
(2020) 02 RAJ CK 0596
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1010 Of 2019

Lt. Col. Eklavya Tak

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Citation : (2020) 02 RAJ CK 0596

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : K K Shah, B S Sandhu

Final Decision : Dismissed

Judgement

1. The present petition has been preferred laying challenge to the Policy dated 10.01.1996, prescribing Procedure to be followed by the Army Dental

Corps Selection Board for selection of Officers for grant of Permanent Commission in the Army Dental Corps (for short "Policy of 1996"),

more particularly, selection of Short Service Commissioned Officers (SSCO) for Permanent Commission in the Army Dental Corps (AD Corps).

2. The facts ad rem are that pursuant to the advertisement dated 25.07.2005, the petitioner was selected as SSCO in the A D Corps, in the year 2006.

3. The petitioner having granted two extensions, is continuing as such till today and his term is expiring in the year 2020.

4. The Army Instructions manual, as amended from time to time, prescribes three opportunities by way of a Departmental Examination for grant of Permanent Commission to an SSCO.

5. The Petitioner appeared in such examination, firstly in the year 2008; then in 2009 and lastly in 2011, and failed in all his three attempts.

6. The petitioner, now at the fag end of his stint as a SSCO- to be superannuated in the year 2020- has preferred the present petition, not only

challenging the policy of 1996 to the extent of criteria adopted for the departmental examination, but also prays for a direction to the respondents to

consider his case for Permanent Commission on the basis of Policy dated 20.03.2012; Revision of Criteria for grant of Permanent Commission to

Short Service Commissioned Officers (for short â??Policy of 2012â??).

7. Mr. K K Shah, learned Counsel for the Petitioner, submits that the impugned policy is not only discriminatory but also irrational, as the same

prescribes a single clear test criteria for the purpose of Permanent Commission to an SSCO, which depends upon the whims and wishes of the

Selection Board, and thus, negating the entire work experience, particularly his ACRâ??s, whilst being in service.

8. Mr. Shah, in order to drive home his cause, heavily relied on Policy of 2012 and submitted that such policy provides for consideration of

performance of the Officer, special achievements, honours and awards etc. for grant of Permanent Commission. He added that a personâ??s

suitability cannot be decided on the basis of his performance on one single day- his entire service record should be considered.

9. Learned counsel contended that the criteria specified for grant of Permanent Commission was never communicated to the petitioner and it was only

in the year 2017, that the petitioner came to know about the fact that unlike other Corps, no weightage is given to the work rendered/ ACRâ??s of an

officer for grant of Permanent Commission.

10. He thus argued that when a uniform, transparent and rational policy for grant of Permanent Commission to SSCOâ??s is in force for all the

Corps, then there was no occasion for the A D Corps, to be on tangent and adopt an entirely different criterion for grant of Permanent Commission.

11. Mr. Sandhu on the other end, argued that the petitionerâ??s reliance upon the Policy of 2012 is misplaced, as the same is not applicable to the A

D Corps. He submitted that grant of Permanent Commission to an SSCO in the A D Corps, is governed by the Policy of 1996 read with Army

Instructions, as amended from time to time. The Policy of 1996 stipulates a procedure of tests and interviews for the purpose of grant of Permanent

Commission to an SSCO, as according to which, three opportunities are provided

to clear the examination aforesaid.

12. He argued that it cannot be accepted that a candidate who appears in a recruitment process was not aware about the criteria adopted, while

maintaining that ignorance of law cannot be a valid excuse.

13. Mr. Sandhu further argued that the petitioner having appeared in three attempts without any protest and demur, and having exhausted all his

opportunities, is barred from challenging such policy.

14. Heard.

15. The facts are undisputed. The petitioner was appointed in the year 2006 as an SSCO; appeared in the Departmental Examination on three

occasions for grant of Permanent Commission and failed.

16. The petitioner has set up a case that at the time of appearing in the departmental exams, he was not aware of the fact that the ACRs of the

petitioner have no bearing whatsoever for the purpose of grant of Permanent Commission. This Court is unable to fathom such stand of the Petitioner

inasmuch as a candidate is required to know at least the provisions concerned with such services and any future avenues. Ignorance of the provisions

governing the recruitment in question cannot be a ground to lay challenge to the procedure of recruitment at such a belated stage, particularly when he

has appeared thrice in pursuance of such policy.

17. That apart, even if it is assumed that the Petitioner was unaware of such criteria, he ought to have challenged the same at the earliest possible

opportunity. Now it is too late in the day to lay a challenge to such policy as the petitioner has not only participated, but also failed. Petitioner is barred

by the principle of acquiescence.

18. Adverting to the other ground of challenge to the Policy of 1996 that the procedure as specified in the Policy of 2012 ought to have been adopted

as the same is uniformly applicable to all the Corps and is also the most transparent, this Court is of the considered opinion that it is beyond the scope

of the writ Court sitting in judicial review to examine as to which is the best suited policy for the purpose of grant of Permanent Commission. The

authorities in their wisdom have provided for separate procedures for such purposes for different corps.

19. It has not been pointed out as to how the Policy of 2012 supercedes the

impugned Policy or has an overriding effect on all other policies.

20. No other argument was advanced.

21. For the reasons aforesaid, petitioner's challenge to the Policy of 1996 fails.

22. The writ petition as well as the stay petition, therefore stand dismissed.