

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

A

OA 360/2021

Maj Akanksha Sharma

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Harish V Shankar for R 1-3,
None for R-4

CORAM

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

ORDER
12.01.2024

Vide our detailed order of even date, we have dismissed the main OA No. 360/2021. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

2. After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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**... Applicant
... Respondents**

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Harish V. Shankar for
Respondents Nos. 1 to 3
None for Respondent No. 4

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, and aggrieved by denial of Permanent Commission (PC)/Extension of service beyond 10 years by No 5 Selection Board (SB) vide the impugned order dated 11.01.2021, the applicant has prayed for following reliefs:-

- (a) Call for complete proceedings of No 5 Selection Board (No. 5 SB) held in Dec 2020 in respect of SS-90 Batch and SS-91 Batch leading to the impugned Order dated 11.01.2021 and, after perusal thereof, set-aside said impugned Order dated 11.01.2021

in so far as the same relates to the applicant.

(b) Call for the applicant's entire record of service and, after perusal thereof, set-aside the complete assessment of the IO/FTO (including any un-communicated adverse/ weak remarks or negative recommendation), and those of the RO/HTO/SRO, made in applicant's Confidential Report (CR) for the period 01.11.2013 to 31.10.2014 & 01.11.2014 to 18.03.2015 being inconsistent, subjective and not-performance based.

(c) Call for the applicant's entire record of service and after perusal thereof, set-aside any other CR found to be inconsistent, subjective or containing an un-communicated adverse weak remarks or negative recommendation for grant of PC/extension;

(d) Direct the respondents not to take into account applicant's past medical category in 'S' factor which has since been upgraded to Shape-1 while reconsidering applicant's case for grant of extension of service;

(e) Direct the respondents, while reconsidering applicant's case for grant of extension of service, that she will not be denied extension of service on the consideration of her present medical category, i.e., 'A2(P)' for 'ACL Tear Right knee (Optd)' (held

aggravated by military service) and 'P2(P)' for 'Psoriasis with Arthritis' (arbitrarily held to be NANA by military service), as the same is not a disqualification for grant of extension of service to an SSC Officer;

(f) Direct the respondents to reconsider the applicant's case for grant of extension of service keeping in view the points urged by applicant in the instant OA and on such reconsideration grant her the extension of service;

(g) Direct the respondents not to release the applicant from the Army service until completion of complete process of reconsideration by No.5 SB as prayed for herein above; and

(h) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

Brief Facts of the Case

2. The applicant was commissioned on 19.03.2011 into the Army Service Corps (ASC) as a Short Service Commissioned officer (SSC-WO) in terms of Ministry of Defence/Govt of India letter dated 20.07.2006. As per the terms and conditions of service, the Short Service Commissioned Officers (SSCOs) had an initial contractual obligation of

10 years' service, extendable by further 04 years (10+4). As per Government of India of letter dated 24.02.2012, before completion of initial contractual service of 10 years, the SSCOs were to be considered for grant of PC/Extension of service by another 04 years by No. 5 Selection Board.

3. The applicant was considered by No. 5 Selection Board held in Dec 2020 for grant of PC/extension. The applicant was found 'UNFIT' for both PC as well as extension. Aggrieved, the applicant submitted a statutory complaint dated 15.01.2021 against non-grant of PC by No 5 SB held in Dec 2020. The applicant also impugned CRs for the period 11/13-10/14 and 11/14-03/15. The competent authority duly examined the statutory complaint dated 15.01.2021 and held that the impugned CRs (11-13-10/14) and (11/14-03/15) were fair, objective, well corroborated, performance based, consistent and technically valid. Accordingly, the competent authority vide order dated 16.08.2021 rejected the statutory complaint filed by the applicant. Subsequently, the applicant was released from service on from 18.03.2021, on completion of her initial contractual period of 10 years. Hence, this OA.

Arguments by Counsel for the Applicant

4. It is the case of the applicant that non-empanelment for PC/Extension of service beyond 10 years by No 5 SB was due to low assessment of the IO/FTO (Respondent No 4) in CR-1 (11/13-10/14) and CR-2 (11/14-03/15). Referring to these CRs, the counsel submitted that the overall box-grading of '7' awarded by the IO/FTO not only suffered from inconsistency but also did not truly reflect the applicant's overall performance. The counsel stated that the applicant was also apprehensive that the other reporting officers may have assessed the applicant in a similar manner as per the assessment given by the IO/FTO. Further, the counsel further submitted that since box-grading of '7' in a CR is an 'Above Average' assessment and thus the grading of '7' cannot be a ground for denial of extension of service to the applicant.

5. The counsel further submitted that the applicant's medical category was downgraded in 'S' (Psychiatric) factor to S2 (Temporary) in 2016 for disability 'Adjustment Disorder' which was later upgraded to S1 in Oct 2018, i.e. prior to consideration by No 5 SB in Dec 2020. Further, the applicant was placed in low medical category i.e., 'A2(P)'

for 'ACL Tear Right Knee - Optd and 'P2(P)' for 'Psoriasis with Arthritis. The counsel contended that these factors may have unduly influenced the No 5 SB held in Dec 2020.

6. The counsel vehemently contended that as per the criteria laid down in Para 9 of the General Instructions dated 14.08.2020 issued by the MS Branch Army HQ, applicant's status as LMC in A2 and P2 factors only disentitled the applicant for grant of PC but not for grant of extension of service. Moreover, there was no mandatory criteria in the relevant policy regarding grant of extension of service to SSCOs and, in the past, SSCOs with LMC (except in 'S' factor) had been granted extension of service.

7. The counsel also narrated the incident which forced the applicant to file a written complaint (on charges of rape) against a serving officer. The counsel alleged that, although the said officer was to be tried by a General Court Martial (GCM), this might have led to an official bias against the applicant.

8. The counsel also submitted that the scheme of SSCOs in the Army was introduced by the Govt to overcome the deficiency of the officer cadre in the non-select rank of Captain/Major/Lt Colonel and to protect

the career interest, and secure the promotional prospects of permanent commissioned regular officers. However, the same had been denied to the applicant due to gender discrimination and institutional prejudice against women officers as compared to male officers. He concluded that in view of these considerations, the results of the No 5 SB held in Dec 2020 be quashed, OA be allowed and the applicant be granted PC.

Arguments by Counsel for the Respondents 1 to 3

9. Although the notice was issued to all the respondents but none appeared for Respondent No. 4, despite several opportunities. Therefore, the final submissions on behalf of the respondents were made by counsel for Respondents No. 1 to 3.

10. Per contra, the counsel for the respondents while endorsing the facts of the service condition with respect to grant of PC/Extension of service submitted that the grant of Permanent Commission/Extension of SSC is governed by Govt of India letter dated 24.02.2012, read with Para 23 of AO 18/88 and Para 1 (d) of Govt of India letter No 7(10)/88-D(AG) dated 15.01.1991 which mandates that grant of extension was not automatic, but based on merit of every candidate. Therefore, the contention of the applicant that 'generally grant of extension of service

is never denied', was wrong. The counsel further submitted that not only the applicant, but many other similarly placed officers were denied extension of service by No 5 Selection Board held in Dec 2020.

11. The counsel reiterated that before completion of 10 years of contractual period of service, the applicant was considered by No 5 SB in Dec 2020 for grant of PC/ extension of 04 years and the applicant was found 'UNFIT' and therefore neither granted PC nor extension. Accordingly, the applicant was released from service w.e.f 18.03.2021.

12. The counsel further submitted that the competent authority duly examined the statutory complaint dated 15.01.2021 and found that the CRs in the reckonable period including the impugned CRs (11/13-10/14) and (11/14-03/15) were found to be fair, objective, corroborated, consistent, performance based, technically valid and consistent with the overall profile of the applicant. There was no evidence of bias or subjectivity. Therefore, the competent authority rejected the statutory complaint dated 15.01.2021 vide order dated 16.08.2021.

13. The counsel clarified that the medical status of the applicant was not placed before the Selection Board. Hence, the apprehension of

the applicant that only due to her present medical category, she was denied PC/ extension of service was incorrect. Further, the counsel stated that the applicant had no disciplinary/administrative award on her profile on the day of the Selection Board. In fact, the Selection Board was not aware of any complaint made by the applicant. Therefore, the apprehension of the applicant about official bias due to the said complaint dated 10.02.2019 was again baseless.

14. The counsel further submitted that No. 5 SB conducts impartial consideration of all officers irrespective of gender and the SB is not privy to the identity of the officers being considered, hence, there can be no question of bias, and as much as the grant of extension of service is not contingent upon availability of vacancy.

Consideration

15. We have heard the arguments of both sides and perused the pleadings, various policy documents, the CR dossier, examination of the statutory complaint as well as the Board Proceedings of the No. 5 SB that have been produced before us by the respondents.

Statutory Complaint

16. Statutory complaint dated 15.01.2011 was filed by the applicant

against non grant of PC/Extension of service by No 5 SB held in Dec 2020. The applicant highlighted her service profile including her then low medical category status. She impugned CR-1 (11/13-11/14) and CR-2 (11/14-03/15) wherein she averred that the IO/FTO had arbitrarily under assessed her performance and that the RO/SRO too may have not assessed her performance due to limited interaction. That while her medical status might disentitle her for grant of PC, she was still eligible for grant of extension. The applicant also apprehended that her act of lodging an FIR on a charge of rape by a colleague officer may have created an official bias against her. She has further averred of gender bias and discrimination vis-à-vis the male officers and that there was no lack of vacancy for grant of extension and that the late conduct of No SSB had denied her time for resettlement.

17. The applicant had sought the following redressal:

- (a) Complete assessment of the IO/FTO, RO/HTO and SRO in CR-1 and 2 be set aside.
- (b) Complete CR profile be scrutinized and inconsistency/aberration, if any, be set aside.
- (c) Grant of extension of service be reconsidered.

(d) Impending release from service on 18.03.2021 be held in abeyance pending disposal of the complaint or until reconsideration of grant of extension.

18. The examination reviewed the complete CR profile. The applicant had earned nine CRs in the reckonable period from 04/11 to 10/18. All the CRs in the reckonable period are 'Above Average' reports with a fair mix of 7/8/9 in figurative assessment and matching recommendations for promotion/ employment. Assessments in all CRs were assessed as being objective, performance based, consistent with the profile of the applicant. Hence the examination concluded that there was no gender bias as there was no pro-rata share for male/ female SSCOs and that PC was granted as per comparative merit. The applicant had not been granted extension as the Board did not find the applicant fit for extension. The examination also concluded that the No 5 SB had been delayed due to administrative reasons. That due to pandemic the resettlement course in 2020 was cancelled and that the applicant could have undertaken resettlement course till 3 years post retirement. The examination concluded that the complaint was bereft of any merit and thus was finally rejected vide order dated 16.08.2021.

CRs

19. The applicant had earned nine CRs in the reckonable period. All the reports have 'Above average' box grading; of which 55% assessments are boxed '8' and the balance 45% are '7'. The figurative assessments of various attributes in the various CRs is a fair mix of 7, 8 and 9. In the CR covering the period 11/11 to 10/12, earned as Lt (Pl Cdr/5121 ASC Bn) both the IO and RO have assessed her as '6' in the attribute of 'Stamina'. And in the pen picture, the IO has mentioned that "..... *the officer needs to pay additional attention to her physical fitness and excess weight and improve upon her stamina*". Both the impugned CRs, CR-1 (11/13-10/14) and CR-2 (11/14-03/15) have been assessed in the rank of Capt as MT officer of a Divisional ASC Bn in field, in a LC/CI environment.

(a) CR-1 (11/13-10/14) This CR is boxed 7/7/- by IO/RO/SRO. The IO has recommended the applicant for promotion PC and extension. However, though the RO has recommended the applicant for promotion and extension, he has not recommended her for PC. The pen pictures are positive and the RO has held the assessment by IO as 'justified.'

(b) CR-2 (11/14-03/15) This report too has been boxed 7/7/- by IO/RO/SRO. In this report the IO and RO have both recommended the applicant for promotion, PC and extension. The pen picture by both IO and RO are positive and the RO has held the assessment of the IO as 'justified'.

No 5 SSB

20. The applicant was considered by No 5 SSB held in December, 2020. The SB considered SSCOs of four batches, SSC-34 (Tech), SSCW-5 (Tech), SSC-91 (Non Tech) and SSCW-5 (Non-Tech). It considered a total of 196 officers of whom 183 were found fit for grant of PC, 3 were found fit for grant of extension only; 5 were found unfit for PC/Extension and 5 were withdrawn. The merit of the applicant was 69.44 whereas the merit of the last officer who was found fit for PC was 79.32. Five officers including the applicant were not granted extension as they were not found fit for grant of extension on various grounds. The merit of these five officers varied from 64.02 to 76.46.

21. The applicant had given willingness for grant of PC vide her application dated 28.8.2020. Also, the applicant was in low medical category i.e., 'A2(P)' for 'ACL Tear Right Knee - Optd and 'P2(P)' for

Psoriasis with Arthritis, respectively. However, both the IO and RO have not recommended the applicant for grant of PC or extension and detailed reasons have been appended to the application. Moreover, it is seen from the CRs that the applicant has not been recommended for PC by the IO/RO/SR`O in the CR covering the period 1.11.2017 to 31.10.2018. The IO has also not recommended the applicant for extension either. Thus the applicant has not been granted PC because of her comparative merit and non-recommendation and she has not been granted extension as she has not been found fit due to her inconsistent CR profile, merit and non recommendation for PC/extension by the reporting officers.


Conclusion

22. In view of the above consideration, we conclude that the statutory complaint has been correctly disposed of by the competent authority. None of the CRs merit any further interference at this stage. The applicant has not been granted PC/extension due to her overall merit and non-recommendation by the reporting officers.

23. The OA is therefore dismissed being bereft of any merit.

Pronounced in the open Court on this day of 12 January, 2024.


(RAJENDRA MENON)
CHAIRPERSON


(P M HARIZ)
MEMBER(A)

/ashok/