

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 179/2016

Maj Vibha Singh	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant	:	Mr. S.S. Pandey, Advocate
For Respondents	:	Mr. Prabodh Kumar, Advocate

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a Short Service Commission Women Officer (SSCWO) and is aggrieved on not being granted Permanent Commission (PC) and rejection of her statutory complaint. The applicant has made the following prayers:

- (a) Issue directions to the Respondents to quash and set aside the Government of India, Ministry of Defence Letter dated 22 May 2015 along with the Impugned ACRs as quoted therein being inconsistent with the overall ACR profile as also the consequential Release Order issued by the Army HQ MS Branch dated 18 Dec 2015 both of which have been placed as

Annexure A – 1 (Colly) being arbitrary, whimsical and especially without any Speaking Order whatsoever, contrary to many case laws on the subject,

(b) Issue directions to the Respondents to grant Permanent Commission to the Applicant in view of her exemplary military Service with two Instructional tenures at Indian Military Academy Dehradun as also in the light of the DOPT Rules on Compassionate Appointment applicable to the Armed Forces placed herein as Annexure A – 10 to meet the ends of equity, justice and fair play.

(c) Pass such other and further orders/directions to the Respondents by way of payment of all back wages to the Applicant as also an adequate compensation in the attendant genuine circumstances of the case, to meet the ends of justice.

(d) In the interim, stay the operation of the Release Order dated 12.05.2015.

Brief Facts of the Case

2. The applicant was commissioned as a SSCWO in the Army Education Corps (AEC) on 02.03.2002 as part of WSES – 19 Course. The applicant was granted SSC under the terms and

conditions of Special Army Instructions (SAI) 3/S/98. Consequent to the promulgation of revised SSC policy vide MoD letter dated 20.07.2006, the applicant opted for the revised terms and conditions for a tenure of 10+4 years with PC consideration in the 10th year for eligible SSCOs. Consequent to the MoD policy letter dated 26.09.2008 and its implementation issued vide letter dated 04.10.2010, SSCWOs of AEC and JAG Branch became eligible for grant of PC. Accordingly, the applicant submitted her willingness to be considered for PC vide her application letter dated 29.09.2011.

3. The applicant was then considered by No 5 Selection Board (SB) held in Dec 2012, however, was not granted PC. She was found fit for extension and accordingly her service was extended by four years. The result was promulgated vide MS Branch letter dated 27.02.2012 (Annexure A-4) wherein the applicant was approved for extension of service for four years up to 01.03.2016. The applicant then submitted an application dated 03.04.2012 (Annexure R-3) to Chief of the Army Staff (COAS) for grant of PC on extreme compassionate grounds. The applicant was then informed vide MS Branch letter dated 12.06.2012 (Annexure A-6) that her application to the COAS had been considered and that

the existing policy did not permit any review consideration for grant of PC. Subsequently, the applicant's Release Order was issued vide MS Branch letter dated 18.12.2015 (Impugned Order) and the applicant was to be released w.e.f. 01.03.2016. The applicant then submitted a statutory complaint dated 16.12.2013 against the CRs of 2007, 2008 and 2009. The complaint was, however, rejected by the competent authority vide order dated 25.05.2015 (Impugned Order). Hence the OA.

Argument by the Counsel for the Applicants

4. The counsel recapitulated the details of the case and stated that the applicant is a widow of an Army Officer who had died within three years of their marriage due to a medical condition. The applicant then completed graduation, post graduation and applied for the SSC Scheme. Being a widow of an Army Officer with applicable age relaxation, the applicant was selected for SSC training at OTA, Chennai. The applicant has two children, a boy and a girl. The counsel further added that the applicant was commissioned on 02.03.2002 into AEC.

5. The counsel then elaborated the service profile of the applicant and highlighted the fact that she had been posted as

an Instructor twice at the IMA and once at the Armoured Corp Centre and School. He further stated that the applicant had been posted thrice as Brigade Education Officer (Bde Edn Offr) at the HQ of Inf/Armd Bde. The counsel then emphasised that in spite of her exemplary service record, she was not granted PC when considered by No 5 SB in Dec 2011 and was only found fit for grant of extension.

6. The counsel then elaborated on the applicant's application to the COAS for grant of PC on compassionate grounds being a widow with two children. The counsel then elaborated on the reply to her application, wherein the respondents had intimated that she could not be re-considered for grant of PC under the existing policy. The counsel then drew our attention to the statutory complaint dated 16.12.2013 filed by the applicant (Annexure A-8). The counsel elaborated the details of the statutory complaint in which the applicant had impugned the CRs of 2007, 2008 and 2009 all earned whilst she was posted as the Bde Edn Offr at HQ 45 Inf Bde. The counsel then emphasised and elaborated that the IO had deliberately given a lukewarm report in all the three CRs, as she had spurned the improper advances of the IO. He further

added that based on the IO's reports, it was possible that the higher reporting officers had also given her a lukewarm report.

7. The counsel then drew our attention to MoD letter dated 22.05.2015 (Impugned Order) which had rejected the complaint. He emphasised that the complaint had been rejected without considering the special circumstances of the applicant and her case. The counsel concluded by asserting that the applicant deserved a special consideration given her circumstances and, therefore, the Release Order be quashed qua the applicant and she be re-considered for grant of PC.

Argument by the Counsel for the Respondents

8. The counsel briefly explained the policy of rendition on CRs and elaborated on the salient aspects of Special Army Order (SAO) 3/S/98 which has since been replaced by Army Order (AO) 45/2001/MS. The counsel then briefly explained the terms and conditions of a SSCO as per the SAI 3/S/98 and the revised policy dated 20.07.2006 (Annexure R-1 and R-2). The counsel further added that consequent to the issue of the policy letter dated 20.07.2006, the applicant had opted to be governed by the new policy with consideration for PC in the 10th year. The

counsel then stated that the applicant had submitted her application dated 29.09.2011 (Annexure A-2) and had also given her willingness to be granted extension if she was not granted PC. The applicant was then considered by No 5 SB in Dec 2011 and was found fit only for grant of extension due to her overall profile.

9. The counsel then elaborated on the applicant's application to the COAS (Annexure R-3) and the reply given by the MS Branch vide their letter dated 12.06.2012, in that as per the policy, there was no review or reconsideration for grant of PC. The counsel then asserted that consequent to not being granted PC by No 5 SB in Dec 2011, the applicant did not file any statutory/non-statutory complaint against the non-grant of PC or against the CR. The counsel further emphasised that even in her application to the COAS, there was no mention of the issue pertaining to the CRs and the allegations against the IO, or any challenge to the CR. The counsel further asserted that it was only after a lapse of four years that the statutory complaint dated 16.12.2013 against three CRs earned as Bde Edn Offr, HQ 45 Inf Bde was submitted.

10. Further elaborating on the statutory complaint, the counsel stated that the applicant had assailed the assessment of the IO on

the grounds that her low assessment by the IO was due to the fact that she had spurned the IO's improper advances towards her. The counsel further emphasised that though the IO had shown the CR to the applicant way back when each of the CRs were initiated in 2007/2008/2009, and despite knowing the assessment, the applicant did not make any complaint or raise any issue against the CRs. The counsel then vehemently stated that the challenge to the CRs after a lapse of four years, and that too with very serious allegations against the IO was nothing but an afterthought and was seriously barred by limitation. Further, though the statutory complaint had been rejected in Feb 2015, the OA was filed only in Feb 2016 just prior to proceeding on release.

11. The counsel further stated that the Release Order dated 18.12.2015 was a mere consequence of the No 5 SB result promulgated earlier vide letter dated 27.02.2012. Thus, the applicant had acquiescence with the result of No 5 SB, and is therefore estopped from challenging it after a lapse of four years without having sought any other alternate remedy. The counsel further emphasised that, importantly, the challenge to these impugned CRs was based on serious allegations against the IO, amounting to sexual harassment at the work place, and that the

application was non-maintainable, as the applicant had not impleaded the IO and RO who were essential parties to the case. The counsel asserted that the OA ought to be dismissed on the grounds of non-joinder of the relevant parties.

12. Referring to the contention with reference to MS Branch letter dated 29.12.2010 (Annexure A-7) that certain SSCOs had been given a second consideration for PC, the counsel elaborated that consequent to the revised terms and conditions introduced by the policy letter dated 20.04.2006, the then serving SSCOs were given the option to continue with the original terms and conditions, or opt for the revised terms and conditions. Thus, the second consideration in the 8th year was only given to those SSCOs who had been considered earlier and had not been granted PC. In the case of the applicant since she opted for the revised terms and conditions, she was only eligible for PC consideration in the 10th year.

Consideration

13. Having heard both the parties at length, the only issue for consideration is whether the respondents were justified in not granting PC to the applicant and releasing her at the end of the extension granted. The respondents have submitted the CRs

dossiers of the applicant, files connected to the examination of the complaint and the Board Proceedings of the No 5 SB. These have been examined in detail by us.

14. It is not in dispute that the applicant was commissioned in 2002 under the old terms and conditions, and consequent to the policy dated 20.04.2006, the applicant opted for the revised terms and conditions of 10+4 years with PC consideration in the 10th year. It also not in dispute that consequent to the policy dated 24.09.2008, SSCWOs of AEC and JAG Branch became eligible for PC consideration and this was finally promulgated vide letter dated 14.10.2010. Accordingly, the applicant was given a fair consideration by the No 5 SB held in Dec 2011, however, she was not granted PC and was only found suitable for extension.

No 5 SB December 2011

15. The No 5 SB considers the SSCOs under the provisions of the policy letter dated 30.09.1983 for grant of PC and is conducted as per the procedure laid down in Army Order AO 18/88 'System of Selection for Grant of Permanent Commission to Short Service Commissioned Officers'. The SB is conducted as a closed Board, with agenda numbers being assigned to the officers under consideration.

The Board consists of a total of five members including the Presiding Officer. Relevant extracts of AO 18/88 are reproduced below:-

Grading

6. The members of the Selection Board award gradings to each officer as under based on the officer's performance :-

- (a) Recommended for Permanent Commission - 'B'
- (b) Recommended for Extension only - 'BE'
- (c) Rejected for Permanent Commission and extension - 'Z'
- (d) Withdrawn (for want of sufficient material/administrative reasons)- 'W'
- (e) Deferred -'D'

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Guidelines for Assessment

13. Assessment is made in accordance with the criteria approved by the Government. The salient points are given below:-

- (a) Officers are assessed on the merits of their service performance as reflected in the ACRs and course reports filed in the CR Dossier. Personal knowledge of an officer neither jeopardizes his selection nor is the basis for favourable consideration of his case.
- (b) While evaluating ACRs, the possibility of subjective/ inflated reporting and fluctuation in performance of officers occasioned by following circumstances, are taken note of
 - (i) Last ACR before assessment for PC.
 - (ii) Set of initiating/reporting officers endorsing more than two reports..
 - (iii) Period covered by the report, if less than six months.
- (c) Rating and assessment in mandatory qualities of loyalty, integrity and dependability are given due weightage.
- (d) More weightage are given to reports earned from regimental appointment as opposed to staff/ERE if any.
- (e) Low Medical Category of the officer does not influence the assessment as it is an administrative restriction and not a criteria for assessment.

Conduct of Board

14. The Board meets as scheduled. The opening address containing guidelines for assessment is read by the Secretary on behalf of the Chairman, The MDS is explained to the members. The guidelines for assessment and the system of marks/ grading is placed before each member for ready reference

during the conduct of the Board. Members glance through few cases to formulate their independent view/yardstick before deliberations.

15. The Secretary of the Board gives a brief resume on the factual data to include course profile, appointments held, ACR ratings recommendations for giant of PC, strong/weak points, details of honours and awards and disciplinary awards if any of each officer. Members award marks and grading independently on the basis of MDS. No discussion which may prejudice the opinion of members is permitted.

16. Each member awards the marks and grading on a separate grading chart and the same is signed by him. The independent gradings are compiled by the Secretary and recorded on the Master Grading Sheet with the help of the other members of the Staff at the end of each day. The Grading charts of each member are retained for record for five years. Master Grading Sheets are authenticated by the Chairman of the Selection Board and the Secretary.

17. The majority verdict is taken as the final grading which is placed before the Chief of the Army Staff for his approval before it is sent to the Ministry of Defence for final approval.

Objectivity

17A. Objectivity in the system is ensured by the following:-

(a) Concealment of the identity of the officers being considered from the members of the Board. The MDS placed before the members does not contain the officer's number, name, name of reporting officer/units/formation; thereby ensuring anonymity.

(b) No member is allowed to express his opinion or comments for or against an officer being considered which in any way can influence the other members. All questions are addressed to the Secretary who answers the query for the benefit of all the members.

(c) Grading and marks awarded by one member is not known to the other and they cannot evaluate the grading pattern of the other members.

(d) The independent marks and grading awarded by each member is recorded in the Master Grading Sheet at the end of each day. The average marks and the majority grading are taken into consideration for final merit. Master Grading Sheet is authenticated by the Chairman of the Selection Board and the Secretary,

(e) In case of inconsistency, the case is re-submitted for reconsideration/re-examination by the members. In doing so, the inconsistency of Board members is highlighted with the help of comparable cases.

(f) Any case which has been graded against the guidelines and criteria, is highlighted in proceedings to the COAS and the Ministry of Defence while obtaining approval.

16. The No 5 SB was held from 07 to 12 Dec 2011. This SB had to consider SSCOs of Sep 2006 and Mar 2007 batches as fresh

cases for consideration for grant of PC in their 5th year. In addition, the SB also had to consider those SSCOs of the Mar 2002 batch who had opted for the revised terms and conditions as per policy dated 20.07.2006, and had to be considered for grant of PC in their 10th year. The March 2002 batch SSCOs being considered in Dec 2011 included 04 AEC officers of WSES(O)-19 course, including the applicant. In the case of the applicant, based on her profile, she was graded 'BE' (only recommended for extension) by three members and was recommended as 'Z' (not recommended for PC or extension) by two members. Thus, she was granted a final grading of BE; recommended only for extension, and accordingly she was granted extension of four years. The results were promulgated vide letter dated 20.12.2011; the results of 15 SSCOs who had opted for the revised terms and conditions were promulgated later vide letter dated 27.02.2012.

Statutory Complaint

17. In the statutory complaint dated 16.12.2013, the applicant had impugned the three CRs she had earned when she was posted as Bde Edn Offr in HQ 45 Inf Bde. The CRs impugned are:

- (a) CR – 1 : 06/07 – 12/07.

(b) CR – 2 : 01/08 – 12/08.

(c) CR – 3 : 01/09 – 05/09.

18. Her main point of complaint was that, given her background on seeking Short Service Commission, she had worked diligently and had never been counselled verbally, or in writing by her reporting officers and that the low assessment in the three impugned CRs were the major reason for not being granted PC. It was her case that the IO had given her low assessment in all the three CRs since she had spurned his improper advances. Thus, the low assessment by the IO may have been corroborated by the RO/SRO. Also that CR-2 had been returned to her after two months on the pretext that the CR had been soiled and was required to be initiated afresh, and that this was done deliberately as the box grading had been changed by the IO from '6' to '7', probably at the behest of the RO.

19. While examining, the complaint, comments of all reporting officers were obtained. Both the IO and RO have submitted detailed comments on the performance of the applicant during this period and also on the veracity of the allegations levelled against the IO. The examination also looked at the overall profile of the officer and finally concluded that the CRs were commensurate

with the overall profile, which was duly corroborated by the pen picture and assessment by the other reporting officers. The competent authority, therefore, concluded that the CRs were well corroborated, performance based and technically valid and, therefore, there being no bias, the CRs did not merit any interference. Accordingly, it was rejected vide order dated 22.05.2015.

CRs

20. We have examined the impugned CRs. CR-1 is boxed 7/7 by the IO/RO and has not being endorsed by the SRO. CR-2 is boxed 6/6/6 by the IO/RO/SRO. CR-3 is boxed 7/6/6 by the IO/RO/SRO. Thus, the overall assessment is predominately high average. The pen pictures are satisfactory with no adverse remarks. The reporting officers, however, have not recommended the applicant for foreign assignments or career courses. Having examined the CRs, we are of the opinion that they are entirely performance based, therefore, do not merit any further interference.

Miscellaneous

21. The applicant was well aware of the assessment by the IO in the period 2007 – 2009. Yet, the applicant did not challenge the

CRs till a month prior to her release. Considering the allegations made, even if the applicant had chosen to keep quiet about it at the relevant time, having made such serious allegations in the statutory complaint in Dec 2013, it was only appropriate that the IO and the RO were made a parties to the case when the OA was filed. Since the IO and RO were not arrayed as parties, neither the applicant nor the Tribunal has had the opportunity to learn what the IO or RO would have otherwise stated in their respective affidavits. However, having examined the comments sent by them to the competent authority with reference to the statutory complaint, we have no hesitation in holding that the assessment in the CRs is entirely based on the performance of the applicant.

Conclusion

22. In view of the above consideration, we do not find any reason for any interference in the three impugned CRs at this stage. The applicant was given a fair consideration for grant of PC but was not found fit based on her overall merit. The No 5 SB, however, found her suitable for grant of extension and thus, the Release Order towards the end of the extension has been issued as per the policy.

23. Accordingly, the OA is dismissed being bereft of any merit.
24. No order as to costs.
25. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 9th day of August, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN P.M. HARIZ)
MEMBER (A)

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