
(2021) 12 AFT CK 0023
In the Armed Forces Tribunal
Case No : O.A. No. 2002 Of 2020

Maj Navdeep Banyal

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 22

Citation : (2021) 12 AFT CK 0023

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

Bench : Division Bench

Advocate : S.S. Pandey, Suman Chauhan

Final Decision : Dismissed

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the prayer made in Para 8 of the application reads as under:

(a) Call for the records based on which the Respondents have denied the opportunity to apply for the grant of Departmental Permanent Commission (DPC) to the Applicant in terms of the impugned order dated 03.05.2019 as conveyed vide order dated 09.05.2019 without considering his request for age relaxation and thereafter quash the same including the policy instructions which were issued vide letter dated 21.09.2001 and 05.05.2006 being unconstitutional.

(b) Direct the Respondents to consider the Applicant for the grant of Permanent Commission as a compensatory chance by granting age relaxation in view of the waiver granted to other such similarly placed Non-Regular Officers vide their policy letter dated 09.04.1997 and 15.06.2009 thereby granting them the Permanent Commission in the AMC.

(c) Direct the Respondents to grant Departmental Permanent Commission to the Applicant if found fit for the same with all consequential benefit.

(d) Pass such Order/Orders as deemed appropriate by this Honble Tribunal.

2. It is the grievance of the applicant that in an illegal and arbitrary manner, which is also discriminatory in nature, his case, for consideration to grant of Permanent Commission by appearing in the Departmental Permanent Commission (DPC) Examination has been rejected on the ground that he is overage. It is his grievance that his request for relaxation of the age and for grant of a compensatory chance to appear in the DPC Examination is being denied in an illegal manner. He further alleges discrimination in the matter of providing age-relaxation till 35 years to Short Service Commissioned Officers (SSC Officers) who have already acquired Post-graduate degree prior to commissioning into service and denying the same relaxation to officers who had acquired the Post-graduate degree while in service as SSC officers.

3. Challenging the aforesaid action, this application has been filed and in nutshell, the facts indicate that the applicant acquired a degree in Bachelor of Medicine and Bachelor of Surgery (MBBS) and thereafter was commissioned as a SSC Officer in the Army Medical Corps (AMC) on 30.12.2009 at the age of 25 years and 06 months. It is alleged that while undergoing the rigorous training for Medical Officers Basic Course (MOBC) in August, 2010, the applicant suffered from Acute Viral Hepatitis (A) due to which he was placed in Low Medical Category S1H1A1P2(T-24)E 1 with effect from 14.10.2010 and was not allowed to complete the said course, but subsequently, he was upgraded to SHAPE-1 with effect from 05.04.2011. It is further stated that he was detailed for the MOBC by the Office of the DGMS in August, 2012 and while doing so, the fact about his eligibility for being detailed for the course for the year 2011 was totally ignored, as a result of which, he could not apply for participating in the DPC Examination, which was to be held in the year 2012, as he had not completed the MOBC. It is stated that in the DPC Exams, marks were awarded by the Selection Board based on the performance of the aforesaid Course. It is further stated that because of the disability, again caused due to certain disease, which was attributable to military service, the applicant was downgraded to Low Medical Category S1H1A1P3(T-24) with effect from 22.05.2013 and this again became an obstacle for him to appear in the DPC Examination which was held in the year 2013. Thereafter, he was upgraded to SHAPE-1 category on 20.11.2013 when he had already attained 29 years and 05 months of age and in June, 2014, he was to become 30 years of age. Therefore, it is stated that his becoming overage was on account of medical disability attributable to military service and it is the case of the applicant that an SSC officer, in normal course, gets three chances to appear in the selection process to acquire the status of Permanent Commission but he is required to be in medical category SHAPE-1. It is the case of the applicant that, at the first instance, i.e. in the year 2012, he could not appear due to his low medical category and further prejudice was caused in this regard by not detailing him to the MOBC in the year 2011, but thereafter MOBC was done only in the year 2012, due to which he could not apply to participate in the

selection process of 2011.

4. It is further stated that the applicant applied for the Post Graduate Entrance Examinations after which he joined the BASE Hospital, Delhi Cantt in March, 2015 and accordingly started his Post-Graduation Training for Diplomate of National Board (Psychiatry) which was completed in the year 2018. In June, 2018, the applicant had applied to appear in the DPC Examination, but on the ground of his being overage, his application was rejected. In February, 2019, he applied to the DGAFMS seeking one-time waiver to appear in the DPC Examination. However, his claim was rejected on the ground that he has become overage. It is stated that without considering the fact that he has secured Gold Medal in the Course Ending Examination of Advance Course (Psychiatry) in 2018 and the National Board of Examinations, Delhi Certificate for standing First in Final Examination (Psychiatry) session in December, 2017, he has been arbitrarily denied age relaxation and an opportunity to appear in the DPC Promotion Examination exercise. It is the case of the applicant that action of the respondents in not considering a meritorious candidate like the applicant and refusing to grant him waiver is unjustified and unsustainable.

5. Based on these facts which have come on record, the applicant has filed this application and in the grounds raised, it is the case of the applicant that the respondents, by not allowing him to appear in the DPC Examination by relying upon certain policies and instructions, have committed grave illegality not only in the matter of granting him age-relaxation but also not considering his Post Graduate degree and granting him relaxation in age as has been granted to certain class of employees by granting them relaxation till the age of 35 years. It is said that in the matter of granting age relaxation on the basis of the time of acquiring Post-Graduate degree i.e. while in service or otherwise, respondents are acting unconstitutionally in violation of the mandate of Articles 14, 16 and 21 of the Constitution. He further refers to letter dated 09.04.1997 issued by the DGAFMS, the provisions of Army Instructions (AI) 74/76 and 78/79 and argues that an officer is granted three chances and one waiver. The applicant, because of the peculiar circumstances i.e. his becoming overage and on two occasions, his disability to appear in the selection process on account of having acquired low medical category, is entitled to seek one more opportunity, which is being denied. That apart, in the matter of overage, the ground of discrimination with regard to the period of time of acquiring Post-Graduate degree is highlighted in the application.

6. Learned counsel for the applicant, Shri S.S. Pandey, invites our attention to various documents available on record, namely, the impugned order dated 03.05.2019 (Annexure-A1) declaring him ineligible for consideration for DPC being overage; communication dated 09.05.2019, wherein his request to allow him one compensatory chance for appearing in DPC Selection Board has been rejected on the ground that he has become overage and, therefore, same

could not be granted. Learned counsel also invites our attention to the provision of Terms and Conditions of service for officers granted SSC for the Army Medical Corps vide AI 75/78, amendment incorporated on 05.05.2006 and refers to the amended provision, which 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 914 years service provided they fulfill the conditions of eligibility laid down in the AI 74/76 as amended subject to the condition that not more than two chances shall 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."

The above provision stipulates that an officer is entitled to three chances for taking the examination and it is stated that in the case of the applicant, he was denied the chances due to reasons beyond his control, therefore, one compensatory chance as applicable should have been granted to him. Further reference is made to the letter No. 34528/DPC/DGAFMS/DG-1A/2493/D (Med), Government of India, Ministry of Defence dated 21.09.2001, wherein age-relaxation upto the age of 35 years is granted to SSC officers in the Army Medical Corps, who are already in possession of the Post-Graduate degree acquired by them prior to their commissioning. It is stated by the applicant that this benefit of age-relaxation should also be extended to officers who acquired Post-Graduate degree while in service. Holding the provisions in the AI 74/76, which prevent the officer from getting age-relaxation, challenge is made to the action of the respondents.

7. Shri S.S. Pandey, learned counsel for the applicant took us through various aspects of the matter as well as to certain provisions as detailed hereinabove and argued that the respondents in the matter of considering the case of the applicant have committed grave irregularities and, therefore, the same should be interfered with.

8. Respondents have filed a detailed counter affidavit and we find from the counter affidavit filed that the date of birth of the applicant is 26.06.1984. In pursuance to the advertisement published in August, 2009, the applicant applied for grant of SSC in the Army Medical Corps (AMC) and in the advertisement, he applied and was selected and granted SSC in AMC. In the said advertisement itself, the eligibility criteria for persons applying to get Permanent Commission was indicated as under :

"Permanent Commission

That on completion of 2 years of service, SSC officers are eligible to apply for Departmental Permanent Commission (DPC) provided they have not attained the age as indicated below :-

- (i) MBBS - 30 years as on 31 Dec of the year of application for DPC
- (ii) Diploma - 31 years as on 31 Dec of the year of application for DPC
- (iii) Post Graduate 25 years as on 31 Dec of the year of application for DPC."

A copy of the aforesaid advertisement is filed as Annexure R-1. The applicant was granted SSC on 30.12.2009 in accordance to the provisions of AI 75/78, as amended from time to time.

9. It is the case of the respondents that the SSC officers in the AMC are eligible for being considered for DPC on fulfillment of eligibility criteria stipulated in Para 12 of AI 75/78 and the provisions laid down in AI 74/76 filed as Annexure R-2. The instructions stipulated in the AI 75/78 further amended on 05.05.2016 clearly lay down the following provisions (Annexure R-3) :

"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 two years of SSC service and before completion of 9-1.2 service, provided they fulfill the conditions of eligibility laid down in the AI 74/76 as amended subject to the condition that not more than two chances shall 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."

The age criteria for grant of DPC has been laid down in AI 74/76 as amended vide Govt. of India, MoD letter No. 34528/DPC/DGAFMS/DG-1A/2493/D (Med) dated 21.09.2001 (Annexure R-4) and the criteria for age relaxation reads as under:

"Age Limits :-

4. (a) Candidates must not have attained 30 years of age on 31 Dec of the year of receipt of application from them. But in the case of candidates possessing additional medical qualifications, the following age limits will apply:

- (i) Those possessing post-graduate diploma like DOMS, DPH, DA etc. 31 yrs.
- (ii) Those possession post-graduate qualifications like MD, MS etc 35 yrs."

10. It is the case of the respondents that the applicant was eligible for any of the three DPC Boards conducted between the years 2012 and 2013. The DPC Board for the year 2012 was conducted twice, first one in June 2012 and the second one in December, 2012. Thereafter, the DPC Board for the year 2013 was conducted in November, 2013 but despite being eligible to appear in any of the two chances out of these three Boards conducted between 2012 and 2013, the applicant did not appear in any of the three Boards. It is stated that instead of applying for the DPC Boards in the years 2012 and 2013 when he was eligible, the applicant applied in the year 2018, when he had already become overage and had become ineligible on that count, that is why the impugned

action was taken. Thereafter in the year 2019, the applicant again submitted his application on 28.02.2019 seeking 'one-time age waiver' which was also rejected vide Annexure R-7 dated 09.05.2019.

11. According to the respondents, the applicant in his application for grant of one-time age waiver has contended that he had suffered a back injury in December, 2012, in Field Area, Sumdo (High Altitude Area) in Himachal Pradesh, which led to his suffering from PIVD L4/L5, L5/S1 and admitted to the Command Hospital (Western Command), Chandimandir in March, 2013. He was operated upon and observed as a Low Medical Category P3 (T-24) with effect from 22.05.2013, but later was upgraded to SHAPE-1 on 20.11.2013. It is the case of the respondents that it is not a condition precedent for applying for the DPC to be in SHAPE-1 but the officer has to be in SHAPE-1 when the DPC Examinations are held. It is said that in this case, the applicant had already been upgraded to SHAPE-1 on 20.11.2013 and, thus when the DPC Board 2013 was conducted between 09.12.2013 and 13.12.2013, the applicant was already in SHAPE-1 as he was re-classified by the Re-classification Medical Board on 20.11.2013 and approved on 29.11.2013.

12. It is stated in the counter affidavit by the respondents that when the applicant was declared in the Low Medical Category and when the applicant underwent Re-classification Medical Board, approval for which was granted on 29.05.2013, when he was upgraded from P4 (T-06) to P3 (T-24), he was already made aware on that day itself that his next Re-classification Medical Board will be held on 04.11.2013 and the applicant signed this communication on 24.05.2013 (Annexure R-9). It is said that the applicant was well aware of the date of holding of Re-classification Medical Board and, therefore, he could have easily applied for consideration in the DPC which was to be held in November, 2013. It is stated that the applicant chose not to represent and thereafter when his application for age-waiver was rejected on 09.05.2019, it is only after a delay of more than 384 days that he chose to challenge the impugned action.

13. It is further stated that the applicant was detailed for MOBC in the year 2010, however, due to his own illness i.e. Viral Hepatitis A (HVA), he was not able to complete his course. He was again detailed for the said Course in August, 2012 and he completed the MOBC with 'B' grading in October, 2012, while the last date for receipt of the application for DPC Board which was to be held in December, 2012 was 15.11.2012. It is stated that once the applicant has completed MOBC in October, 2012, he could have very well applied for DPC Board which was to be held in December, 2012 for which the application was to be submitted by 15.11.2012. It is said that the applicant having voluntarily not chosen to apply for both the Boards which were held in 2012 and 2013, now cannot turn around and say that because of his Low Medical Category, he was denied an opportunity to appear in the DPC Examinations and that he is now entitled to one-time waiver of his age and claim age-relaxation. That apart,

respondents have relied upon the judgment rendered by this Tribunal in the case of Maj. Gen. Basavaraf G. Gilganchi Vs. Union of India and others [O.A. No. 1256 of 2018] decided on 13.12.2018 [Annexure R-11] to say that the applicant did not avail of the statutory remedy for redressal of his grievance in time and, therefore, the application is liable to be rejected and that apart, they contend that delay of more than 384 days is not explained in accordance to the requirement of Section 22 of the AFT Act. Respondents have also tried to indicate that the application is barred by limitation. Thereafter, inspite of all these, it is stated by the respondents that the applicant deliberately chose not to apply for the DPC Boards on two occasions in the years 2012 and 2013 and is now trying to carve out a relief on lame excuse of his being in Low Medical Category at that point of time, after a lapse of six years and on this ground itself, it is stated that the relief as prayed for cannot be granted to the applicant.

14. It is the case of the respondents that the applicant does not have to be in SHAPE-1 at the time of applying for the DPC, in fact, he is only required to be in SHAPE-1 at the time of appearing before the Selection Board or at the time of interview. It is stated that in this case the applicant on the ground that he was in Low Medical Category at that time, did not apply whereas he became SHAPE-1 much before the Selection Board process was held in both the occasions. Accordingly, the respondents have contended that in the facts and circumstances of the case, as the applicant himself is to be blamed for the situation created, no relief can be granted to him.

15. We have heard the learned counsel for the parties and bestowed our anxious consideration on various aspects of the matter canvassed before us and have also gone through the records.

16. Admittedly, the applicant had three chances to appear in the DPC Examination process that was to be conducted for being eligible to be granted the Permanent Commission. He was eligible when three DPC Boards were conducted between 2012 and 2013. In the year 2012, the Board was conducted for the first time in June, 2012 and the second one in December, 2012. The DPC Board for the year 2013 was conducted in November, 2013. However, inspite of the fact that the applicant was eligible to avail of two chances from any of the three, he did not apply even for a single chance, instead applied only in the year 2018 when he had already become overage, and sought one-time age waiver through his application dated 28.02.2019. As far as the injury suffered by the applicant in December, 2012 is concerned, records indicate that he suffered the injury in December, 2012, was admitted to the hospital in March, 2013, he was operated upon and was upgraded to SHAPE-1 in November, 2013. The DPC Board for the year 2013 was conducted between 09.12.2013 and 13.12.2013 and the applicant was upgraded to SHAPE-1 on 20.11.2013 and he was approved for 25.11.2013 i.e. much before the conduct of the DPC Board. The date of his Re-classification Medical Board in November, 2013 which was scheduled to be held on 04.11.2013 was within the

knowledge of the applicant on 24.05.2013. Apparently, the applicant could have applied and for reasons best known to him, he chose not to apply, inspite of the knowledge that the only requirement as per the rule is that the officer has to be in SHAPE-1 at the time of appearing in the Selection Board and not at the time of making the application. That apart, the applicant had completed the MOBC with 'EY grading in October, 2012, much before the last date of submitting the application i.e. 15.11.2012 and the DPC Board was to meet in December, 2012 and in this Board also, the applicant, inspite of having completed the MOBC in October, 2012, did not apply. That being so, the respondents are correct in contending that for reasons best known to the applicant himself, chose not to apply in any of the three DPC Boards which were held between 2012 and 2013 and now claims age-waiver on the ground that he should be granted one-time waiver in view of the peculiar circumstances as explained hereinabove.

17. We are of the considered view that the applicant himself is responsible for creating the situation. He would have had a case if he had applied and would have declared ineligible because of his Medical Category when the Selection Board was to be held. In this case, in anticipation that he would be in Low Medical Category and ineligible when the Selection Board is to be held, the applicant chose not to apply. The contention of the respondents that the applicant has to be in the appropriate medical category at the time when the Selection Board process or interview is held and not at the time of application becomes relevant in the case of the applicant because we find that on both the occasions, when the DPC Boards were held, the applicant had already been upgraded to SHAPE-1 and the applicant having fully well aware that the Reclassification Medical Board is to be held on certain date, should have at least applied to participate in the DPC Selection Board process and if he had not acquired SHAPE-1 Category at the time of selection, he would have had a better case for seeking waiver. In this case, even without applying in the years 2012 and 2013, the applicant wants waiver and that too after a period of more than five years, when he had become overage. When the Army Instructions, which lay down mandatory process for grant of Permanent Commission prescribes a particular age limit by which time a candidate should seek appointment or grant of Permanent Commission, we cannot, in ignorance of the same, approve grant of age-relaxation or one-time waiver when apparently from the record, it is clear that the applicant is overage and is not eligible for consideration in accordance to the Army Instructions.

18. That apart, the contention of the applicant that discrimination in the matter of granting age-relaxation to candidates who acquired a Post-Graduate degree before being commissioned and candidates who acquire Post-Graduate degree after being commissioned are concerned, we find that there is no such discrimination. Candidates who are commissioned into the Short Service Commission without having acquired a Post-Graduate degree holding only an MBBS degree form a different class than the candidates who apply for

grant of SSC after obtaining the Post-Graduate degree. The time, approximately of about 3 to 4 years spent by a candidate for acquiring a Post-Graduate degree after completing his MBBS course with internship etc. entitles him for grant of age-relaxation when he enters service as a SSC officer after he acquired a Post-Graduate degree in comparison of an MBBS candidate who gets commissioned without a Post-Graduate degree. Both these categories of employees form two different class, having different criterias with regard to the qualifications possessed by them when they are commissioned into the service and if taking note of this basic difference, the respondents have laid down different provisions for grant of age relaxation in the manner done, this being purely an administrative/executive policy of the respondents, which is seen to be reasonable, we find no reason to interfere into the same. The contention of the applicant that both classes of persons belonging to the same category are being discriminated in the matter of age-relaxation is a misconceived and unsustainable argument. Both the categories of officers fall in two different categories on account of the circumstances and the qualifications acquired by them before undergoing the selection process for entry into service as a SSC officers and if keeping that in view, two different policies in the matter of age-relaxation are evaluated by the respondents for the purpose of seeking Permanent Commission, we see no illegality or irregularity in the same.

19. That apart, as contended by the respondents, we find that the applicant has invoked the jurisdiction of this Tribunal belatedly and there is no justifiable explanation for the delay. Even though we are not inclined to dismiss the application on the ground of delay, having examined the issue involved in detail on merit, we find no substance in the contentions of the applicant and, therefore, refrain from interfering into the matter.

20. Accordingly, for the grounds and reasons as detailed hereinabove and finding the justification given by the respondents in their counter affidavit to be proper warranting no interference, we reject the prayer of the applicant. The original application is dismissed. However, there is no order as to costs.

Pronounced in open Court on this 10th day of December, 2021.