

(2020) 03 AFT CK 0010

In the Armed Forces Tribunal

Case No : Original Application No. 2299 Of 2019

Suprita Kaur

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 31(1)

Citation : (2020) 03 AFT CK 0010

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Deepika Sheoran, Baljeet Singh, Anil Gautarn

Final Decision : Dismissed

Judgement

1. Vide our detailed order of even date, we have dismissed the main OA No.2299/2019. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order 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 order, 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 order, therefore prayer for grant of leave to appeal stands dismissed.

The applicant, who was commissioned as a Short Service Commissioned (SSC) Officer in the Indian Air Force on 18.12.2004, has filed this

application under Section 14 of the Armed Forces Tribunal Act 2007 challenging Annexure A1 order dated 17.09.2019, whereby the respondents, in

terms of the Air Headquarters letter dated 02.09.2019, have conveyed to the applicant that her representation for reconsideration of her request for

grant of permanent commission has been rejected. Claiming the following reliefs and challenging the impugned order, this application has been filed:

- (i) Set aside the impugned order dated 17.09.2019 (Annexure A1);
- (ii) Direct the respondents to reconsider the applicant's case based on her records and comparing her performance at 10 years of service to affirm how dedicatedly she has performed her duties during the 15 years of her service; and
- (iii) Direct the respondents to grant permanent commission to the applicant as per HRP/04/2010 dated 19.11.2010 and HRP/03/2011 dated 02.08.2011

as she is also a pre-25.05.2006 commissioned officer and the fact that almost all officers with similar appraisal reports, including her course mates, have already been granted permanent commission in compliance of Hon'ble Delhi High Court order dated 12.03.2010.

2. It is the case of the applicant that, she was commissioned as a SSC officer on 18.12.2004, at a time when permanent commission was granted only

to male SSC officers. Subsequently, with effect from 25.05.2006, grant of permanent commission for all SSC officers, both male and female, was

withheld. Gender bias in granting permanent commission to women SSC officers was the subject matter of adjudication before the Hon'ble Delhi High

Court in Babita Puniya v. Union of India and another (W.P (C) No. 1597 of 2003) and by judgment dated 12.03.2010, the policy making such

discrimination was quashed and it was directed that all women SSC officers, who had opted for permanent commission and were recruited before the

issuance of the policy dated 25.05.2006, were also eligible to be considered for permanent commission at par with male SSC officers in accordance

with the policy that was in existence prior to 25.05.2006. In the meantime, a new policy dated 19.11.2010 for grant of permanent commission to

women SSC officers who came within the ambit of the case Babita Punlya (supra) was enforced. It was further amended on 02.08.2011 vide

Annexure A4. At that point of time, the applicant, instead of seeking permanent commission in accordance with the policy in vogue, sought only

extension of her service as SSC officer and, in fact, expressed her unwillingness for grant of permanent commission and vide application dated

06.02.2014. Citing her family commitments and difficulties, opted for extension of tenure, which was granted for a period of five years with effect

from 18.12.2014. While so, the respondents issued a draft policy dated 14.11.2018, wherein officers who were in service were given an option to be considered for grant of permanent commission subject to eligibility criteria and other conditions stipulated therein. Accordingly, the applicant, vide Annexure A5 dated 04.12.2018, gave her option for grant of permanent commission and finally when the draft policy was converted into a regular policy (Annexure A6 dated 16.01.2019), the case of the applicant was considered, but as she did not meet the requisite criteria, she was not granted permanent commission.

3. Now, when she has almost completed her tenure as SSC officer, at the fag end of her service, the O.A has been filed stating that she should be considered for granting permanent commission in the light of the principles laid down by the Hon'ble Delhi High Court in the case of Babita Puniya (supra) and that her case should have been considered in accordance with the policy that existed prior to 25.05.2006 and in support thereof, she has placed heavy reliance on the judgment dated 19.12.2019 rendered by this Bench in Wg Cdr Vyomika Singh v. Union of India and others in O.A No.1740 of 2019.

4. The second limb of her argument is that, instead of considering her claim as per the appropriate applicable policies and in the light of the judgment of this Tribunal in Wg Cdr Vyomika Singh (supra), her case has been considered as per Annexure A6 policy dated 16.01.2019, that apart, it is argued that her case was considered along with other batch mates who were junior to her. In fact, it is her contention that consideration as per the policy dated 16.01.2019 has not been done properly even though she is eligible and meritorious on account of her unblemished career but by considering her case along with other batch mates i.e. her juniors, her merit has been ignored by the Board concerned.

5. Her third contention is that the policy dated 16.01.2019 provides three chances for being considered for permanent commission, but she was considered only once, thus she is entitled to be considered on two more occasions. She also argues that, under the new policy dated 16.01.2019, there is a provision for withdrawal of willingness/unwillingness and such withdrawal must be deemed to have been considered as withdrawal of her unwillingness given on 06.02.2014. Therefore, it is argued that the applicant is

entitled to be considered as per the policy that was in vogue prior to 25.05.2006 or in the alternative, to seek further two chances based on the policy dated 16.01.2019.

6. Mr. Anil Gautam, learned counsel appearing for the respondents, argued that so far as the consideration of the applicant's claim in accordance with the policy dated 25.05.2006 and the decision in Babita Puniya (supra) is concerned, the applicant now cannot claim this benefit on account of the fact that when the respondents were willing to consider her as per this policy, she submitted her willingness not to be considered for permanent commission and instead opted for extension of SSC by five years, which was granted from 18.12.2014 up to 17.12.2019. The respondents contend that once she had given up her claim for consideration as per the policy which existed prior to 25.05.2006, she cannot claim any further benefit. That apart, the respondents referred to Annexure A5 dated 04.12.2018, wherein the applicant gave her willingness to be considered for grant of permanent commission in accordance with the policy that came into force on 16.01.2019 when the draft of this policy was circulated on 14.04.2018. Her case was considered and rejected and now she cannot claim the benefit of consideration as per the policy that existed prior to 25.05.2006.

7. The respondents further contended that there is nothing to indicate that the consideration of the applicant as per Annexure A6 policy dated 16.01.2019 was made improperly. The contention of the applicant that her case was clubbed together and considered along with her junior batch mates is without any basis and liable to be rejected. They further submitted that three chances to be provided as per the policy dated 16.01.2019 are only for those who are still in service and not for to an officer who had already been released from service. Referring to Note 1 of Para 4 of the policy dated 16.01.2019, it is argued that eligibility is available only to such officers who are not granted permanent commission till completion of applicable SSC tenure and once they are released from service, they will not be eligible for consideration as per the policy dated 16.01.2019. The applicant has been considered as per this policy. However, she did not come within the merit criteria fixed and once the applicant has received a fair chance of consideration as per this policy, in the absence of there being any illegality or irregularity, the claim of the applicant cannot be considered. It

is the case of the respondents that based on the required Qualitative Requirements (QRs) grading and other eligibility criteria, the claim of the applicant having been considered and rejected, no indulgence in the matter can be made.

8. We have heard the learned counsel for the parties and Have gone through the various aspects of the matter.

9. The applicant has raised the following questions:

(i) The case of the applicant has to be considered as per the policy that existed prior to 25.05.2006, in view of the judgment of the Delhi High Court in

the case of Babita Puniya (supra) and the decision in Wg Cdr Vyomika Singh (supra) and her consideration as per the policy which came into effect

on 16.01.2019 is unsustainable;

(ii) Even the consideration as per the policy dated 16.01.2019 is illegal and unsustainable in law because her merit has not been properly assessed. Her

consideration after clubbing with juniors of subsequent batches is illegal and in spite of having merit and extraordinary service record, ignoring her

merit, her claim for permanent commission has been rejected; and

(iii) She is entitled to have two more chances for consideration as per the policy dated 16.01.2019 and even as per the earlier policies. The same has

not been extended to her.

10. So far as the first ground canvassed before us is concerned, we are of the view that the applicant is not entitled to raise this issue now, in the

peculiar facts and circumstances of this case. She was eligible to be considered for grant of permanent commissi on in accordance with the policy that

existed prior to 25.05.2006, in the light of the law laid down by the Hontle High Court in the case of Babita Puniya (supra) and the decision of this

Bench in Wg Cdr Vyomika Singh (supra). The respondents do not state that she is not entitled for consideration. Her claim for consideration was not

made since the applicant herself vide application dated 06.02.2014 expressed her unwillingness for considering her name for permanent commission.

Instead, she opted only for extension of her SSC by five years. Once the applicant gave in writing her unwillingness for being considered, she cannot

now turn around and say that she has to be considered as per the policy laid down in the light of the judgment in the case of Babita Punlya (supra).

Para 7(a) of the policy that was in vogue at that point of time viz. Annexure A4

dated 02.08.2011 clearly stipulates that only those officers who have given written willingness are entitled to be considered for grant of permanent commission. The applicant gave her 'unwillingness' in writing and having expressed her unwillingness not to be considered for permanent absorption, she cannot now claim the benefit canvassed before us. The case of Wg Cdr Vyomika Singh (supra) is clearly distinguishable. That was a case where the applicant Wg Cdr Vyomika Singh had a grievance that her claim was not considered in accordance with law laid down in the case of Habits Punlya (supra) and the policy that was in vogue prior to 25.05.2006, instead the respondents insisted that her claim would be considered as per the policy dated 16.01.2019. As the claim of Wg Cdr Vyomika Singh (supra) was not considered as per her legal entitlement, which accrued to her in the light of the law laid down in the case of Babita Puniya (supra), direction was issued.

11. In the case of the present applicant, the factual scenario is entirely different. When she had a legal right to be considered for permanent commission as per the policy and the law laid down in the case of Babita Puniya (supra), the applicant gave up her right, by submitting her unwillingness for being considered for permanent commission and she felt satisfied by extension of her SSC by 5 years and it was only after getting such extension for five more years, on 04.12.2018 the applicant gave her willingness for considering her for grant of permanent commission. The draft policy had been circulated on 14.01.2018, which later culminated in issuing final policy on 16.01.2019 (Annexure A6). By this, she not only gave her willingness for permanent commission but also withdrew the unwillingness given by her earlier. Her request was accepted and thereafter she was considered. When her claim was rejected, she has come out now with the plea that her consideration was not done fairly and correctly as per this policy. This plea of the applicant cannot be accepted. The case of Wg Cdr Vyomika Singh (supra) is entirely different on facts and once the applicant herself gave her unwillingness for grant of permanent commission on 06.02.2014, it cannot be said that the respondents have committed any error while considering her claim as per the policy that came into being on 16.01.2019. Accordingly, so far as the first ground is concerned, we see no merit and reject the same.

12. So far as the second ground that she was not given fair consideration and that she was considered along with officers of junior batches, on being asked as to which part of the policy is violated, where it is stipulated that consideration cannot be made by clubbing together different batches, nothing has been pointed out in the form of any circular, policy letter or rule which can be said to have been violated. On the contrary, when we look at Para 9 of the policy dated 16.01.2019 and the appendix to the said policy, it is seen that consideration has to be made in accordance with various guidelines and parameters, which include eligibility criteria, the number of chances to be given, uniform QRs, procedure for submitting application and calculation of marks for preparing merit list. Nothing is pointed out as to which guideline or policy has been violated. The minimum performance criteria laid down in Para 6(d) of the policy and stipulated in Appendix 'A' also indicate various parameters for consideration. Nothing in specific terms or factual assertion is available on record. The method of preparing and calculating marks for drawing up of the merit list is contained in Para 9 of the policy and Appendix 'C' gives various faculties and features for which marks are to be allotted and how the marks are to be allotted. Nothing is pointed out during the course of hearing as to how these procedures have been violated in the case of the applicant, except for contending that she has unblemished service and consideration along with officers of her junior batches is illegal. No justifiable factual data in this regard along with the guidelines or instructions, based on which submission is made, has been brought to our notice. That being so, the applicant having failed to prove that consideration was not in accordance with the requirement of the policy, we see no reason to make any indulgence on Ground No. (ii) canvassed before us.

13. So far as the third ground is concerned, with regard to her claim for three chances of consideration, as contained in Paragraphs 4 and 5 of the policy dated 16.01.2019, it is clear that consideration has to be made as per the willingness on three occasions. The policy clearly indicates that consideration can be made only to a serving SSC officer and not to a SSC officer who is no more in service. That being so, the third ground canvassed by the applicant that she should be given two more chances has no merit, for the simple reason that the applicant's tenure as SSC officer had come to

an end and she is no more in service and she chose to file this application only on 13.12.2019, just a few days before her tenure as SSC officer came to an end on 18.12.2019.

Accordingly, in the facts and circumstances of the case and for the reasons indicated herein above, we see no reason to make any indulgence in the matter. The application is dismissed. No order as to costs.

Pronounced in open Court on this the 11th day of March 2020.