

(2019) 12 AFT CK 0008
In the Armed Forces Tribunal
Case No : Original Application No. 1740 Of 2019

Vyomika Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2019) 12 AFT CK 0008

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

Bench : Division Bench

Advocate : S.S. Pandey, Harish V. Shankar

Final Decision : Allowed

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007 and seeking permanent commission in the Air

Force, the applicant has made the following prayers:--

(a) Call for the records based on which the respondents have applied HRP 06/2018 dated 07.12.2018 while considering her for PC in gross

violation of the judgment dated 18.09.2015 passed by this Tribunal in T.A No. 07 of 2014 as affirmed by the Hon'ble Supreme Court vide

order dated 07.01.2019 and on that basis denied PC to her as well as issued orders releasing her from service in terms of impugned order

dated 28.06.2019, and thereafter quash all such orders including the order dated 28.06.2019;

(b) Direct the respondents to reconsider the case of the applicant for PC as per the laid down QRs strictly in terms of judgment dated

18.09.2015 in T.A No. 07 of 2014 by this Tribunal as affirmed by the Hon'ble Supreme Court vide order dated 07.01.2019 in Civil Appeal D

9120/2016 as they would have applied in respect of the other similarly situated officers who were the applicants before this Tribunal and

grant her PC with all consequential benefits if she is found fit for such PC in terms of earlier QRs.

2. It is the case of the applicant that she is a Short Service Commissioned (SSC) Officer of the Indian Air Force and the grievance ventilated by her in

this application is with regard to denying permanent commission to her by applying the policy dated 07.12.2018 in an arbitrary and illegal manner and

consequently rejecting her prayer for permanent commission vide the impugned order dated 28.06.2019. It is her contention that she is entitled to the

relief claimed for viz, consideration of her claim for granting permanent commission as per the appropriate relevant policy and in view of the judgment

of this Tribunal in Wg Cdr. Namrita Chandi v. Union of India and others (T.A No. 7 of 2014 decided on 18.09.2015), the judgment of the Delhi High

Court in Babita Puniya v. Union of India and others (W.P No. 1597 of 2003 decided on 12.03.2010) and certain other judgments rendered by the

Coordinate Benches of this Tribunal in various similar cases.

3. In the year 1992, the Government of India issued a policy letter dated 07.08.1992 introducing a scheme for induction of women in the officers cadre

of Transport, Helicopter, Navigation, AE(M) and AE (L) streams of Flying and Technical Branches of the Indian Air Force with a clear stipulation in

Para 7 of the said policy that they will have a right for consideration for grant of permanent commission. It is stated that the Air HQs issued a letter

dated 23.04.2001 conveying sanction of the President of India for continuance of Short Service Commission (SSC) scheme in the officer cadre of

Flying (Women) in Transport, Helicopter and Navigation streams with the revised terms and conditions as laid down in the Appendix to the said letter.

It is further provided that the initial engagement period would be ten years from the date of commissioning and extension of five years may be granted

to deserving officers and their claim for grant of permanent commission would be considered during the last one year of service subject to service

requirements. It is the case of the applicant that since the induction of the scheme under the SSC, a number of women officers were commissioned,

but they were deprived of the benefit of permanent commission which accrued to them in accordance with the policy, aggrieved by such denial, a

batch of women officers (Babita Puniya and others) filed W.P (C) No. 1597 of 2003 before the Delhi High Court. Subsequently, several other writ petitions were also filed challenging the same action. In the meanwhile, on 07.07.2003, the applicant was recruited as a Flight Cadet for commissioning in the Flying Branch as an SSC officer and thereafter she was sent for pre-commissioning training. She underwent the training from July 2003 to December 2004 and finally was commissioned in the SSC on 18.12.2004 in the Flying Branch (Helicopter Stream). While the matters stood thus, the respondents issued another policy on 10.09.2004, with regard to grant of permanent commission and extension of service was extended only to SSC male officers, subject to their willingness, suitability, etc. and in this policy, no commission was offered to women SSC officers. As already indicated herein above, a large number of cases were pending before the Delhi High Court where women SSC officers had raised the issue of gender based discrimination and, therefore, the Air Force came out with another policy on 25.05.2006, which stipulated grant of permanent commission to all category of officers, both male and female. Accordingly, after 25.05.2006, the policy was to grant benefit to all SSC officers. However, in the meanwhile, a Human Resources Policy (HRP) was issued granting extension of service to SSC officers. Ultimately, the Delhi High Court, where the matter was pending i.e. W.P (C) No. 1597 of 2003, vide a detailed judgment rendered on 12.03.2010, decided the issue canvassed before it by the lady officers, who were granted SSC in the Air Force and after taking note of the fact with regard to induction of women in various wings of the Armed Forces, particularly in the Air Force, the import and mandate of the circular dated 25.11.1991, by which the policy was implemented, and after detailed analysis of various aspects of the matter in the backdrop of precedence, came to the conclusion that as far as the question as to whether women aspirants should be recruited or not into the Air Force and if so then which area, falls within the policy making domain of the Government and it is not for the Court to decide as to in which area of the Air Force they are to be employed. However, after taking note of the schemes for SSC officers introduced in the Air Force, the changes made in the policy from time to time based on the circulars as detailed herein above, the following directions were issued by the High Court:

61. We are, thus, of the considered view that the following directions are required to be issued:

i. The claim of absorption in areas of operation not open for recruitment of women officers cannot be sustained being a policy decision.

ii. The policy decision not to offer PC to Short Service Commissioned officers across the board for men and women being on parity and as

part of manpower management exercises is a policy decision which is not required to be interfered with.

iii. The Short Service Commissioned women officers of the Air Force who had opted for PC and were not granted PC but granted extension

of SSCs and of the Army are entitled to PC at par with male Short Service Commissioned officers with all consequential benefits. This benefit

would be conferred to women officers recruited prior to change of policy as (ii) aforesaid. The Permanent Commission shall be offered to

them after completion of five years. They would also be entitled to all consequential benefits such as promotion and other financial benefits.

However, the aforesaid benefits are to be made available only to women officers in service or who have approached this Court by filing

these petitions and have retired during the course of pendency of the petitions.

iv. It is made clear that those women officers who have not attained the age of retirement available for the Permanent Commissioned officers

shall, however, be reinstated in service and shall be granted all consequential benefits, including promotion, etc. except for the pay and

allowance for the period they have not been in service.

v. The necessary steps including release of financial benefits shall be done by the authorities within two (2) months of passing of this order.

4. It is the case of the applicant now before us, based on the aforesaid judgment, that the directions issued in Para 61(ii) are, in the backdrop of the

policy introduced on 25.05.2006 with regard to non-grant of permanent commission to SSC officers across the board i.e. both male and female.

However, taking us through the directions issued in Para 61(iii), it is the case of the applicant that all such SSC officers, who were recruited prior to

25.05.2006 and who had opted for grant of permanent commission, are entitled to permanent commission at par with their counterpart male SSC

officers if they were recruited prior to 25.05.2006 subject, however, to fulfilling

other conditions of the policy governing grant of permanent commission. It was argued before us that after the aforesaid judgment was rendered by the Delhi High Court, when benefit accruing to certain women officers were not granted, the matter was again agitated before the Delhi High Court and, therefore, again writ petition was filed by Wg Cdr Namrita Chandi i.e. W.P (C) No. 4052 of 2011. In these cases, several batches of officers, including women officers, who were denied the benefit of consideration for permanent commission in spite of their recruitment prior to 25.05.2006, were kept out of the purview of such policy. After the formation of the Armed Forces Tribunal, all these petitions were transferred and registered as T.A No. 7 of 2014, T.A No. 9 of 2014 and T.A. No. 10 of 2014 before this Tribunal, all the transferred applications were decided by a common order on 18.09.2015 (Annexure A7). In these cases, this Tribunal took note of the judgment rendered by the Delhi High Court on 12.03.2010, various circulars issued, particularly after induction of women officers in the Indian Air Force in the non-technical ground duty branches commenced on the basis of the circular dated 25.11.1991, the policy with regard to induction of women in the cadre of Transport, Helicopter and Navigation streams, their eligibility for grant of permanent commission during the last year of their service, which was for a fixed term of 10/15 years, and the final decision taken imposing total ban on grant of permanent commission with effect from May 2006. After considering various aspects of the matter, the mandate of the Delhi High Court and the contentions advanced by the applicants and the Union of India, this Tribunal, in Para 17, came to the conclusion that denying the officers' right to have permanent commission in spite of there being stipulation in this behalf, violates Articles 14 and 16 of the Constitution as it denies the right to seek employment on permanent basis in the Armed Forces. It was also observed that there was no policy declaration debarring grant of permanent commission till May 2006 and finally, after detailed discussion, all the applications were allowed and the respondents were directed to consider the case of women SSC officers for grant of permanent commission, if they satisfied the QRs as laid down. A bare reading of the judgment would indicate that the policy dated 25.05.2006 was made applicable prospectively and held not applicable to officers recruited on SSC prior to that date. The Special Leave Petition

filed against the said order of the Tribunal was dismissed by the Hon'ble Supreme Court, as is evident from the order available on record at page 142.

In the meanwhile, another woman officer (Wg Cdr. Sandeep Kaur) approached this Tribunal by filing O.A No. 1035 of 2016 and a Coordinate Bench

of this Tribunal, vide order dated 13.12.2016, after taking note of the judgment dated 12.03.2010 and the judgment dated 18.09.2015 in T.A No. 7 of

2014, directed the respondents to consider the case for grant of permanent commission to such officers who came into service prior to the policy

dated 25.05.2006. Finally, another Bench of this Tribunal again decided similar issues in the case of another woman officer in Sqn Ldr (Released)

Sangeetha Damodar v. Union of India and others O.A No. 184 of 2017 on 01.10.2019, wherein the applicant was aggrieved by the action of the

respondents in not granting permanent commission to her. She sought consideration of her case as per the Air HQs policy dated 19.11.2010 read along

with the earlier policy dated 10.09.2004. After considering all the judgments on the issue, as has been discussed by us, this application was also

allowed.

5. In sum and substance, based on these judgments, the case of the applicant now before us is that the ratio of these judgments starting from the Delhi

High Court judgment dated 12.03.2010 to the order passed by this Tribunal in T.A No. 7 of 2014 should be applied and all such women officers

inducted as SSC officers prior to 25.05.2006 are entitled to be considered for grant of permanent commission in accordance with the policy as was in

vogue and they cannot be denied such consideration. That apart, it is also the contention of the applicant now before us that she has to be considered

for grant of permanent commission in accordance with the policy that was in vogue when all other similarly situated women officers were considered

for grant of permanent commission and who were appointed prior to 25.05.2006 by applying the same policy and not as per the policy which came into

force subsequently on 07.12.2018. It is the case of the applicant that her case has been considered not in identical terms as has been done in the case

of other SSC (both male and female) officers who have been appointed prior to 25.05.2006 based on the policies viz, policy dated 19.11.2010 read

with the earlier policy dated 10.09.2004. Indeed, the applicant's case has been considered as per the policy which came into force on 07.12.2018,

which is not permissible. It is her further case that she has a legally enforceable right for consideration in accordance with the terms and conditions of

her induction as SSC officer and based on the policy existing when all other officers identically situated were considered for permanent commission. It

is also her case that she is entitled to the benefits of all the judgments referred to herein above and the action of the respondents in considering her

case as per the policy dated 07.12.2018 and rejecting it is unsustainable.

5A. The respondents, by filing a detailed counter affidavit, have justified their actions and contended that the earlier judgments are not applicable in the

case of the applicant. They also relied upon the policy dated 07.12.2018, which clearly stipulated that all eligible SSC officers would be considered

three times for grant of permanent commission and must mandatorily submit their willingness/unwillingness. Earlier the applicant was considered for

grant of permanent commission along with her course mates by the Board of Officers held in December 2018 and May 2019, but she was not granted

permanent commission due to her position in merit vis-a-vis availability of vacancies on both the occasions. The applicant's case was again considered

for permanent commission and the Board of Officers found the applicant not meeting the criteria for grant of permanent commission in the light of the

parameters laid down in the policy dated 07.12.2018. It is vehemently contended by Mr. Harish V. Shankar, learned counsel appearing for the

respondents that once the applicant in unequivocal terms had given her willingness for being considered for permanent commission in accordance with

her application dated 13.02.2019 (Annexure All available at page 154 of the paper book) and having been found non-suitable for grant of permanent

commission, the right which accrued to her for consideration based on the judgments relied upon by learned counsel for the applicant is deemed to

have waived off. In sum and substance, it is the case of the respondents before us that apart from contending that the judgment of the Delhi High

Court and this Tribunal are not applicable in the case of the applicant and once the applicant has been considered in accordance with the policy dated

07.12.2018 and found not suitable for permanent commission by the Board of Officers, no relief can be granted to her.

6. Learned counsel for the parties took us through various policies available on record and the terms and conditions for induction as SSC officers and

canvassed their rival contentions.

7. It is not necessary for us to dwell in detail with regard to the submissions made as we are of the considered view that various aspects of the matter, which were canvassed before us, have already been adverted to by the Delhi High Court in *Babita Punliya* (supra) and also in various other judgments of this Tribunal as have been detailed by us herein above. In *Babita Punliya* (supra), the Delhi High Court, after going into various aspects of the matter, had issued specific directions, which are reproduced by us in Para 3 herein above. If we take note of Para 61(ii) and (iii) of the aforesaid judgment, it is clear that the Delhi High Court has laid down the legal principle in the following terms:

(a) The policy decision not to offer permanent commission to SSC officers across the board for both men and women being on parity and as part of

manpower management exercises is a policy decision and cannot be interfered with by the Court in exercise of its power of judicial review.

(b) The SSC women officers of the Air Force, who had opted for permanent commission and were not granted permanent commission but granted

extension of SSCs are entitled to permanent commission at par with male SSC officers with all consequential benefits, subject, however, to their

fulfilling other requirements and further clarifying that the aforesaid benefits would be made available only to women officers in service or who were

recruited prior to change of the policy in the year 2006 i.e. 25.05.2006.

Thereafter, when the matter came to this Tribunal in the case of *5mt Namrita Chandi and others*(supra), this Tribunal had directed to consider the

case of all such women officers who were recruited prior to May 2006 in accordance with the policy in vogue. Similar is the direction issued in the

subsequent case of *Sangeeta Damodar* (supra). From the aforesaid judgments, it is clear that all such women officers who were inducted as SSC

officers prior to May 2006 were entitled for consideration for grant of permanent commission in accordance with the policy in vogue subject to their

fulfilling all other criteria,

8. Admittedly, in the case of the applicant, this was not done. Her case was not considered, instead, when she insisted on considering her case in the

light of the decisions rendered in various cases and the reliefs granted to similarly situated officers, the respondents considered her case as per the

policy dated 07.12.2018 and rejected it on the ground that on consideration, she was not recommended for grant of permanent commission.

9. Therefore now, the questions before us are, (i) whether this act of the respondents is in accordance with law? and (ii) whether the applicant is

entitled to be considered for grant of permanent commission as per the policy dated 07.12.2018 or some other policy?

10. It is not in dispute and there cannot be an iota of doubt that the applicant was similarly situated like all women SSC officers inducted into the Air

Force prior to 25.05.2006 and was also entitled to be considered for grant of permanent commission in the light of the judgments rendered by the Delhi

High Court and by this Tribunal in various cases. This is a right that accrued to the applicant by virtue of the law laid down in this regard by various

legal precedents, which were binding on the respondents. However, the respondents are now objecting to grant this benefit to the applicant as per her

right and entitlement only on the ground that the policy dated 07.12.2018 has come into force and based on her own willingness, her claim had been

considered and, therefore, all rights which may have accrued to her prior to 07.12.2018 have been waived off or given up by her and now she cannot

seek a direction for consideration as prayed for in this application.

11. In our considered view, the concept of waiver or acquiescence will not apply in the facts and circumstances of the present case. Once a legal

right had accrued to the applicant and when the respondents did not extend the benefit of this right to the applicant for a long period of time and if,

forced by the circumstances created by the respondents the applicant was compelled to give her willingness for consideration or grant of permanent

commission in accordance with the policy dated 07.12.2018, we are of the considered view that in this manner, the legal right which had accrued to

the applicant cannot be taken away. The applicant, due to circumstances beyond her control, had no other option but to take a chance for expressing

her willingness for consideration as per the policy dated 07.12.2018, else even without any consideration, she would have been discharged from

service. Based on these situations, the applicant had no option and, therefore, the principle of acquiescence or waiver will not apply in the peculiar

facts and circumstances of this case, more so as it is a well settled principle of law that the legal right available to a person in accordance with law

cannot be taken away or waiver will not be given in such cases where the person concerned due to circumstances beyond his or her control is

compelled to submit for consideration as per a procedure which is not applicable to her in accordance with law. In this case, had the respondents

considered the case of the applicant, as was done in the case of other SSC officers after the judgments of the Delhi High Court and this Tribunal, the

applicant also would have reaped similar benefit like many other identically situated.

It was only the delay caused by the respondents that postponed consideration of her case and merely because of the conduct of the respondents in not

considering her case at an appropriate time, the applicant was forced to submit her willingness as per the policy dated 07.12.2018. In our considered

view, this cannot operate as waiver of a legal right which had accrued to the applicant by virtue of the law laid down in various cases. In fact, this

would amount to an unfair or unreasonable treatment towards the applicant, discriminatory in nature, in comparison of other similarly situated SSC

officers, based on the judgments rendered by this Tribunal. Once the legal principle is settled and after judgments rendered by this Tribunal in T.A No.

7 of 2014 and thereafter in the case of Sangeetha Damodar (supra) and even prior to that in the case of Smt. Namta Chandi (supra) and other cases

were considered and decided as per the policy dated 19.11.2010, the action of the respondents is nothing but illegal, arbitrary and discriminatory in

nature. Treating equally situated persons by applying different yardsticks and policies cannot be accepted. In the given set of facts and circumstances,

the applicant had no other option but to submit her willingness and in our considered view, it cannot be considered as an act of willingness or

acquiescence to give up the legal rights that had accrued to the applicant by virtue of the law laid down by the Delhi High Court and this Tribunal.

12. Resultantly, the instant O.A is allowed, with the following directions:

(i) The impugned order dated 28.06.2019 is quashed;

(ii) The respondents are directed to allow the applicant to continue as SSC officer and consider her case for grant of permanent commission in

accordance with the Air HQs policy dated 19.11.2010 read with the policy dated 10.09.2004 within three months from the date of receipt of a copy of

this order and in case the applicant is found eligible for grant of permanent

commission, she would be entitled to the same with all consequential benefits;

We are informed that the applicant would be/has been released from service on 17.12.2019. We direct that in case the applicant is released before the receipt of a copy of this order, she shall be taken back to duty and in case she is found eligible for grant of permanent commission, all consequential benefits, including pay and allowances for the entire period, shall be granted to her.

13. No order as to costs.

Pronounced in open Court on this the 19th day of December 2019.