stated that the Respondents have not stated any cogent reason for only having granted further two years of extension. The Counsel further stated that while the requirement of grant of Permanent Commission was not being pressed at this stage, the ends of justice would be met, if the applicant was granted further extension of two years to which she is authorized.

Arguments by the Counsel for the Respondents

4. The Counsel for the Respondents reiterated that the applicant was a SSCO of 04.07.2010 seniority belonging to the X/LG cadre and that she was due to be released on 04.07.2022 after completion of her SSC terms of engagement including the two years extension granted to her. The Counsel then stated that the 2010 batch officers were first considered for extension in 2019 and that since the X/LG cadre was over borne then, only those officers who had undergone the Long Logistic and Management Course were granted mandatory extension as warranted under NO 30/2015. Accordingly, release order in respect of all other officers, including the applicant were issued vide latter dated 03.07.2019. The Counsel then elaborated that since the applicant was to be released in July 2020, she was nominated for the

Directorate of Resettlement sponsored Pre-Release Course at TIM, Ahmedabad, 40% of the cost of which was borne by the exchequer.

5. The Counsel then stated that whilst the applicant was attending the Pre-Release Course, the Apex Court Judgment dated 17.03.2020 in the case of Annie Nagaraja (supra) was pronounced which amongst other issues stated that all SSC officers of the Logistic cadre who were in service on 17.03.2020 were to be considered for PC. The Counsel further added that since the conduct of the SB for PC was delayed due to the Covid situation and the SB could be held only in December 2020, certain SSCOs including the applicant had submitted applications seeking extension till the consideration by the PC SB. The Counsel further added that the applicant had sought extension till September 2020 vide her application dated 01.07.2020 (Annexure R-1/page 383 of the Short Affidavit). The Counsel then asserted that notwithstanding various rules/ conventions, it was decided by the Service HQ that all those who applied for extension pending consideration by the PC SB would be granted one year of extension. Accordingly, the applicant was granted one year of extension of service till July 2021.

6. The Counsel then stated that the SB for PC was held on 18.12.2020 where in the applicant too was considered. However, she was not selected for grant of PC due to her low inter-se merit, and that accordingly orders were issued for the applicant to be released from Service on 04.07.2021. In 2021, the applicant once again applied for extension of service on the grounds of her child's health. The Respondents once again favourably considered her request and granted the applicant an additional year of extension up to 04.07.2022. The Counsel then asserted that the applicant had sought a further extension till 2024, whilst similarly placed officers had already been released/ are being released. The Counsel further stated that the request for extension till 2024 too was examined in detail and the competent authority had declined further extension based on the merits of the case.

7. The Counsel concluded that considering the applications of the applicant favourably, she was granted a year's extension on two occasions; at the first instance, the applicant was granted extension based on her application seeking extension till the consideration for permanent commission was concluded; and in the second instance when she sought further extension on medical grounds of her child, and that since the applicant did not merit further extension, her discharge order was issued based on which she is to be released on 4th July, 2022.

Consideration of the Case

8. Having heard both sides at length, the only issue to be adjudicated is whether the Respondents had fairly granted extension to the applicant. The records and files pertaining to the grant of extension to the applicant were produced by the Respondents and was examined in

detail. We have also examined the policy on grant of extension, details of extension granted to the applicant and the reason why the applicant was not granted four years extension; which is the plea of the applicant.

9. Policy on Extension. To begin with the initial engagement period of SSC officers was seven years; this was later extended to ten years with the provision of further extension upto 14 years vide GoI Letter dated 27.02.2002. Also, as per Regulation 122 of Regulations for the Navy Part III (Statutory), service of SSC officers beyond their initial engagement is to be extended in two tranches, each not exceeding two years at a time. Thus, as a standard practice, extension of service is being granted on a two year basis (i.e. 10+2+2 yrs). It is also seen from the Records that by practice, officers who are on odd years of extension are accorded one year extension to complete the first cycle (i.e. 10+2) and then subsequently considered for the second extension (i.e. 10+2+2) since extension is to be granted 'not exceeding two years at a time'. Since majority of SSC officers were not considered for PC till the Hon'ble Supreme Court judgment dated 17.03.2020 in Annie Nagaraja's case (supra), the extension of SSC officers was governed by two policy letters dated 15.03.2002 and 24.05.2002, in which the two laid down criteria are, willingness of the officer and availability of vacancies in the Branch/ Cadre. Consequent to the Hon'ble Supreme Court judgment dated 17.03.2020, since all SSC officers were to be considered for PC as well, fresh policy on grant of extension was issued vide letter dated 16.09.2021 and the new PC Policy was promulgated vide letter dated 29.11.2021. Extracts of Regulation 122 and policy letters are given below:

Regulation 122 of Naval Ceremonial, Conditions of Service and Miscellaneous Regulations, 1963

122. Short Service Commissions. - (1) The following Provision shall govern the entry, training and promotion of officers granted Short Service Commissions in the Executive Branch of the Indian Navy.

(2) to (6) xxxx

(7) Duration of Commission. - The period of Short Service Commission shall be seven years commencing from the date of reporting for, or

commencement of, training whichever is later. This may be extended by a specified period at the discretion of the Chief of the Naval Staff with the consent of the officer concerned, provided the period of extension does not exceed two years at a time and the total service of the officer does not exceed ten years. On expiry of their Short Service contract, including any period of extension thereof, officers shall be placed on the Emergency List for a period of 5 years.

(8) to (14) xxxxx

GoI letter No.MP/0417/SSC/1V1112/269/US(MP)/D(N-II) Dated 27.02.2002

Subject: DURATION OF COMMISSION OF SHORT SERVICE COMMISSION (SSC) OFFICERS IN NAVY

Sir,

I am directed to convey the sanction of the President for modification of the provisions of the Regulation for the Navy, Part-HI, Statutory, Chapter IV Article 122(7), 124(7) and 126(7) and Para 3 of GOI, MoD letter MP/ 0417/ NHQ/ 1110/ DO/ D(N-IV) dated 20 Dec 91 as follows:

Duration of Commission: The period of Short Service Commission shall be 10 years commencing from the date of reporting for, or commencement of training, whichever is later. This may be extended by a specified period at the discretion of the Chief of the Naval Staff, with the consent of the Officer concerned, provided the total duration of service of the Officer does not exceed 14 years. On expiry of their Short Service contract, including any period of extension thereof, Officers shall be placed on the Emergency List for a period of 5 years.

2. The above provisions will also apply to serving Officers commissioned for an initial period of 7 years and/ or granted extension for further periods under the existing provisions, provided they opt to be governed by the revised provisions.

3. The Regulations for the Navy will be amended in due course.

4. The letter issues with the concurrence of the Ministry of Defence (Finance/ Navy) vide their ID No.13-S/ NA/ 2002 dated 4th February, 2002.

Yours faithfully,

Sd/ -

(Babu Cherian)

Under Secretary to the Government of India

Naval HQ letter No NA/0278/SSC dated 24 May 02

TRAINING PA77'ERN AND CAREER PROFILE OF SHORT

SERVICE COMMISSION OFFICERS

1. Refer to Naval Headquarters letter RS/ 1109/ SSC/ 2001 dated 15 Mar 02 and Government of India letter No.MP/ 0417/ SSC/ NHQ/ 269/ US(MP)/ D(N-II) dated 27 Feb 02 (enclosed with the former).

2. The period of Short Service Commission (SSC), has been revised to 10 years commencing from the date of reporting, or commencing of training, whichever is later. This may be extended by a specified period provided that the total duration of service does not exceed 14 years.

3. Accordingly, the revised policy guidelines pertaining to training, career profiles and promotion in respect of SSC officers are enumerated in the succeeding paragraphs.

4. Ab initio training of SSC officers will be at par with PC officers in their respective cadres/ branches.

5. SSC X/ GS, X/ 0, X/ Hydro, Education and Tech officers would be considered for specialist and M Tech courses respectively based on the norms applicable to PC officers in their respective cadres/ branches. SSC officers selected for such courses would be required to give an undertaking in accordance with NO 4/99 and opt for extension of Service such that, they have at least 05 years of residual Service on completion of the course.

Grant of Permanent Commission (PC)

6 SSC officers may be considered for grant of PC in accordance with Article 203, Chapter IX of Regs Navy Part III.

7. Subject to the abovementioned regulation, SSC officers would require to exercise the option seeking Permanent Commission not later than the eighty years of service. Grant of Permanent Commission would however be governed by availability of vacancies in the specific and subject to approval of the competent authority.

Extension of Service

8. The period of Short Service Commission may be extended at the discretion of the Chief of the Naval Staff and with the consent of the offices concerned, provided the period of extension does not exceed two years at a time and the total service of the officers does not exceed 14 years.

Career Profiles

9. Career profile of SSC officers in the rank of Lieutenant would be similar to that of PC officers in their respective cadres/ branches. However, SSC Lieutenant Commanders would normally not be progressed through criteria appointments/ courses unless they are being considered for grant of PC.

Promotions

10. Promotions in respect of SSC officers of all branches will be governed by the existing rules for time scale promotions as amended from time to time. They would not be eligible for Select List promotions unless they have been granted PC, in which case, they would be considered at par with PC officers of their respective cadres/ branches.

11. It is requested that the contents of this letter be disseminated to all units of the respective Command Headquarters.

Sd/ -

(Sanjeev Bhasin)

Rear Admiral

Asst. Chief of Personnel (HRD)

IHQ of MoD (Navy) letter No NA/0424/185/1/Policy dated 16 Sep 2021

POLICY ON EXTENSION OF SERVICE SSC OFFICERS

1. SSC officers are inducted for a period of engagement as per terms and conditions enumerated in various GoI policy letters issued from time to time for each Cadre or Branch or Specialisation, as applicable. The SSC tenures may be extended by a specified period at the discretion of the Chief of the Naval Staff with the consent of the officer concerned, provided the period of extension does not exceed two years law provisions of Regs Navy Part HI. The maximum SSC tenure and extension periods are subject to amendment from time to time by Govt. of India. This policy letter aims to enumerated methodology for granting extension of service to SSC officers.

2. Extension of service is not a matter of right, but is subject to service requirements and willingness of the officer concerned. The eligibility criteria and selection methodology for consideration of SSC officers for grant of extension of Service are enumerated in succeeding paragraphs.

3. Willingness: IHQ MoD (N)/ DOP will seek willingness of SSC officers for extension of Service from time to time.

4. Eligibility Criteria. The eligibility criteria for consideration of officers for grant of extension are as follows:

(a) Medical Category. Officers should not be in a medical category below 52A2 (Pmt), Women Officers, who are in medical category below 52A2 (Pmt) de to Ante-Natal Care (ANC), will be considered for extension of Service provided they were in medical category S2A2 (Pmt) or above prior to being downgraded for ANC. Further, the officers in any medical category for obesity and/ or substance/ drug abuse will not be considered for extension of Service.

(b) Discipline. The officer should not be under Discipline and Vigilance ban.

(c) In-Service Courses: Officer should not have denied in-service professional courses that he /she has been nominated for.

(d) Resettlement Courses. Officer should not have availed a resettlement courses.

5. Selection Methodology. Selection of eligible officers for grant of extension of Service would be undertaken as follows:

(a) Recommendation in CRs. The officer should not have been

commended/ marked adversely for grant of extension/ PC/Re-employment in the CRs in the preceding five years.

(b) Vacancies: Selection of officers would be based on the vacancies against the Govt. Sanction iro respective Branch/ Cadre/ Specialisation, as applicable.

(c) Inter-Se Merit: In case vacancies in a particular Branch/ Cadre / Specialisation are less than the total number of eligible volunteers, selection would be based on inter-se merit of officers under consideration, based on ACRs of preceding five years held on such officers.

6. NOC for Civil Employment/ Resettlement Courses: SSC officers once granted extension of Service will be provided NOC for civil employment and resettlement courses (DGR or self-sponsored both) only in last year of such extended period.

7. SSC officers of Medical and Dental services would be governed by policy issued by DGAFMS in the matter.

8. It is requested that the contents of this letter be given wide publicity.
Sd/ -

(Rahul Shankar) Commodore

Cmde (Pers)

10. The applicant is an X/LG SSC officer, commissioned on 05.07.2010 and presently due for release from service on 04.07.2022. After her initial engagement period of ten years, which culminated on 05.07.2020, the applicant was granted extension for two years; one year at a time. It is also established that since the applicant was initially due for release on 04.07.2020 itself, she had applied for and had attended the Pre-Release Course at JIM Ahmedabad.

11. It was argued by the Counsel for the applicant that the applicant was perhaps the only 2010 batch officer who had not been granted four years extension. On checking the details, the following has been established from the records. The 2010 batch was given two looks; in 2019 and 2020. In the first look of 2019, out of the total batch strength of 239, willingness had been ascertained from 210 officers (22 officers had been granted PC and 07 officers had been released) vide letter dated 25.09.2018 (Annexure A-4). The applicant gave her willingness vide letter dated 09.10.2018 (Annexure A-4/ Page 106) and a total of 207 officers were considered. Of the 207 officers considered, 122 were granted extension and 78 were released. Seven officers had been released prior to completion of 10 years. The Release Order for 78 officers of 2010 batch, including the applicant, was promulgated vide letter dated 03.07.2019 (Annexure A-5). With particular reference to the X/

LG Cadre, during the 2019 look, the Service HQ had concluded that it was not possible to provide regular extension to SSC X/LG officers since the cadre was already overborne with reference to the Govt Sanctioned strength. As seen from the records, in February 2019, the Govt Sanctioned (including temporary sanction & excluding TDLR) strength was 520 and the borne strength was 564.

However, since the officers who attended long courses were required to serve for five years after the course (Policy - NO 30/2015), Naval HQ granted extension to only those X/LG officers who were required to serve for the mandatory five years on completion of their long course in 2017/2018. Accordingly, of the 16 X/LG SSCOs, 09 officers were granted extension and the balance 06 officers, including the applicant were approved to be released in June 2020 on completion of 10 years of service.

12. Consequent to the Honble Supreme Court judgment dated 17.03.2020 in Annie Nagaraja's case (supra), a number of officers who were undergoing PRC/ awaiting release expressed their willing to be considered for PC. Thus, in May 2020, the applicant too submitted an application for consideration for PC/ pensionable service. Based on this, a one- time dispensation was accorded to extend the service by one year in respect of all such SSC officers and accordingly the applicant too was granted extension of one year up to 04.07.2021, vide letter dated 03.07.2020 (Annexure A-7). The applicant was considered for PC in December 2020 but was not granted PC due to low inter-se merit. Consequent to the declassification of the PC SB results in which the applicant had not been selected for grant of PC, she submitted another application requesting further extension.

13. Similarly, in the second look of 2010 batch in 2020, willingness had been ascertained from 122 officers and all 122 were considered; of which, 79 were granted extension and 43 were released. Officers who had already been granted extension up to 2022/ 2023 (based on normal extension of 10+2 yrs or based on the mandatory five years post course in 2017 86 2018) were considered/ granted extension up to 2024 and officers like the applicant who had been granted only one year extension till 2021 were granted a further extension of one year up to 2022. In the X/LG cadre, ten officers were considered for extension. While one officer withdrew willingness, the balance nine officers including the applicant were granted extension. While the applicant's tenure had been extended by another one year based on her application seeking extension on grounds of critical illness of her child, the other 08 officers were granted extension till January/ June/July 2024. Out of these nine officers, two officers including the applicant were Non Specialist officers since they had not done LLMC, while the balance 07 officers were LLMC (Long Course) qualified. As seen from the records, in April 2021, the Govt Sanction strength of X/LG was 617 and the borne strength was 589, with a deficiency of 28. The complete list of officers of various branches/ cadres granted extension was then

promulgated vide letter dated 23.05.2021. Consequent to being granted a second extension till July 2022, the applicant submitted her application dated 30.06.2021 requesting for further extension up to July 2024, as provided to her other batch mates. This request too was examined in adequate detail as per the extant policy by Directorate of Personnel. The fact that the applicant was not eligible as per the policy dated 16.09.2021, having already attended a pre-release course; not being qualified on PME; request for spouse coordinated posting; lack of sea time as Lt Cdr and other organisational issues were all taken into consideration and the competent authority declined further extension on the merits of the case. Accordingly release order was issued vide letter dated 15.12.2021 with intimation to her office (Material Branch/ Dte of IT).

14. It is seen from the records that as of January 2022, of the original 239 officers of 2010 batch, there were 130 officers in service. Of these, a total of 28 officers have been granted PC. 23 officers are scheduled to be released in 2022 on completion of two years of extension; of whom one officer was released in May 2022 and the remaining 22 including the applicant are scheduled to be released on 04.07.2022. Nine officers are due for release in June/July 2023 on completion of three years of extension, and 70 officers will be released in 2024 on completion of four years extension. With specific reference to SSCOs of X/LG cadre of 2010 batch, overall, the batch had a total of 16 officers from X/LG cadre. Of these, one officer was granted PC; two each were released in 10th, 11th year of service; two will be released in the 12th year of service (2022) and nine officers will be released on completion of 14 years in 2024.

15. We therefore find no mala fide in the manner in which extension has been granted to officers of 2010 batch, and in particular to officers of X/ LG cadre and the applicant. The first extension of one year was granted based on the specific application of the applicant seeking extension till consideration by the Selection Board for PC and the second extension was sought on medical grounds of the applicant's child, which was also granted. The applicant's subsequent request for further extension till July 2024 was also examined in detail and declined. Moreover, having been granted an extension as part of each of the two looks, the applicant prima facie does not have a case to seek further extension through a special consideration, especially when similarly placed officers have already been/ are being released.

16. In view of the above consideration, we find no merit in the OA and it is accordingly dismissed.

17. No order as to costs.

Pronounced in open Court on this 1st day of July, 2022.