

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

92.

OA 3253/2023

DFR Kishore Kumar Poddar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Ms. Sheetal Raghuvanshi, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
21.11.2024

Having heard learned counsel for the parties, we find that in accordance with law the applicant was entitled to be granted three opportunities to appear in the promotion exercise/written examination for promotion to the post of Nb. Risaldar/JCO. In the first chance, the applicant appeared in the examination held in January, 2020, however, he could not qualify and failed in the examination by one mark. The second chance was given in August, 2020 but the examination was cancelled on account of the Covid Pandemic. The examination was again held for the third time in May 2021 wherein also the applicant failed. Another third chance was offered to the applicant to appear in the examination which was held on 14.01.2022 but the applicant was not permitted to take up the examination for the reasons which have not been explained nor attributable to the applicant. However, he was offered one more chance, i.e., the third chance

according to the applicant, was given to him on 25.04.2022 which he cleared, but he is not being granted the promotion because at the time of conduct of the examination on 25.04.2022, the applicant became over age by 45 days. The applicant claims relaxation in light of the Policy dated 18.11.2023 placed at Annexure A-5 of the OA wherein relaxation of age/service limits for promotion to JCO rank is laid down. Paragraphs 2 and 3 thereof read as under:-

“1. Reference Army HQ letters No.92209/AG/PS-2(c) dated 09 Jan 1962 and even No dated 8/14 Sep 1962.

2. A No of applications have been received in the recent past for age relaxation for promotion to the rank of Nb. Sub. while relaxation has been accorded to deserving cases, most applications have had to be rejected.

3. This HQ letters quoted above has laid down guidelines regarding exceptional circumstances under which relaxation can be granted. According to it, following will be treated as exceptional circumstances:-

(a) A case based on an "outstanding achievement" by an individual which brings credit to the Army.

(b) A most peculiar case normally rarely to happen and cannot be used as a precedent later to seek for a similar treatment to another cases.

(c) A rare qualification provided that the retention of an individual by virtue of that qualification is an inescapable requirement of the service.”

2. In our considered view, the applicant availed of all the three chances offered to him. In the first two chances, he failed but in the third chance, which was offered to him, he appeared and passed in the examination. However, the respondents are

denying him promotion on the ground that he is over age. Apart from the fact that the applicant is *prima facie* entitled for relaxation as per the Policy, the applicant's case is a deserving case wherein relaxation of age should be granted for a period of 45 days. The respondents are directed to consider the matter and report within two weeks. In case the respondents are unable to consider the case, they should record reasons for the same and communicate to the Tribunal.

3. Treating the matter as **Part Heard**, list on 19.12.2024.
4. Let a copy of this order be provided **DASTI** to the learned counsel for the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

/vb/vks/