

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
24.**

O.A. No. 314 of 2011

Capt. Prabhat Chaturvedi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Rajiv Manglik, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

28.05.2012

1. Petitioner by this petition has prayed that the order dated 16th June 2011 may be quashed having been issued ignoring the service condition laid down in the advertisement on the basis of which the Petitioner joined the Army Medical Corps (AMC). It is also prayed that the Respondents may be directed to consider the Petitioner for grant of permanent commission by conducting a Review Board and lastly that he may be allowed to avail all the three chances for permanent commission.

2. Petitioner applied for Short Service Commission in AMC in pursuance of the advertisement issued by the Central Government dated 15-21st December 2007. The date of birth of the Petitioner is 15th May 1978. The terms and conditions regarding age limit read as under:

Age Limit: The candidate must not have attained 45 years of age on 31st December 2007. It may be noted that, the maximum age limit for MBBS degree and Post Graduate Diploma/Degree holders desirous of

Permanent Commission, on becoming eligible during service, will be 30 years and 31/35 years respectively as on 31st December 2007 while applying for SSC.”

3. He was commissioned in Army as a Medical Officer on 11th April 2008 and he joined the service on 25th April 2008. He was below 30 years of age on 31st December 2007. Thereafter the question came up for Permanent Commission as per the conditions laid down in the advertisement dated 15-21st December 2007. He submitted the application for Permanent Commission to the Directorate General Armed Forces Medical Services (DGAFMS) but he could not succeed in the first chance as the name of the Petitioner did not find mention in the result dated 16th May 2011. Thereafter he applied for a second time for grant of Permanent Commission but Respondents did not entertain his application and, therefore, he was not called for interview and selection for second time. Since he was not called for second time, therefore, Petitioner made some representations and ultimately filed the present petition before this Tribunal for the aforesaid reliefs.

4. A reply was filed by the Respondents and the Respondents contested the matter and submitted that the Petitioner has not been rightly called because as per the advertisement he was not eligible as he has already attained the age of 30 years on 31st December 2008 but because some anomaly occurred in the advertisement therefore one chance was given to such persons by the order dated 15th June 2009 of the DGAFMS which was also availed by the Petitioner. Since he failed to secure 50% marks, therefore, he could not be appointed. It is also admitted that there was a mistake in the advertisement dated 15-21st December 2007 mentioning the

date as 31st December 2007 whereas as per the conditions of service contained in Annexure A to Army Instructions 74/76 the clause (4) 'age limit' reads as under:

"Age limits

(a) Candidate must not have attained 30 years of age on 31st December of the year of receipt of application from them. But in the case of candidates possessing additional medical qualifications, the following age limits will apply:-

- (i) Those possessing post-graduate diploma like DOMS, DPH, DA etc. -31 years.
- (ii) Those possessing post-graduate qualifications like MD, MS, etc. -32 years.
- (iii) Those possessing high post-graduate qualifications like FRCS, MRCP, MRCP, MRCOG etc. and have served in their Specialities under recognised medical Institutions for a period of at least 5 years vide para 1(c) above -36 years."

5. According to this condition of service there was a typographical error in the advertisement where they have mentioned the year i.e. 2007 whereas it should have been 31st December of the year of receipt of application. Therefore this mistake crept in and as such DGAFMS gave one chance to all such persons who have been selected under this selection as a one time measure by the letter dated 15th June 2009 which reads as under:

"34528/SOP/DPC/DGAFMS/DG-IA
Integrated HQ Ministry of Defence (Army)

Directorate General Medical Services (Army)/DGMS-
IA,
New Delhi.

Integrated HQ Ministry of Defence (Air)
Directorate General Medical Services (Air)/Med-I,
New Delhi.

Integrated HQ Ministry of Defence (Navy)
Directorate General Medical Services (Navy)/Med-I,
New Delhi.

Grant of departmental Permanent Commission to
serving Short Service Commissioned Officers in the
Army Medical Corps.

1. Reference AI 74/76 as amended from time to time & this HQ letter of even No. Dated 10 Dec 2008.
2. As per 74/76 the age criteria for grant of permanent commission in Army Medical Corps (AMC) is as under as on 31 Dec of the year of application for Departmental Permanent Commission:

| | <u>Years</u> | | <u>Qualification</u> |
|-----|--------------|---|----------------------|
| (a) | 30 years | - | MBBS |
| (b) | 31 years | - | PG Diploma |
| (c) | 35 years | - | PG Degree. |

3. As per the advertisements published for recruitment of doctors in AMC as SSC Officers up to Dec 2007, the age criteria for grant of PC was 30 years, 31 years and 35 years for having MBBS, Diploma and PG Degree holders respectively as on the date of application for SSC. Since the current interpretation has been implemented wef the Selection Board for Permanent Commission, in June

2008 a number of officers have become ineligible to apply for Permanent Commission due to age criteria.

4. Taking into consideration the above facts one time age relaxation was given during the Selection Board held in Nov 2008 with the approval of DGAFMS.

5. There are still a number of officers who had applied and joined in response to this office advertisements published up to Dec 2007 but could not avail even a single chance to appear for Permanent Commission interview due to present age criteria.

6. In view of the above, it has been decided to give age relaxation for one chance only to those officers who had applied and joined AFMS as SSC officer in response to the advertisements till Dec 2007. This relaxation would further be continued till Dec 2010 by which all those officers joined in response to Dec 2007 advertisement would be covered. However, this relaxation of age would be for giving one chance only to those officers who would be otherwise overage by 31 Dec 2009 and 31 Dec 2010 provided they fulfil other eligibility criteria laid down for grant of Permanent Commission.

7. This has the approval of DGAFMS.”

6. In the background of this advertisement and the service condition and the rectification which has been issued on 15th June 2009, learned counsel for the Petitioner has submitted that the Petitioner is entitled to three chances as

per the conditions of service and he has only availed one, therefore, he is entitled for two more chances. He has also submitted that provisions of Clause 4(b) that a candidate with previous commissioned service in the Army Medical Corps will be entitled to extension of the age limits given in clause 4(a) of Annexure to Army Instructions 74/76. Clause 4(b) reads as under:

“A candidate with previous commissioned service in the Army Medical Corps will be entitled to extension of the age limits given below:

(i) Full period of previous reckonable service if such service was rendered while in possession of a medical qualification recognised by the Indian Medical Council.

(ii) Full period of reckonable service less two years if such service was rendered while in possession of a licentiate medical qualification.”

7. He submits that this two years commissioned service so far as construe that he has already put in more than one month of service on 31st December 2007 should mean that he is entitled for benefit of that service and he should be given a second chance.

8. We have considered the submission of learned counsel for the Petitioner and we regret we cannot accept the same.

9. The first and foremost thing is the advertisement. The advertisement clearly contemplates that the person who possess MBBS degree and are desirous of Permanent Commission, on becoming eligible during service, will

not be more than 30 years on 31st December 2007 while applying for SSC. That means it was clearly indicated that the persons should not have crossed the age of 30 years for Permanent Commission on 31st December 2007. It is also mentioned in the advertisement that further eligibility for Permanent Commission is that he may have two years of service as a Short Service Commission for departmental Permanent Commission and shall not have attained the age of 30 years on 31st December 2007. Therefore it was clear that in any case the incumbent should not have attained the age of 30 years for Permanent Commission on 31st December 2007. But the date of 31st December 2007 was contrary to the service conditions and the service conditions in clause 4(a) of Annexure to Army Instructions 74/76 clearly stipulates that the candidate must not have attained the age of 30 years on 31st December of the year of receipt of application. Therefore it is clear that the year which has been mentioned as 31st December 2007 in the advertisement was on the face of it erroneous. Therefore it was realised that persons applying should not be made to suffer and the DGAFMS passed the order dated 15th June 2009 giving relief of one chance to all the candidates who have been commissioned under the aforesaid advertisement. The case of Petitioner was considered but he failed to secure 50% marks and, therefore, he could not make it. Learned counsel for the Petitioner submitted that this is a mistake committed by the Respondents as they gave it to understand that they have given him two chances as per the MoD letter dated 5th May 2006 which amended the terms and conditions of service for grant of Short Service Commission in the AMC vide AI 75/78 amended and in that it was clearly mentioned that the Officers who have been granted Short Service Commission will be eligible for Permanent Commission after completion of

two years SSC and before completion of 9½ years of service as provided. Further the condition of eligibility laid down in Army Instruction 74/76 as amended subject to the condition that not more than two chances will be given in one tenure of five years and during the second and subsequent tenure if not done in continuation of first year then no chance for departmental Permanent Commission will be given. This amendment according to learned counsel for the Petitioner gives two chances to the incumbent but same was denied to the Petitioner. He acted on the basis of the information given in the advertisement but that advertisement was contrary to the service conditions and that has been admitted by the Respondents. Therefore he should be given one more chance. We regret it cannot be acceded for the simple reason that the mistake has been admitted by the Respondents and if the mistake would not have been corrected by the Respondents then Petitioner could not have given even one chance as he has already completed 30 years on 14th May 2008 and he is being sought to be considered for Permanent Commission in 2010. Therefore he has already completed more than 30 years and as per the original advertisement he was not entitled even for calling for first chance also. But the Government after realising that the mistake corrected it gave one chance to all the SSC officers who were recruited as per the aforesaid advertisement. Therefore this mistake was committed and rectified by giving one chance to the Petitioner and he cannot seek as a matter of right second chance in terms of the advertisement as discussed above.

10. Now coming to the next submission made by learned counsel for the Petitioner with reference to clause 4(b) of the AI 74/76. Clause 4(b) has no

relevance so far as Petitioner is concerned. It clearly contemplates that a person with previous commissioned service means that any service not necessarily Army service and that period which has been spent by incumbent shall be counted for the purposes of the extension of the age limit. It further says that previous reckonable service should be after the incumbent has obtained a medical qualification recognised by Indian Medical Council and the full period of previous reckonable service less two years if such service was rendered while in possession of a licentiate medical qualification that means that he must have put in two years of reckonable service prior to seeking for a Permanent Commission may be in the Army or may be out of the Army after doing his licentiate medical qualification. But in the present case there is no question of any previous commissioned service available to the Petitioner as he has joined the service in April 2008 and the Petitioner was sought to be considered for commission in 2010. Therefore there was no question of invoking this clause in the present case.

11. Hence, we do not find any merit in the petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 28, 2012
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O.A. No. 314 of 2011

Page 9 of 9