

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

ORIGINAL APPLICATION No.606 of 2010

Sqn. Ldr. Lalit Kumar Tandon & Ors. ...Petitioner

Versus

Union of India & others ...Respondents

with

OA No.702 of 2010 and OA No.30 of 2011

For the Petitioner : Ms. Rekha Palli, Advocate

For the Respondents: Ms. Jyoti Singh, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

22.02.2011

1. All the above three petitions involved similar question of law, therefore, they are disposed of by a common order.
2. For convenient disposal of all the three petitions, the facts given in the case of Sqn Ldr. Lalit Kumar Tandon are taken into consideration.

3. Petitioner in this petition has prayed that respondent may be directed to grant applicants for grant of Permanent Commission if found fit as per parameters already fixed.
4. A combined petition has been filed on behalf of Sq. Leader Lalit Kumar Tandon along with the other 12 applicants i.e. together 13 applicants have filed this joint petition espousing the same cause.
5. All these applicants are Short Services Commission (SSC) officers of Indian Air Force and have been commissioned in AE (L/M) and Administration / Fighter Controlled branch on the various dates mentioned herein. So far as applicant Mr. Tandon is concerned, he was commissioned on 10th July, 2010. All these were given 12 weeks training at AFTC, Bangalore and rest of the applicants (i.e. administrative officers) were given 12 weeks training at AFAC, Coimbatore before being commissioned as

SSC Officers initially for a period of 6 weeks with effect from the date of commencement of training. At the time of training, the applicants were assured that if their performance is found satisfactory, they would be considered for grant of permanent commission and this fact was reiterated in Clause 5(d) and (e) of the Terms and Conditions of Joining instructions.

The clause 5(d) reads as under:

Extension of Tenure / Grant of Permanent Commission

"Short Service Commission Officers will be considered for the grant of Permanent Commission during the last one year of Short Service engagement period Grant of Permanent Commission will be subject to his willingness, suitability and further necessary training. If not considered an officer may leave the Service. If he so wishes on completion of the tenure of Short Service Commission, he may be considered for one or two extension of Short Service Commission, such extension shall be for a period of five years on each occasion."

The clause 5(e) relates to Seniority, it says that seniority will reckon from the date of grant of Short Service Commission.

6. Petitioner and other applicants are serving with best of their ability and dedication which have earned them a very good ACR. It is alleged that all the petitioners at the time of joining were assured that they will be granted a Permanent Commission(PC). In pursuance of the commitment of the respondent they issued a letter to the each of the petitioner along with the other applicants seeking their option for grant of PC extension and all the petitioners gave their option for being considered for Permanent Commission. But the Government changed their stand and decided to stop granting PC to SSC Officers. But the Women Officers who were also recruited under the SSC started making their representation and invoked the Principle of Promissory Estoppel.
7. It is alleged that subsequently Respondent denied the PC to the petitioners on the basis of change of the policy i.e. Human Resources Policy No.11 of 2007 dated 07.11.2007 Normally this policy, if the

Government was keen that should have been adhered to uniformly for both male and female officers of the Short Service Commission. But the women officers recruited through a SSC filed a petition in the Delhi High Court which came to be registered as a W.P.(C) No.1597/2003 alongwith a batch of writ petitions, challenging the respondent's action in not granting Permanent Commission to Short Service Commission Officers who had been commissioned pursuant to specific assurances given to them that Permanent Commission would be granted to them subject to suitability and vacancy.

8. The Writ Petition was allowed by Hon'ble Delhi High Court and Hon'ble Delhi High Court directed those women SSC Officers who had been commissioned prior to change in policy in 2006, will be granted of Permanent Commission on the basis of Principle of Promissory Estoppel. The Hon'ble Delhi High Court observed as under:

"The women Air Forces officers joined the service on the assurance as held out to them in terms of the Circular dated 25.1.1991 read

with its appendix and as advertised for their recruitment. A representation was made to them that though they were initially to be granted a SSC for a period of 5 years, they were entitled to a PC so long as they were willing and subject to their suitability. The women officers opted for PC but despite this fact only their SSC was extended.

As noticed above neither is the question of suitability nor the absence of requirement in doubt which was the twin condition even as per clause (v) of the appendix. Once male officers who had been granted PC, there could be no question of absence of requirement of officers for PC. The advertisement also held out a promise to the women Air Force officers of grant of PC depending upon two factors, which are:

- (i) Vacancy
- (ii) Suitability of the officers.

The officers thus joined the Air Force on the promise of these terms of their recruitment apart from other terms and conditions of service and the respondents cannot now introduce an alien element other than these two conditions

Once these two conditions are satisfied, which is so in the present case, the women Air Force officers cannot be denied PC on the specious plea that the SSC was only on experimental basis and there was no entitlement to PC despite satisfaction of the two terms and conditions.

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."

9. The aforesaid judgement of Delhi High Court was not challenged before the Apex Court and the

Government accepted the decision and granted the Permanent Commission to all the women officers prior to change in policy i.e. 2006. But so far as the petitioners are concerned same treatment was denied. The petitioner made a representation before the Government that since they are all SSC Officers who were commissioned prior to the year 2006 and they are continuing, therefore, similar treatment should be granted to them, but they were denied the same treatment, therefore, all these male officers who were in similar situation and recruited in same manner left with no option but to file this petition invoking the violation of article 14, 15 & 16 of the Constitution and read with Article 39 of the Constitution.

10. A reply has been filed by the Respondent and Respondent contested the position and submitted that since there was a new policy brought into force, therefore, Respondent as a policy measure has

denied to grant a Permanent Commission to Short Service Commission Officers.

11. It is alleged that AV Singh Committee was appointed after a Kargil War for restructuring officers cadre of the Armed Forces in order to achieve two-fold objectives of lowering the age profile of combatants, and improving upward mobility in the officer cadre. It is pointed out that strength of SSC cadre in the IAF is well short of its cadre establishment levels while the PC cadre strength is satisfactory. Grant of PC to SSC officers would, therefore, upset the desired PC: SSC ratio, thereby diluting the recommendations of the AVSC report. It was also pointed out that Indian Air Force is implementing its induction and release policy to conform with the AVSC recommendations and thus SSC officers cannot be granted PC since it would go against the recommendations of AVSC. So far as the judgement of Delhi High Court is concerned and question of invoking the Article 14, 15 & 16 is concerned, no

answer was given. It is only stated that a tri-service study on grant of PC to women officers was undertaken in 2006 and COSC opined that a common employment policy for women officers needed to be effected for all three services. Grant of PC to all SSC officers was to be deferred for the present. The same could be considered after a gestation period of 10-14 years. It is also pointed out in the conditional affidavit that it is true that IAF has shortage of about 1100 officers, but qualified and experienced SSC officers are being released every year and the shortage in the IAF exist only in the ranks of Squadron Leader and Flight Lieutenant while the strength in the Group Captain and Wing Commander ranks are already surplus.

12. An attempt was made to defeat this petition by showing that so far as the cadre of Wing Commander is concerned, it is surplus that there are 321 officers whereas in Squadron Leader there is shortage of 259 officers. Long and short of reply of the respondent

is that if the similar treatment is given to petitioners then it will bloat the cadre of Wing Commander which is already in surplus as all of these officers have already the seniority of 9 to 12 years of service. It is also pointed out that Hon'ble Delhi High Court has given this benefit to women officers in service and who have approached the Court by filing the petition and retired during the course of pendency of this petition but no further relief has been given as the Hon'ble Court was aware that extending benefit to other officers would mean overreaching the judgement and making the cadre management as unmanageable position.

13. We have heard learned counsel for the parties and perused the record. In order to appreciate the controversy it may be relevant to reproduce here the advertisement issued by Indian Air Force. The Women Officer were recruited for SSC on the cadre of Non-Tech Ground Duty branches of IAF from 1992 on experimental basis for 5 years on the basis of

Circular dated 25.11.1991 issued by the Ministry of Defence, Government of India. The terms and conditions of engagement was appendix with it and the tenure of the engagement reads as under:

"Tenure of Engagement: Initial engagement period would be for 5 years from the date of commissioning. On completion of this period, the officer may opt for PC or another SSC tenure of 6 years. The officers seeking such extension will not be considered for PC. Grant of extension of PC would be subject to suitability and requirement of the Air Force.

Permanent Commission: SSC officers granted PC will be eligible for all benefits / privileges, which are admissible to the regular PC Officers.

Seniority: the seniority of SSC Officers will reckon from the date of grant of provisional SSC. So as to place them at par with their contemporary PC Officers. However, the SSC Offices' names will appear in the Air Forces List immediately below that of their contemporary PC Officers. They would be eligible for promotion up to the rank as applicable to permanent commissioned officers of Non-Tech GD/ branches".

14. It means all the women officers were initially engaged for 5 years and on completion of this period, officers may opt for PC or another extension as SSC for 6 years. The officers seeking such extension will not be considered for PC. The grant of extension or PC would be subject to suitability and requirement of the IAF. Similar is the condition of engagement of male officers which is apparent from

there joining instructions for training in Aeronautical engineering course (SSC) at Air Force Technical College, Jalahali West, Bangalore. Terms and conditions are almost paramaterial. The clause 5(d) for extension of tenure / grant of Permanent Commission reads as under:

"Short Service Commission Officers will be considered for the grant of Permanent Commission during the last one year of Short Service engagement period Grant of Permanent Commission will be subject to his willingness, suitability and further necessary training. If not considered an officer may leave the Service. If he so wishes on completion of the tenure of Short Service Commission, he may be considered for one or two extension of Short Service Commission, such extension shall be for a period of five years on each occasion."

15. All other facilities were same as given in Article 2 for female officers and in pursuance of this, the option was invited from the petitioners on 19.07.2005, willingness or unwillingness to exercise option for PC or extension on completion of present tenure. Therefore, the method of recruitment, training of the male officers were identical to that of female officers . In this connection our attention was also invited to note issued for male officers for the course

commencing on March, 2000. There also terms and conditions were laid down which reads as under:

"Terms and conditions given in the advertisement are subject to change without any notice.

- *Airmen/other Government employees are to apply through proper channel*
- *No compensation will be paid to any injury sustained as a result of SSB Tests.*
- *Initial engagement is for six years with a provision to opt for Permanent Commission (depending on service requirements) or another extension of five years.*

16. This advertisement of March, 2000 and the conditions of joining and terms of the engagement of the female officers are almost paramaterial with each other. The decision given by the division bench by the Delhi High Court has been accepted by the Respondent and granted the PC to female officers whereas same has been denied to the petitioners.

17. Learned counsel for the petitioners has heavily bank upon the decision given by the Delhi High Court and has submitted that Principle of Promissory Estoppel is applicable in case of male officers also as it was made applicable to female officers. In addition to the decision

of the Delhi High Court, learned counsel has invited our attention to the decision given by three Judges Bench of Apex Court given in the case of ***D. Boopalan and Others Versus Madras Metropolitan Water Supply and Sewerage Board and Others [2007(12) SCC 569]***. Similarly, in the case of ***UP Power Corporation Ltd. & Anr. Versus Sant Steels & Alloys (P) Ltd. & Ors. [2008 (2) SCC 777]*** and in the case of ***LML Ltd. Versus State of UP & Ors. [2008 (3) SCC 128]***.

18. Learned Counsel for the petitioner submitted that respondents are stopped from going back as they have held out a representation to the petitioner that after the completion of their tenure they will be considered for grant of PC subject to the suitability and vacancy. The same plea was taken before the Delhi High Court that there is no vacancy and it will unnecessarily inflate the cadre but that was not accepted by the bench of Hon'ble Delhi High Court and directed to grant of PC to

the female officers subject to the suitability. Therefore, Learned Counsel for the petitioner submitted that same Principle of Promissory Estoppel is applicable in case of male officer, but in addition to this learned Counsel emphasised there is serious discrimination resulting in violation of article 14, 15 & 16 of the Constitution. Learned Counsel submitted that it is a case of a reverse discrimination and it is a case of reverse gender bias and submitted that same treatment should be given to the male officers as is given to the female officers. It is pointed out that so far as decision of the Delhi High Court is concerned, the respondent in their reply is silent when they are granting PC to the SSC women officers who were recruited in almost same manner as the petitioners are, they fall in same category of SSC Officers, PC is granted to female officers and same has been denied to SSC male officers. Since both are SSC officers, they are identical based, it is sought to be discriminated on the basis of

sex. Therefore, the Learned Counsel submitted that it is breach of article 14, 15 & 16 of the constitution.

19. Learned counsel for respondent tried to justify that so far as Principle of Promissory Estoppel is concerned it is clearly mentioned that it is subject to the availability of the vacancy, since induction of these officers will be against cadre restructure as recommended by AV Singh Committee and it will unnecessarily increase the cadre of Wing Commander as in view of changed situation, Sq. Ldr with 13 years of service is entitled to become Wing Cdr. and most of the officers have put in 12 to 14 years of service, therefore, extension will unnecessarily increase the cadre of Wing Cdr.

20. We have bestowed our best of consideration to the rival submissions of the parties. There is no gain saying that in matters of public appointment no discrimination can be made on the basis of gender.

Article 14 of the Constitution says that state shall not deny to any person equality before law or equal protection of law within territory of India. Article 15 of the Constitution mandates that there should be no discrimination on the basis of religion, race, caste, sex, place of birth or any of them. Therefore, section 15 prohibits discrimination on the ground of sex i.e. on the ground of gender.

21. Article 16 says equal opportunity in matters of public appointment and no citizen on the ground of religion, race, caste, sex, place of birth or any of them will be ineligible for, or discriminated against in respect or, any employment or office under the State. Meaning thereby that state shall not discriminate on the basis of gender, but in the present case discrimination is writ at large. That the women officers who were recruited as a Short Service Commission officers, they are given opportunity to become Permanent Commission Officers, whereas similar recruited persons who were recruited in

similar method of recruitment, the same terms and conditions are sought to be discriminated as similar treatment is being denied to them.

22. We have already pointed out above that mode of recruitment of both the short service commissioned officers is same and terms of conditions of the recruitment and grant of extension and Permanent Commission is also identical. Therefore, in this view of the matter we fail to appreciate why the male officers are being denied the PC, whereas female officers are being given PC by virtue of a decision of the division bench of Delhi High Court. The same plea was raised before the Delhi High Court also that it will increase the cadre but that argument was not accepted and the respondent abided by the decision of the Delhi High Court and granted a PC to same SSC women officers but same is being denied to the male officers for no justifiable reason. All Short Service Commission officers, may be male or female form small class as

they are similarly situated and their terms and conditions of appointment and their methods of recruitment is same and both the categories of officers male and female has to go in almost identical period of training and their terms and conditions are paramaterial with each other and there is no distinction between them then this is a case of a reverse discrimination based on a gender bias. This cannot be countenanced.

23. Learned Counsel for respondent has failed to satisfy us that why Article 15 & 16 of the Constitution be not enforced. There is no reply on behalf of respondent that in what way the case of male officers distinguishes against case of female officers. Once a principle has been accepted in respect of female officers why male officers are denied same treatment. Since both of them fall in same class/ category of Short Service Commission with same terms and conditions therefore, there is no justification (though none has been pleaded) for denying the similar treatment to the male officers.

Since the policy has been changed from 2006 therefore it can operate prospectively, whereas the officers who have been so far recruited in terms of the earlier policy, these officers are entitled to have same treatment as was given to the female officers. The 2006 policy cannot be applied retrospectively, this is a prospective policy and same cannot be applied to the male officers retrospectively. Had that been so perhaps the female officers would not have been granted Permanent Commission. But there is no distinction between the two, therefore, we direct the respondent to give a similar / identical treatment to the male officers as they form members of same category as women officers are i.e. Short Service Commission Officers. This petition and other two petitions are allowed and respondents are directed to treat the male officers in a similar way as female officers have been treated i.e. they shall also be granted the Permanent Commission subject to the terms and conditions of the suitability and willingness of the officers.

All petitions are allowed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
22nd February, 2011