

(2020) 01 AFT CK 0009

In the Armed Forces Tribunal

Case No : Original Application No. 1100 Of 2019

R.P. Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 31(1)

Citation : (2020) 01 AFT CK 0009

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Ajit Kakkar, V. S. Tomar

Final Decision : Dismissed

Judgement

“

1. Vide our detailed judgment of even date, we have dismissed the main OA. Faced with this situation, learned counsel for the applicant makes an oral”,,

prayer for grant of leave to appeal to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.”,,

After hearing learned counsel for the applicant and going through our judgment, in our considered view, there appears to be no point of law much less”,,

any point of law of general public importance involved in the judgment rendered by the Tribunal, therefore prayer for grant of leave to appeal is”,,

declined.,,

The applicant, a Short Service Commissioned officer in the Army Medical Corps, is due to retire from service on 20.01.2020. He is aggrieved by his”,,

non-consideration for grant of Departmental Permanent Commission (DPC) in the Army Medical Corps (AMC).,,

2. The essential facts of the case are that, the applicant was commissioned in the Army on 20.01.2006. He became eligible to apply for DPC on",,,

20.01.2008, when he completed the two years' mandatory Short Service Commission however in 2008, though eligible, he did not apply for DPC. In",,,

February 2009, he applied for the DPC for the first time but his application was rejected on grounds of being overage i.e. more than 30 years as on",,,

31.12.2009. In September 2009, again he applied for grant of DPC, this time as per new policy letter dated 15 Jun 2009, a one-time waiver despite",,,

overage was granted to him to appear for DPC. However he was not selected in this DPC, being low in comparative merit. Thereafter, on",,,

28.04.2013, the applicant again applied for grant of DPC, wherein he was not found to be eligible, on the ground of being overage. When he",,,

represented for grant of DPC, the same was rejected vide letter dated 22.04.2015 stating that the applicant was ineligible as he had missed his chance",,,

due to his own volition and that he had already availed the one-time age relaxation waiver. His subsequent representations also suffered with similar",,,

fate. Hence the instant O.A seeking the following reliefs:,,

(a) Quash the impugned orders;,,

(b) Direct the respondents to allow the applicant to be considered for the grant of Departmental Permanent Commission;,,

(c) Direct the respondents to provide age waiver to the applicant to apply for Departmental Permanent Commission and to consider his",,,

application without prejudice.,,,

3. Mr. Ajit Kakkar, learned counsel for the applicant submitted that the applications submitted by the applicant for permanent commission was",,,

rejected by the respondents on several occasions on the ground of being over-age, which is not only wrong but also illegal and arbitrary. Additionally",,,

he cited several instances where SSC officers like him were granted DPC even at much higher age, whereas the case of the applicant was turned",,,

down on the ground of age bar, which is a clear discrimination violating the provisions of Articles 14 and 16 of the Constitution. He further claimed",,,

that the advertisement under which the applicant joined AMC didn't have such age restrictions. Learned counsel, in support of his contentions, relied",,,

on the decision of this Tribunal in Surg Lt Cdr Rohit Verrna v. Union of India and

others (O.A No. 775 of 2015 decided on 11.09.2018) and submitted,,
that a lenient view may be taken in the case of the applicant as well and he may be given one more chance for DPC.,,
4. The respondents have opposed the instant O.A by filing a counter affidavit, in which they have admitted the fact that the applicant was granted SSC",,
in AMC on 20.01.2006 under the provisions of Army Instruction No. 75/78, as amended from time to time. Before completion of his first spell of SSC",,
(5 years), the applicant was granted first extension of service for five years and subsequently second extension for four years till 20.01.2020. At the",,
time of joining as SSC officer, the age of the applicant was 26 years and 07 months. The respondents have also stated that the criteria for grant of",,
DPC to SSC officers of the AMC is governed by Para 12 of Annexure to AI 75/78 as amended, which lays down the number of chances and the",,
service limits within which such chances have to be availed by SSC officers, whereas the age criteria is laid down in AI 74/76, according to which the",,
cut-off date for determining the age criteria is 31st December of the year of application for DPC. The applicant was eligible for applying for DPC in,,
the year 2008 as per the laid down provisions and he could have availed two chances for grant of DPC, one in May 2008 and the other in November",,
2008 DPC Boards. However, he did not apply for the same on his own volition. The applicant applied for the DPC for the first time in February 2009",,,
but his application was rejected as he became overage (more than 30 years) as on 31.12.2009 as per the extant policy in vogue. Subsequently under,,
policy of one-time exemption for overage, vide DGAFMS letter dated 15.06.2009, the applicant was allowed to appear for DPC towards end of 2009",,
but he could not qualify.,,
5 Additionally, Mr. Tomar, learned counsel for the respondents brought out that the advertisement issued for selection of SSC Medical Officers up to",,
December 2007, contained age criteria by wrongly interpreting the cut-off date for calculation of age as on 31st December of the year of",,
advertisement, for applying for DPC, whereas it should have been 31st December of the year of application for DPC as per AI 74/76, as amended.",,
The correct interpretation of the age criteria was implemented with effect from DPC held in June 2008 and as a result, number of officers, who had",,
applied and joined SSC in response to the advertisements published up to

December 2007, became ineligible for DPC without availing even one",,
chance for DPC. Considering this scenario, a one-time age relaxation was granted
for DPC held in November 2008 with the approval of DGAFMS.",,

Since there still remained a number of similarly placed officers who could not
avail even a single chance to appear for DPC due to implementation of,,
correct age criteria, to accommodate these officers who would have been
otherwise overage by 31.12.2009 and 31.12.2010, a one "time relaxation",,
for DPC was extended in December 2009, June 2010 and December 2010 vide
DGAFMS letter dated 15.06.2009.",,

6. Learned counsel for the respondents further stated that the applicant again
applied for grant of DPC in August 2009 on the strength of the above,,

letter dated 15.06.2009 and his application was accepted in view of the one-time
age relaxation waiver. The applicant was called for the DPC Board,,

held in December 2009, but could not be granted DPC being low in comparative
merit in view of limited number of vacancies. Thereafter, the",,

applicant again applied for the second chance in the year 2013 in response to the
circular inviting applications for DPC Board for the year 2013. On,,

examination of his application in the light of the circular inviting applications for
DPC Board held in the year 2013, it was found that the applicant did",,

not fall within the purview of one-time age relaxation as he had already availed
the same. Subsequently on 14.02.2015, the applicant submitted an",,

application for providing three chances and waiver of age to appear for DPC. The
said application was examined and replied vide letter dated,,

22.04.2015 as under:,,

34528/AMC(DPC)/DGAFMS/DG-IA 22 Apr 2015,,

OFFICE OF THE VGA FMS/DG-IA,,

REPRESENTATION FOR PROVIDING THREE CHANCES AND WAIVER OF AGE TO
APPEAR FOR DEPARTMENTAL,,

PERMANENT COMMISSION,,

1. XX XX XX XX XX XX,,

2. The request of Maj RP Singh for providing three chances and waiver of age
relaxation to appear in the interview for Departmental,,

Permanent Commission in Army Medical Corps has been examined by the
Competent Authority.,,

3, MS-15205M Maj RP Singh was granted SSC on 20 Jan 2006 in AMC at the age of 26 years, 06 months & 13 days (DOB 18 Jun 1979).",,,

He completed two yrs of mandatory SSC service on 20 Jan 2008 and became eligible to apply for Departmental Permanent Commission,,

(DPC) for Jun 2008 and Dec 2008 Selection Boards. As per laid down age criteria, he was eligible to apply for DPC since his age was less",,,

than 30 years as on 31 Dec of the year of the application i.e. 2006 The officer did not apply for Departmental Permanent Commission on,,

his own volition,",,

4. The officer availed the age relaxation in Dec 2009 for one chance only granted to other similarly placed officers in Dec 2009, Jun 2010",,,

& Dec 2010 who had applied and joined AFMS as 55C offrs in response to the advls upto Dec 2007. The officer appeared for interview for,,

consideration for Departmental Permanent Commission in Selection Board in December 2009. The officer could not be granted Permanent,,

Commission being low in relative merit. The age relaxation was a one time dispensation.,,,

5. The officer did not avail all the chances except one entitled to him while he was eligible in all respects.,,,

6. DPC in AMC is granted as per policy laid down in AI 74/76, as amended and the same is strictly adhered to. There is no provision for",,,

relaxation of age limit as well as upper service limit Hence the officer has no legitimate claim for consideration for DPC and no institutional,,

injustice has been done to the officer. His application is recommended to be rejected as it lacks merit.,,,

XX XX XX XX XX XX,,

Learned counsel for the respondents further submitted that the applicant again submitted an application for grant of DPC, which was also rejected",,,

vide the impugned order dated 03.05.2019. He concluded by stating that the applicant had already availed all chances and there being no infringement,,

of any rules or regulations, the O.A has no merit. He stated that the subject matter raised by the applicant is no more res Integra. This issue has",,,

already been decided in favour of respondents by an order dated 25.05. 2012 by a Co-ordinate bench of this Tribunal in the case of Capt. Prabhat,,

Chaturvedi v. Union of India and others (O.A No 314 of 2011 decided on

25.05.2012). He further stated that the case quoted by the learned counsel,,
for the applicant i.e Surg Lt Cdr Rohit Verma v. Union of India and others (O.A
No. 775 of 2015 decided on 11.09.2018) is not relevant to his case,,
because the order in this case is specific to the case and the order clearly states
that it is not to be treated as a precedent for other persons to claim,,
such rights. He pleaded for the O.A to be dismissed.,,

7. Having heard the learned counsel for the parties, and having perused the
records the following facts are clear to us:",,

(a) That the applicant joined as a Short Service Commissioned (SSC) officer in
Army Medical Corps (AMC) on 20.01.2006. The applicant is,,
due for release as an SSC officer on 20.01.2020.,,

(b) That after completing training, he had two chances to apply for Departmental
Permanent Commission (DPC) in 2008 but he did not",,
apply for the same, this being a matter of option and voluntary choice for an SSC
officer.",,

(c) In 2008, the respondents, realized that there is an error in the
advertisements for SSC officers in relation to eligibility for permanent",,
commission vis-a-vis conditions of service contained in Annexure A to Army
Instructions 74/76. The nature of error was that while the Army,,
Instruction specified that the age limit i.e. 30 years must not have been attained
on 31 December of the year of receipt of application for,,

DPC from the candidate whereas the advertisements indicated this age related
cut-off date as 31"" December of the year of advertisement",,
i.e. 31.12.2005, in the case of applicant.",,

(d) On 15.06.2009, the office of DGAfms issued a letter clarifying the error in
the advertisement and offering one chance to every person",,
who had not availed a single chance and had become ineligible for permanent
commission due to over age factor.,,

(e) In August 2009, on the basis of above-mentioned letter, the applicant applied
for DPC. However, he was not selected, being low in merit.",,

(f) Thereafter, the applicant tried on multiple occasions for one more attempt at
DPC, but the same was not permitted by the respondents on",,
account of the policy on the subject. Hence this O.A.,,

8. We have noted that providing SSC is a policy decision of the Government and
is linked to management of pyramidal structure of the Armed,,

Forces. Hence no SSC officer can claim Permanent Commission as a right, however, those SSC officers, who opt for Permanent Commission, must",,,

be given a fair consideration as per the extant rules. In view of the above, the only question that needs to be answered by us is, whether the applicant",,,

is entitled for an additional chance for consideration by DPC, by giving him the benefit of age waiver?"",,,

9. There is no dispute that the applicant was granted SSC in AMC on 20.01.2006 as per the provisions of Army Instruction No. 75/78, Before",,,

completion of his first spell of SSC (5 years), the applicant was granted first extension of service for five years and subsequently second extension for",,,

four years till 20.01.2020. At the time of joining as SSC officer, the age of the applicant was 26 years and 07 months. The applicant was eligible for",,,

applying for DPC in the year 2008 as per the laid down provisions and he could have availed two chances for grant of DPC, one in May 2008 and the",,,

other in November 2008 DPC Boards. However, he did not apply for the same on his own volition. The applicant applied for the DPC for the first",,,

time in February 2009, but his application was rejected as he became overage (more than 30 years) as on 31.12.2009 as per the policy in vogue. In",,,

this regard, it would be beneficial if we refer to Para 1(b)(ii) of AT No. 74/76, which reads as under:"",,,

Serving AMC/SSC/EC/Reserve Officers will also be eligible to take up AMC Examinations for grant of Permanent Commission along with",,,

other civilian candidates provided they are within the age limit as per Para 4(a) below on 31st December of the year of receipt of",,,

application and found eligible in all respects.,,,

Para 4(a) of the aforesaid Army Instruction provides as under:",,,

Age limits:",,,

4. (a) Candidates must not have attained 30 years of age on 31 December 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 years

(ii),"Those possessing post-graduate

qualifications like MD, MS etc",35 years
(iii),"Those possessing high post-graduate
qualifications like FRCS, MRCP, MR COG
etc and have served in their specialties under
recognized medical institutions for a period
of at least 5 years vide para 1(c) above",36 years