

(2019) 10 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 184 Of 2017

Sangeetha Damodar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0005

Hon'ble Judges : Virender Singh, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : Ankita Patnaik, Harish V. Shankar

Final Decision : Allowed

Judgement

1. Feeling aggrieved of the action of the respondents in not granting Permanent Commission and by impugned order dated 11.08.2011 vide which the

applicant, who was commissioned in the Indian Air Force on 10.07.2000 as Short Service Commissioned (SSC) Officer in Aeronautical Engineering

Branch 130 SSC (W)I, was released from service w.e.f. 15.08.2011 based on the Air HQ HR Policy dated 02.08.2011, present OA has been filed by

the applicant seeking quashing of the impugned order dated 11.08.2011 and that the Air HQ HR Policy dated 02.08.2011 be declared as illegal, null

and void and cannot be made applicable and also reinstatement in service granting Permanent Commission in line with the Air HQ HR Policy dated

19.11.2010 read with 10.09.2004 with all consequential benefits.

2. In fact, the applicant is banking upon order dated 07.11.2014 passed in O.A. No. 142 of 2013 (Sqn Ldr Sunita Sighadia 86 Ors. Vs. Union of India

86 Ors.) and order dated 20.02.2015 passed in O.A. No. 110 of 2015 (Sqn Ldr K. Hanuja Vs. Union of India & Ors.).

3. The facts of the present case, in brief, are that the applicant was commissioned in 30 Short Service Commission (SSC) Batch on 10.07.2000 initially

for six years. She was granted first extension of 5 years of SSC service w.e.f. 10.07.2006. Her case for second and final extension of service was

rejected and she was released from service w.e.f. 15.08.2011 after 11 years of service vide respondents' order dated 11.08.2011, impugned herein,

and not granted Permanent Commission (PC) by applying the eligibility criteria of changed Qualitative Requirements (QRs) as per the Air HQ HR

Policy dated 02.08.2011, whereas she ought to have been granted PC as per the Policy dated 19.11.2010, which is at par with Policy dated 10.09.2004

(for male SSC officers), It is averred that the applicant was commissioned on the basis of letter dated 06.06.2003 which was reiterated in Human

Resource Policy dated 10.09.2004, whereby QRs for grant of extension to women SSC officers were laid down. In the said Policy, it was provided that

no Permanent Commission (PC) is to be offered to women SSC Officers. Aggrieved by this order of denial, some of SSC Women Officers moved

Honble High Court of Delhi by way of W.P. (C) No. 1597 of 2003 and clubbed matters, seeking direction to the respondents to consider their cases

for grant of PC devoid of gender bias and the said batch of petitions was allowed vide order dated 12.03.2010, by virtue of which, all serving Women

SSC Officers became entitled to be granted PC on the same parameters on which male SSC Officers were granted PC. However, the respondents

did not consider their cases on the ground that they had not opted for grant of Permanent Commission and as the other women officers were not party

to the aforesaid writ petitions, they were not granted the benefit of PC. Against non-compliance of the aforesaid order to grant PC to women SSC

Officers other than those who approached the High Court, many women SSC officers moved contempt petition(s) before the Hon'ble High Court of

Delhi for grant of PC to them in light of the judgment dated 12.03.2010. In compliance of the aforesaid order, respondents framed Air HQ HR Policy

dated 19.11.2010 laying down certain QRs for grant of PC to Women SSC Officers at par with the Policy dated 10.09.2004 vide which male SSC

Officers were granted PC, but only 23 women SSC Officers were granted PC. In the contempt petition filed before the Hon'ble High Court of Delhi,

the respondents had given an undertaking that the serving Women SSC Officers

of applicable branches would be considered for PC as per the new

Policy framed which would require appraisal of their performance for determining that they meet the QRs of service for which they would be

considered by a duly constituted Board and based on this undertaking of the respondents, contempt petition was disposed of as not pressed vide order

dated 23.05.2011. Thereafter, respondents came with a new HR Policy dated 02.08.2011, impugned herein, laying down changed QRs for grant of PC

to SSC Officers and because of the change in the policy, many SSC officers, who would have been entitled for grant of PC as per the Policy dated

19.11.2010 and 10.09.2004 were declared unfit for grant of PC. This, in short, is the flash-back of the case.

4. Heard Ms. Ankita Patnaik, learned counsel appearing for the applicant and Mr. Harish V. Shankar, learned counsel appearing for the respondents.

5. Ms. Patnaik, at the very outset, submitted that the case of the applicant is squarely covered by the ratio laid down in the case of Sqn Ldr Sunita

Sighadia & Ors. Vs. Union of India & Ors. [O.A. No. 142 of 2015], wherein, while allowing the OA and setting aside the order of rejection of PC to

the petitioners therein, the respondents were directed to consider their case on the basis of HR Policy dated 12.11.2011 read with Policy dated

10.09.2004 within the stipulated period and in the meantime, the respondents were directed to allow the petitioners therein to continue in service.

6. Ms. Patnaik has also relied upon another order of the Tribunal dated 20.02.2015 rendered in Sqn Ldr K. Hanuja & Ors. Vs. Union of India as Ors.

10.A. No. 110 of 2015], wherein on the strength of Sqn Ldr Sunita Sighadia's case (supra), the said OA was allowed observing in Para 4 as under:

4. We have considered the submissions made by the learned counsel for the parties in this behalf. The case of the petitioner is required to

be considered in terms of the orders passed by this Tribunal in OA No. 198/2012 Sqn Ldr. Maninder Kaur Vs. UOI & Ors. on 20.11.2014

and OA No.142/2013 Sqn Ldr. Sunita Sighadia & Ors Vs. UOI & Ors. passed on 07.11.2014. As a matter of fact it is a judgment which was

not confined only to the applicants as it involved broader issues regarding applicability of policies required to be considered for their

permanent absorption. Therefore, any person who was rejected on the basis of the policies which were impugned in the case of Sqn. Ldr.

Sunita Sighadia's case is required to be given the benefit of these judgments.

In the aforesaid case, the applicant, Sqn Ldr K. Hanuja was already discharged from service and the following directions were given:

4. In view of the above, we allow the petition and set aside the order of rejection of the petitioner for permanent commission. We direct the

respondents to consider the case of the petitioners on the basis of HR policy dated 19.11.2010 read with policy dated 10.09.2004 within a

period of three months.

5. It may be noted that the petitioner had already been discharged from the service. The petitioner shall be reinstated only after she is found to have

satisfied the QRs laid down in the policy. In case the petitioner is found fit for Permanent Commission, she will be entitled to the pensionary benefits

and period of absence will not be construed as a break in service.

7. Learned counsel for the applicant submitted that in fact, the respondents themselves should have made the judgment applicable to all the similarly

situated persons including the present applicant.

8. In order to strengthen the case of the applicant further, learned counsel submitted that the applicant derives benefit on all fours from the judgment

dated 24.11.2015 rendered in O.A. No. 323 of 2015 in Sqn Ldr Kalpana Vs. Union of India & Ors. with clubbed matters, wherein Sqn Ldr Kalpana

was released from service on 15.08.2011, the date of release of the present applicant also. Sqn Ldr Kalpana along with others filed the aforesaid OA

in which the respondents had primarily contested the case of the applicant on the ground of delay and laches. It was pointed out that Sqn Ldr Kalpana

had come forward to file the OA four years after her release from service. The Coordinate Bench of the Tribunal, after considering all the issues and

while granting relief to the applicants therein, on the strength of the decision rendered by the Coordinate Bench in Sqn Ldr K. Hanuja's case (supra)

ultimately concluded that none of the petitioners was guilty of inordinate delay or laches. Consequently, all the OAs came to be allowed. Being

aggrieved of the judgment rendered in Sqn Ldr Kalpana (supra), Union of India knocked the doors of Honble Supreme Court vide I.A. No. 14 of 2016

in Civil Appeal Diary No. 16961 of 2016, which was dismissed vide order dated 25.07.2016 as the Honble Supreme Court did not find any substantial

question of law of general public importance arising in the consideration of the

appeal for grant of leave. Learned counsel has drawn attention of the Tribunal to the said order annexed as Annexure-10 (Page 141 of the Paper Book).

9. Learned counsel thus submitted that possibly the respondents will not be able to controvert the case of the applicant so far as merits are concerned and the only stumbling block, which, at the most, can be projected by the respondents in allowing the instant applicant will be delay on the part of the applicant, which aspect the applicant has sufficiently explained in the instant OA. Learned counsel submitted that the applicant was not aware of the fact that her batch -mates had moved the Tribunal seeking PC and of judgment dated 07.11.2014 passed by the Tribunal and it is only in August, 2016 that the applicant learnt about the orders of Hon'ble Supreme Court and the Tribunal to the effect that the officers who were commissioned prior to 2006 were to be granted PC as per the Policy dated 19.11.2010 read with Policy dated 10.09.2004. Learned counsel for the applicant, however, fairly submitted that the representation dated 06.09.2016 moved by the applicant stands responded to vide communication dated 05.12.2016 i.e. before filing the present OA, but inadvertently, the applicant has mentioned that the said representation was not considered till the date she filed the OA, which statement on facts is also not controverted by the respondents in their counter affidavit.

10. Learned counsel further submitted that in the case of Sqn Ldr Kalpana (supra), reference was made to the order of Hon'ble Supreme Court in State of U.P. Vs. Arvind Kumar Srivastava (2015) 1 SCC 347, wherein it was observed that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit and merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

11. Learned counsel wants to submit, in short, that the delay, undoubtedly appears to be there at the end of the applicant, which is well explained but keeping in view the decisions rendered in the case of Sqn Ldr Kalpana (supra), which has been subsequently upheld by Hon'ble Supreme Court dismissing the Civil Appeal filed by the Union of India, the applicant may not be deprived of the substantial justice. Therefore, learned counsel for the applicant prays that the delay caused in moving the Tribunal by the applicant may be condoned to meet the ends of justice, especially when similarly

situated persons have already reaped the fruits of the judgment rendered by the Tribunal.

12. Mr. Harish V. Shankar, learned counsel for the respondents fairly conceding the case of the applicant on merits, has asked for dismissal of the

OA on the ground of delay and laches, submitting that the applicant was awaiting the outcome of the OA filed by Sqn Ldr K. Hanuja and Sqn Ldr

Kalpana and now banking upon the judgments wants to be a beneficiary at a belated stage. He submitted that limitation does not run on the sweet will

of the litigant and every day's delay is required to be explained whereas in this case there is huge delay and it deserved to be dismissed on that count

alone.

13. Mr. Shankar then submitted that it is quite possible that after the decision of the present case, if the applicant reaps the benefit on account of her

own fault as she has moved the Tribunal at a belated stage, some other litigant may come forward and get the delay condoned on one ground or the

other, therefore, there should have been some cut-off date in such like situation and prayed that the dismissal of the present case would set that cut-

off date.

14. On hearing learned counsel for both the sides, what appears to us is that so far as merits of the present case are concerned, the respondents' side

has not been able to controvert the case of the applicant, therefore, we do not find any difficulty to hold that the applicant has a good case on merits.

As for the objection raised by Mr. Shankar, learned counsel for the respondents with regard to delay and laches for dismissal of the instant OA, we

enter into now that arena.

15. The question of condonation of delay is one of the discretion and has to be decided on the basis of facts of each case at hand and the same vary

from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. There

may be a case where the demand of justice is so compelling that the Court would be inclined to interfere in spite of delay. It would be within the

discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it.

16. Ordinarily, a litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. 'Every day's delay must be explained' does not

mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner is the settled legal

position. It is also well-settled that when substantial justice and technical considerations are pitted against each other, cause of substantial justice

deserves to be preferred. Refusing to condone the delay sometimes can result in a meritorious matter being thrown out at a very threshold and cause

of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing

the parties.

17. We, in the present case, after applying the same yardstick, are of the view that the delay undoubtedly appears to be there but deserves to be

condoned to do complete justice to the applicant, otherwise the delay would outway the substantial justice. Admittedly, the order passed by the

Coordinate Bench, in Sqn Ldr K. Hanuja (supra), would straightway come to the rescue of the applicant wherein it has been specifically observed that

the judgment rendered in Sqn Ldr Sunita Sighadia (supra) and other cognate cases was not a judgment confined to the applicants therein and it

involved broader issues required to be considered for their permanent absorption. In Sqn Ldr K. Hanuja's case (supra), the applicant was already

discharged from service and in that background only, the applicant was ordered to be reinstated with a condition that she would satisfy QRs as per the

policy in the judgment making Policy dated 02.08.2011 inapplicable. The matter does not rest here. In Sqn Ldr Kalpana's case (supra), where there

was a delay and while allowing that OA, the delay factor was considered in favour of the applicant therein. Admittedly, the applicant, in this case, has

moved the Tribunal after the decision rendered in Sqn Ldr Kalpana's case (supra), which was subsequently upheld by Honble Supreme Court in July,

2016. Therefore, in our view, in the present set of circumstances, the applicant cannot be made remedy-less. Thus, following the ratio of Sqn Ldr

Kalpana' case (supra), in our view, while condoning the entire delay caused in filing the instant OA, the same deserves to be allowed.

18. In the result, the instant OA is allowed as prayed for. The impugned order rejecting the claim of the applicant for grant of permanent commission

is hereby set aside. The respondents are directed to consider the case of the applicant on the basis of Air HQ HR Policy dated 19.11.2010 read with

Policy dated 10.09.2004 within a period of four months. In case the applicant is found eligible for grant of permanent Commission, she shall be

reinstated subject to condition that pay and allowances for the period in which she has not been in service shall not be payable.

19. There shall be no order as to costs.

20. Before parting with the order, we may make it clear that the delay which stands condoned in this case is on the basis of individual facts of the

case at hand and the discretion exercised herein should not be taken as a precedent in any other case.

21. Instant OA thus stands wrapped up finally.

Pronounced in open court on this 1st day of October, 2019.