

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2422/2021

Maj Prashant Bhardwaj Applicant
VERSUS
Union of India and Ors. Respondents

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

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Aggrieved by the action of the respondents denying him the grant of Permanent Commission (PC) by not declassifying his result even after meeting the competitive merit criteria and instead granted extension of four years, i.e, upto 16th September, 2025 (AN), the applicant, a Short Service Commissioned Officer (SSC), has filed this OA. The reliefs claimed are:

“8. In view of the facts mentioned in Para 4 and 5 above, the applicant prays that this Hon'ble Tribunal may be graciously pleased to allow the present application with costs by passing following orders/directions:-

- (a) *Call for the records based on which the respondents have passed impugned order dated 03.08.2021 and 02.07.2021 vide which the disability 'Connective Tissue Disorder Related Vasculitis' of the applicant has not been declared Battle Casualty and consequently also the records pertaining to consideration of the applicant for PC by No.5 SB held in June 2021 wherein despite well within the merit, solely on the medical ground the*

applicant has been denied PC and thereafter quash the same.

- (b) Direct the respondents to categorise the disability of the applicant Connective Tissue Disorder Related Vasculitis as Battle Casualty within the frame work of instruction applicable on the subject and thereafter reconsider and grant PC to the applicant as applicable in case of Low Medical Category in battle cases with all consequential benefits.*
- (c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case”.*

2. Before we proceed to decide the issues raised in the OA, we may record that during the course of arguments, in reply to a specific Court query made on 17th March, 2025, Lt. Col Deepak Ranwah, AMS (Legal) submitted that there is no requirement of a Battle Casualty Certificate for eligibility for grant of Permanent Commission (hereinafter referred to as ‘PC’) whereas requirement of Army Instructions 1/1970, Annexure R-8, amended vide A1 102/72 is necessary. At the same time Mr. S.S. Pandey, learned counsel for the applicant, submitted that he is not pressing his prayer for declaring the disability ‘*Connective Tissue Disorder Related Vasculitis*’ as a Battle Casualty and is confining his prayer only to the grant of PC.

3. The prayer for grant of Battle Casualty thus needs no adjudication and to decide the OA we will refer to the facts of

the case only with regard to eligibility of the applicant for grant of PC.

4. The order dated 17th March, 2025 reads as under:

“ In reply to a specific Court query, Lt Col Deepak Ranwah, AMS (Legal) submits that there is no requirement for Battle Casualty Certificate for eligibility for grant of Permanent Commission to a Short Service Commissioned Officer, however, the requirement of Army Instructions 1/1970, as modified vide Annexure R-8 annexed to the written submissions submitted by the respondents dated 03.03.2015 is requisite. (2015 ought to be read as 2025)

2. Likewise, it is submitted on behalf of the respondents, in reply to a specific Court query that the demarcation between “Severe Injury” and “Moderate Injury” has no bearing on the aspect of grant of Permanent Commission to Short Service Commissioned Officers.

3. On behalf of the respondents has been submitted copy of Army Order 18/1988 and it is submitted the same in operation as of date.

4. It is further submitted on behalf of the respondents that at the time of consideration of the grant and non-grant of Permanent Commission to the applicant, no sufficient documents were put forth by the applicant to indicate as to whether the disability of ‘Connective Tissue Disorder Related Vasculitis Rt Foot Drop’ was the cause of the duties of the applicant in the Indian Army.

5. During the course of submissions made on behalf of the applicant, learned counsel for the applicant submits that the prayer made through the present OA is confined to seeking the grant of Permanent Commission alone with it having been submitted further on behalf of the applicant that the prayer seeking the declaration of a Battle Casualty qua the disability of the applicant of ‘Connective Tissue Disorder Related Vasculitis Rt Foot Drop’ through the present OA is not pressed for which the applicant would seek redressal by a representation to the respondents in view of subsequent instructions and clarifications issued by the respondents in 2021.

6. On behalf of the respondents, it is submitted that IC-81539P Capt Utkarsh Mishra was not considered for

grant of permanent commission as he was already a permanent commissioner officer.

7. The document No.12812/AG/OW/SS-44836X/MP-5(d) dated 13.02.2025 has been submitted by the respondents taken on record and the respondents have also produced the Non-Fatal case documents qua the applicant bearing File No.12812/AG/OW/OPM/SS-44836X/MP-5(D) which is presently retained on record and directed to be placed in a sealed cover.”

(emphasis supplied)

5. We may, however, like to record with respect to para 6 of the order dated 17th March, 2025 that during the course of his arguments learned counsel for the applicant had submitted that one Capt Utkarsh Mishra IC-81539 P, who was also found to be in low medical category and similarly placed as the applicant, was granted PC whereas the applicant was denied PC. In response thereto, the respondents submitted that Capt Utkarsh Mishra IC-81539P was not granted PC as he was already a commissioned officer. This issue was, therefore, not pursued further.

6. It is the case of the applicant that due to misinterpretation of the existing policy/instructions, the No.5 Selection Board held between 16-18 June, 2021 denied PC to him solely on the ground of his medical category, S1H1 A1 P (P2) E1 for the disease “**Connective Tissue Disorder Related Vasculitis**”. It is contended that the disease suffered by him was caused due to exposure to Sub Zero Temperature while

performing his official duties when he was posted at Siachen Glacier.

7. The applicant submits that after successful completion of training, he joined as a SSC officer in the Corps of Infantry and while posted in Siachen in August 2019, he developed right foot drop restricting his movements. He has further submitted that he still continued performing his duties with the same zeal and enthusiasm till he was evacuated to Siachen Base Camp in February 2020. Thereafter, as averred, on the recommendations of Medical Officer at Siachen Base Camp, he was transferred to a lower altitude station for advance treatment. Having developed acute headache and being examined at two/three military hospitals, ultimately the applicant was transferred to Army Hospital Research and Referral on 21st March, 2020 for advance treatment and remained admitted in the hospital for about ten days and was also listed as 'seriously ill' (SIL).

8. It is further contended that despite fulfilling the eligibility criteria for officers with Primary Low Medical category, as prescribed under Para 9 (c) of the Policy dated 10th February, 2021, he was denied PC. It is submitted that as per the said Para, the low medical category should not

be due to medical reason but must have been caused as a result of casualties suffered in action during operations or due to injury or disability sustained during duty and officers under medical categories lower than S1 or H2 or A3 or P2 or E2 or H2 E2 or H2 A3 or H2 P2 or E2 A3 or E2 P2 are not eligible for grant of PC. The applicant asserts that he does not fall under these categories and, therefore, should not have been denied PC on this ground alone. It is further contended that the respondents have given a selective interpretation to the Policy and have acted in an arbitrary and illegal manner to deny him PC, though he met the criterion for selection. It is further submitted that in terms of the Policy the applicant was in a Low Medical Category, which did not make him ineligible for grant of PC. The applicant has vehemently submitted that in spite of his meeting the competitive merit criteria for grant of PC and being in the Low Medical Category due to injury suffered while on duty, the respondents, by adopting a selective approach, have denied him the same.

9. Despite being granted number of opportunities and as a matter of last indulgence having been granted on 6th March, 2023, the respondents chose not to file the

counter affidavit. Their right to file the same was thus closed. However, vide order dated 7th February, 2025; they were granted permission to file their written submissions.

10. By way of written submissions the respondents have claimed that the applicant has been given a fair chance of consideration by No.5 Selection Board and since the disability of the applicant was not proven to have been sustained during duty and as per Para 9 (c) of the General Instructions, the applicant did not meet the criteria, as mentioned in Para 2 Clause (b) of AI 3/S/70 duly amended vide AI 102/72, hence his case was not considered. It is further submitted that the result of No.5 Selection Board held between 15-16 Jun 2021 was published on 2nd July 2021, and the applicant was ***“Approved for extension of four years upto 15 Sep 2025 (AN)”*** due to his low medical category.

11. The respondents have further countered the claim of the applicant by submitting that the applicant had not submitted any documentary evidence to prove that his disability ***“Connective Tissue Disorder Related Vasculitis Rt Foot Drop”*** was caused during the performance of his duties and merely because the disability has been held to be attributable to service is not a criteria for grant of PC in No.5

SB. It is further submitted that the applicant was denied PC and granted extension of service by four years on the sole ground of his not meeting the requisite medical criteria for grant of PC.

12. It is essential to observe that during the course of arguments, on 3rd March, 2025, in terms of the directions of this Tribunal dated 7th February, 2025, the respondents had produced before us the merit list of PC Officers and SSCW (6) (NT Courses) list JAG Department which shows that the applicant had secured 85.15 marks and ranked at Sl. No.14 of the merit list for PC in the June 2021 selection list.

13. Taking into account the submissions made by learned counsel for either party, the core issue that remains before us to be adjudicated is as to whether the respondents, particularly No.5 Selection Board, have rightly or wrongly rejected the candidature of the applicant for grant of PC on the ground of his medical status and whether the applicant is entitled to PC in place of extension of service by four years.

14. The eligibility conditions for grant of PC to SSC Officers are enumerated in Para 2 of AI 3/S/70 and it would be worthwhile to reproduce Para 2 of AI 3/S/70:

"2. Officers will normally be eligible to apply for Permanent Commission in the Arm or Service in which

they have been granted Short Service Commission, but may be considered for commissioning in the other Arms or Services, provided they fulfill the following conditions:

- (a) The upper age limit for the grant of Permanent Commission will be 27 years at time of grant of Short Service Commission.*
- (b) Must be in Medical Category AYE ONE (A-1). Those who have been placed in Medical Category 'A-2, B-1 and B-2' as a result of casualties suffered in action during operations may also be considered on merits of each case by the Government.*
- (c) Officers applying for commission in the Corps of Engineers, Signal and EME must be in possession of technical qualifications for the grant of Permanent Commission as laid down in AI 4/S/87."*

15 Sub clause (b) of Para 2 was further reconstructed and amended vide A1 102/72 in the following manner:

"Para 2

Clause (b) is reconstructed as under:-

- (i) Their medical category should not be lower than grade 2 under any one of the SHAPE factors excluding 'S' factor in which the grade should not be lower than 1. In exceptional cases grading of 2 in both 'H' and 'E' together may be acceptable.*
- (ii) The low medical categorization should not be due to medical reason – whether attributable or not but should have been caused as a result of casualties suffered in action during operations or due to injury or other disability sustained during duty (for example while travelling on duty, playing, organized games under regimental arrangements, during training exercises and so on.*
- (iii) They should be found fit for permanent commission in all other respects, though Services Selection Board selection where applicable, at which selection they will be given modified tests, taking into account the specific disability in each case."*

16. Para 13 (c) of Army Order 18/1988 which reads to the effect:

(c) Low Medical Category of Officer does not influence the assessment as it is an administrative restriction and not a criteria for assessment”,

clarifies that the Low Medical Category of Officer does not influence the assessment as it is an administrative restriction and not a criteria for assessment

17. Para 21(b) of AO 18/1988 reiterates that Low Medical Categorization should have been caused as a result of casualties suffered in action during operations or due to injuries or other disability sustained during duty.

18. Further to substantiate his claim, learned counsel for the applicant has placed reliance on Para 9(c) of the Policy dated 10.2.2021 which reads as under:

“(c) Eligibility of PC for Officers with PLMC. The low medical category should not be due to medical reasons (whether attributable to military service or not) but should have been caused as a result of casualties suffered in action during operations or due to injury or other disability sustained during duty (for example while travelling on duty, playing organized games under regimental arrangements, during training exercises and so on) ”

19. The contention of the respondents that the applicant did not submit any documents to indicate that his disability was caused during the performance of duties cannot be countenanced as all such documents are apparently available

in the records of the respondents. The applicant has no control on the deductions made on the basis of these documents.

20. There is no denial that the applicant, while posted at Siachen Glacier developed '*Connective Tissue Disorder Related Vasculitis*' resulting in right foot drop due to extreme climatic conditions and inhospitable terrain and was thus evacuated to Siachen Base Camp and after being examined by the Medical officer was recommended for treatment at a lower altitude. After treatment at the Command Hospital, the applicant was shifted to RR Hospital where he was put in the 'seriously ill persons list' for about ten days. The disability suffered by the applicant, as can be seen from the timeline of his treatment, was caused while performance of his official duties in a high altitude area and has been accepted as attributable to service. The case of the applicant is thus fully covered under the eligibility criteria for PC prescribed under Para 9 (c) of the Policy 10.02.2021 read in conjunction with AI 3/S/70 as amended vide A1 102/72.

21. Furthermore it cannot be overlooked that the respondents themselves have admitted that low medical categorization other than S1 or H2 or A3 or P2 or E2 or H2

E2 or H2 A3 or H2 P2 or E2 A3 or E2 P2 does not influence assessment for PC. The applicant is thus clearly eligible for grant of PC and there is no reason for the respondents not to grant PC to the applicant.

22. The perusal of the official records of No.5 SB June 2021, as produced on 3rd March, 2025 by the respondents indicate that the applicant secured 85.15 marks and stood at Sl. No.14 in the PC merit list June 2021 and had made it to merit. The proceedings of the date 3rd March, 2025 read to the effect:

“ Written submissions have been submitted on behalf of the respondents, copy of which has been supplied to the counsel for the applicant and in the interest of justice, the same is taken on record.

2. In terms of directions dated 07.02.2025, the respondents have produced the merit list of PC (officer) of SSC-92/NTA & SSDCW(6) (NT Courses) list JAG Department recommended for PC by No. 5 SB June 2021 submitting to the effect that the applicant had secured 85.15 marks and was at serial No.14 in the merit list and it is further submitted on behalf of the respondents that though the applicant made it on merit for the grant of Permanent Commission, he was not granted permanent commission because of his low medical category. The said records produced by the respondents have been perused and returned.

The respondents are directed to explain the operation duty being performed by IC81593P Capt Utkarsh Mishra in UT of Ladakh on 29.02.2020, and the records deciding the battle casualty for that person. All medical records in terms of the directions dated 07.02.2025 which are stated to have been brought by the respondents today, the same be produced on the next date of hearing.

3. The matter be re-notified for hearing as ‘PART HEARD’ on 07.03.2024 at 2.15 P.M.”

23. Further, the evacuation from Siachen Glacier, treatment at multiple hospitals and classification as "seriously ill" during admission in the hospital for about ten days establishes that the disability of the applicant had occurred during the performance of official duties in a high altitude area. The eligibility condition under Para 9(c) of the 2021 Policy and A1 3/S/70 amended vide AI 102/72 thus stands fulfilled. The respondents are therefore directed to consider the case of the applicant for grant of PC especially when the applicant's medical condition and service circumstances fall squarely within these provisions. This is so as the disability that the applicant has suffered from, regardless of it being 'severe' or 'moderate', has resulted during the performance of his official duty and the contention of the respondents that disability even if attributable to service is not a criterion for grant of PC in No.5 SB is devoid of all merit. The denial of PC to the applicant despite merit and eligibility, due to administrative misinterpretation by the respondents, is wholly arbitrary and violative of Article 14 of the Constitution of India.

24. In view of the above, we find no justifiable reason for the denial of the PC to the applicant by the respondents on

the ground that he was found to be in low medical category. The respondents are, therefore, directed to reconsider the applicant's case, he having ranked Sl. No.14 in the merit list, for grant of Permanent Commission. Considering that the applicant's current term expires on 16th September, 2025 (AN), the respondents are directed to take all necessary steps to reconsider his case and thereafter declassify the result at least two months prior to the said date.

25. The OA is accordingly disposed of. There will, however, be no order as to costs.

Pronounced in open Court on this 25 day of April, 2025.

(RASIKA CHAUBE)
MEMBER (A)

(ANU MALHOTRA)
MEMBER (J)

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