

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

OA 1549/2020

Sqn Ldr Anu Vashisht (Released) ... Applicant
Versus ... Respondents
Union of India & Ors.

For Applicant : Ms. Ankita Patnaik, Advocate
For Respondents : Mr. S.R. Swain, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant who is an officer in Indian Air Force has sought following reliefs:

- (a) Quash the signal dated 28.08.2019 to the extent that the Applicant has been denied Extension;*
- (b) Quash/Expunge the AR raised for the time between 01.12.2015 to 22.05.2016 (Serial No.7 of the table of ARs);*
- (c) Quash the letter dated 20.07.2020, whereby the request seeking review of the Applicant's AR has been denied by the Respondents;*
- (d) Direct the Respondents to grant Permanent Commission to the Applicant, as per the policy dated 16.01.2019, w.e.f. The date of release of the Applicant, i.e. 23.12.2019;*
- (e) Pass any other appropriate order or relief, which this Hon'ble Tribunal deems fit and proper.*

Brief Facts of the Case

2. The applicant was commissioned in the Meteorology Branch of the IAF, on 24.12.2009 as SSCO IN 34 SSC(W) GDOC under "Rationalised Scheme" 10+4 years. As per HRP 11/2007, officers are to submit their willingness/unwillingness for extension in a manner that it reaches Air Head Quarter at least 12 months before the date of release. The Applicant submitted her willingness and accordingly, was considered for grant of 4 years extension of SSC tenure along with her course mates by an independent Board of Officers held in July 2019 under the provisions of HRP 11/2007.

3. As per Respondents, the Applicant did not meet the requisite average ARs as per Para 6(c) of the HRP 11/2007 "*must have a minimum average of 7.0 in last three ARs*". Since, the Applicant did not meet the 7.0 Average of AR, the Board of Officers recommended the Applicant to be released from the service on completion of her tenure of 10 years wef 23.12.2019 vide Air HQ/C 21901/SSC/Extn/Jul 19/PO-3(E) dated 28.08.2019.

Submissions by Learned Counsel for Applicant

4. Learned counsel for applicant submits that the applicant has not been granted fair opportunity for consideration by Respondents, by not taking into consideration her pregnancy and awarding her a grade that reduced her average AR below 7.0 due to which she could not get an extension of service, let alone permanent commission and was released.

5. Defining the service conditions, it is submitted by the applicant that her service tenure has been an active operational forecaster ensuring flight safety of operations and she has further been involved in carrying out numerous scientific studies of various important weather phenomena prevalent over the operational bases where she served. She has further contributed to the revalidation of the existing forecasting hints, which had served as the ready-reckoner, or hints for forecasting weather in future. Based on her performance, she was recommended for a Commendation by the AOC-in-C in 2014 and in 2018 by her IO and RO.

6. It is contended by the applicant that she was also given an overall grading under two categories as, "*Professional: 7.2 and Behavioural: 7.3*" as per the AR feedback provided by the

respondents after completion of 6 years in service from 15.03.2010 to 30.11.2015. It is further submitted that the Respondent failed to appreciate the fact that the Applicant had been graded with an average of 7.2 and 7.3 in her professional and behavioural criteria, in the first 6 years of her service tenure, and was downgraded during the time when she was pregnant and on maternity leave during the last 3 years of her service thereby, downgrading her average grading of 9 years below 7, despite the fact that over the years the Applicant had gained more experience and qualifications over the years in comparison to the initial years of her service.

7. Learned counsel submits that when the applicant was expecting her first child in 2015, during her pregnancy, she was facing difficulties with her health and was advised by the medical authorities to continue her duties except climbing stairs, and since the Met Section and the ATC were located at the 3rd and 5th floor, the Applicant would have preferred a duty which did not involve her climbing stairs. On informing her superior about the medical advice given to the Applicant, the superior asked the Applicant to proceed on Maternity leave immediately. It is submitted that the Applicant was still

physically capable of performing her duties which did not require climbing stairs in the 7th month of her pregnancy. The applicant then proceeded on Maternity, Child Care and Annual Leave from 04.04.2016 to 29.11.2016 (04.04.2016 to 03.05.2016 Annual leave: 04.05.2016 to 30.10.2016 Maternity leave; 31.10.2016 to 29.11.2016 Child Care Leave).

8. Elaborating, learned counsel submits that since the Applicant was on her maternity leave for the aforesaid time period, all three Officers who had to grade her AR, the IO, RO and the SRO, had been posted out and the Applicant did not have the opportunity to serve under either of them for a period of 90 days (as needed), thus, the AR grading for that period (23.05.2016 to 18.12.2016) was marked as 'IK' (Insufficient Knowledge) by all the three Officers. It is unfair and arbitrary on the part of the Respondents to consider the AR for extension of service tenure, which is for a period less than 5 months and 22 days only from 01.12.2015 to 22.05.2016, during which the Applicant on 04.04.2016 proceeded on her maternity leave.

9. Learned counsel submits that the applicant should have been assessed on an AR wherein she had at least served under

the IO for a longer period of time so as to be judged and assessed in a just and fair manner on her performance and professional ethics in order to consider her for an extension.

10. It is further submitted by the learned counsel that due to the policy with regards to maternity leave, a lady officer is permitted to take 180 days as maternity leave, but in case of the Applicant, since she was compelled to go on an early maternity leave, she had to thus join back to her duties on 29.11.2016 after completing her Annual Leave, Maternity Leave and Child Care Leave, thereby, denying her time to actually take care of her child who was just a few months old then. It is further submitted that even on joining back her duties, each time on performing all the tasks and duties assigned to her at work, she would seek permission from her superior to go take a break and breast feed her child which was considered to be an act of evading from her assigned duties at the Met Department. It is further submitted that the Applicant was performing all the tasks assigned to her and had no complaints against her based on her performance at work or her behaviour.

11. Learned counsel contends that the respondents by arbitrarily denying her an extension, have also deprived the

applicant of an opportunity that would have arisen in the 11th year of her service, wherein based on her present qualifications and proficiencies, she would have had an opportunity to be considered for the grant of Permanent Commission, in accordance to the policy dated 16.01.2019. Thus, basing the entire career of the applicant on an AR with a short period of time.

12. It is the case of the applicant that the respondents failed to apprise the applicant on any occasion with respect to any unsatisfactory work which the Applicant might have been performing, it is pertinent to mention that the same IO who also failed to, at any given point in time, counsel the applicant with respect to her work or behaviour, recommended her name for Commendations.

13. Contending over the assessment in the aforesaid CRs, it is submitted by the applicant that she had been downgraded in the Behavioral column to a grading of 6.93, which is mostly assessed based on Integrity and loyalty, Dependability and sense of responsibility, Command and control, Bearing & Demeanor, Determination, Capacity to withstand stress, Inter-personal relations, Cooperation and Team spirit, Motivation and duties assigned to the Officer.

14. Contending on aforesaid qualities, it is submitted by the applicant that the applicant had been organizing a large scale Mela (Fete), and handling all other duties as the Honorary Joint Secretary of AFWWA (L), under direct supervision and guidance of the first lady of the Station while being pregnant, along with her duties as a Met Officer, and that the Respondents have failed to consider a meritorious hardworking officer for extension of her service, based on a grading which denies her the same by a mere 0.07 marking, which is not only unfair to the Applicant but also puts the organization at a loss for not giving an opportunity to a hardworking Officer. Thus it is the grievance of the applicant that she has been wrongfully denied her legitimate right for extension of service and eventual permanent commission in spite of being a well deserved candidate.

Submissions on Behalf of Respondents

15. Learned counsel for the respondents submits that the AR for the period 01.12.2015 to 22.05.2016 was raised by Initiating Officer (IO) on the occasion of his posting out from the unit. The AR was raised in accordance with provisions of Para 20 (a) of AFO 06/2012 and fulfilled all the pre-requisites. These provisions are clearly mentioned in AFO and

are uniformly applicable to all officers of Indian Air Force (IAF).

16. As per the respondents, according to these provisions, IOs are authorised to initiate ARs when the appraise has worked under him / her for a minimum contact period of three months (including the period spent on leave/Temporary Duty by IO or Appraise) and no AR raised by appraise in preceding 5 months.

17. It is the case of the respondents that as per policy, AR is the only criteria for selection of SSC extension of service. As per HRP 01/2019, all serving Ground Duty Branch SSCOs, granted extension (as per HRP/PO/CM/11/2007 dated 07.11.2007 and as amended from time to time for grant of extension), will be considered for grant of Permanent Commission (PC) as per the last three years of service.

18. It is submitted that the applicant's claims that AR Feedback provided to her after completion of 6 years in service was awarded as 7.2 (*Professional*) and 7.3 (*Behavioural*). These figures are found to be factually incorrect. The ARF communicated to officer via DIGITAR Software Application for the period 2011-2015 was 7.10 (*Professional*) and 7.08 (*Behavioural*), and that AR Feedback

is provided to applicant is to help them in self-analysis and personal development. This also provides the individual an idea of his/her performance vis-à-vis other officers in his/her peer group. The ARF is limited in its scope and the feedback letter provided to the officers clearly states that "*the ARF only gives the average numerical assessment during the last five years and it should not be construed as the only input for promotional prospects / career advancement*". It is also mentioned that no representation on the ARF or any other query will be entertained by this HQ.

19. It is contended by the respondents that the figure mentioned by the Applicant for six year ARF is incorrect, and the applicant's claim of ARF provided after nine years of service was drastically reduced to "7.03 (Professional) and 6.93 (Behavioural)" as compared to ARF of six year is found to be factually incorrect, while to note that nine and six years ARFs covers different AR periods.

20. Elaborating the AR profile, it is submitted by the respondents that while six years of AR Feedback include period from 2011-2015, nine years of ARF included period from 2014-2018 with two years of overlap. The difference between six and nine years ARF is marginal and all the ARs

raised between these periods are initiated, processed and reviewed as per provisions of AFO 06/2012. The Applicant's contentions of incorrect assessment in the ARs of the last three years due to her pregnancy or maternity leave have not been substantiated, and that the applicant has incorrectly perceived the situation and no injustice is caused to her based on the mentioned reasons. On the contrary, due weightage has been given to the good work done by the applicant while making assessment which is reflected in the remarks of reporting officers in the ARs of 2016, 2018 and 2019.

21. Learned counsel for the respondents submits that the applicant has not been awarded AOC-in-C commendation. Further no mention was found in ARs for recommendation of the commendation. Also, the applicant's claim of undertaking numerous scientific studies and forecasting hints found no mention in ARs. On the contrary, the remarks by IO in Para 10 (b) of 2016 AR states that *"Her capability to develop new software on her own is average and has not been put to practice"* and *"Keenness to carry out investigation into weather phenomena is average"*. In the same year AR remarks by RO at Para 11(a) states that *"her focus was more towards looking after her pregnancy related issues"* and *"on*

few occasions the warning issued for weather were late”.

These are specific remarks by IO and RO that contradicts her claims of good work in this regard.

22. Taking a contrary view, it is submitted by the respondents that the contentions of the applicant that the Initiating Officer (IO) had never brought to her notice that her performance is not up to the mark is not tenable. Performance Reviews have been carried out during the period of report and recorded as E-PRs. The PR conducted on 09.01.2019 shows that the Applicant has been counselled for her average/ satisfactory performance in traits of Dependability, Leadership, Skills, Organisation Skills, and Team Play and has been advised to improve upon these aspects. Apart from that, the remarks of reviewing officers in various ARs reveals that required communication has been effected to make her know about her performance standards.

23. With respect to the AR for the period 01.12.2015 to 22.05.2016, it is submitted by the Respondents that the same was raised by the Initiating Officer (IO) on the occasion of his posting out from the unit. The AR was raised in accordance with provisions of Para 20 (a) of AFO 06/2012 and fulfilled all the pre-requisites. These provisions are

clearly mentioned in Air Force Order (AFO) and are uniformly applicable to all officers of Indian Air Force (IAF). According to these provisions, Initiating Officers are authorised to initiate ARs when the appraise has worked under him/her for a minimum contact period of three months (including the period spent on leave / Temporary Duty by IO or Appraise) and no AR has been raised by appraise in preceding five months.

24. Elaborating the matrix, it is submitted by the respondents that the involvement of the Applicant in her secondary duty as Honorary Joint Secretary, AFWWA (L) has been duly considered by her Initiating Officer (IO) and SRO in the AR for the period 01.12.2014 to 30.11.2015. However, no mention of such limitations due to pregnancy or health issues was available in the self-appraisal column of concerned AR of that year. The applicant's claim of compelling her to proceed for maternity leave immediately found no mention in ARs and is just an unverified statement with no substance / evidence on record.

25. Concluding his submissions, learned counsel submits that the reliefs prayed by the applicant are not admissible and lacks merit. The applicant's experience, and the work she had

done was duly considered and graded as per her performance, and the applicant has not made it to the merit list of the officers approved for extension, purely on merit.

Consideration

26. Having considered the detailed submissions of the parties through their affidavits, we have studied the contents of various policy letter relied upon during the submissions, the confidential reports dossier of the applicant, application by the applicant to the Chief of Air Staff dated 18.05.2020, the analysis thereof as well as the Board of Officers for grant of Extension to SSC officers of the 34 SSC (W) GDOC along with 4SCC (T) and 18SCC (M). Before proceeding with the analysis, we find that two issue require our consideration, namely :-

- (a) Whether the ARs in respect of the applicant challenged by her are biased and to be set aside by us on merit ?
- (b) Whether consideration for extension of service of the applicant by the respondents have been conducted as per law ?

27. At the outset, we consider it essential to peruse and place on record Air HQ HRP Part 1/PO/CM/11/2007

dated 07.11.07 which lays down the policy for extension of service to Short Service Commissioned Officers. The same is reproduced below:-

Te : 23012436

Air HQ (VB)
PIN - 936 171
C/O 56 APO

Air HQ/C 98807/4/PO-5

07 Nov 07

AIR HEADQUARTERS HUMAN RESOURCES POLICY
PART I/ PO/CM/ 11/2007

EXTENSION TO SHORT SERVICE COMMISSIONED OFFICERS

INTRODUCTION

1. Short Service Commission (SSC) was first introduced for the AE Branch in the year 1985. In the subsequent years, SSC scheme was made applicable to other Branches and extended to women aspirants as well. SSC officers are considered for 'Grant of Extension' of Commission, subject to the provisions laid down in respective GOI letters. QRs laid down in this policy, suitability of an officer and requirements of Air Force would determine the grant of Extension of Commission to SSC officers. The IAF at this stage does not have a requirement to grant permanent commission to SSC officers.

2. Extension may be granted to all officers subject to a maximum prescribed period laid down under various schemes. To promote professionalism in IAF, it is imperative that only the deserving officers are granted 'Extension of Service'. Hence, a need is felt to promulgate QRs and define methodology for grant of Extension to SSC officers, so that SSC officers can prepare themselves for future challenges.

AIM

3. Aim of this HRP is to lay down guidelines for grant of officers.

GUIDELINES

4. 'Extension of Service' will be granted to SSC officers subject to availability of vacancies in particular Branch/stream and imperatives of cadre management. A BOO, as per the composition given in Para 12 below, will consider all relevant factors inclusive of officers' suitability and requirements of IAF, before making its recommendations for 'Grant of Extension' to SSC officers.

5. Eligibility. An eligibility criterion for 'Grant of Extension' to SSC officers defines only the minimum acceptable QRs that an SSC officer must meet so as to qualify to be empanelled for the selection.

6. Qualitative Requirements (QRs). QRs for Grant of Extension' of service are given below :-

(a) An officer coming up for first extension' must have a minimum average of 6.5 in last three ARs.

(b) An officer coming up for 'second extension' must have a minimum average of 7.0 in last three ARs.

(c) An officer coming up for 'extension' (Rationalised Schemes) must have a minimum average of 7.0 in last three ARs.

7. The officer must have a minimum grading of 6.0 (in ARs under consideration), in each of the following professional and behavioural factors for 'Grant of Extension':-

(a) Professional Factors.

- (i) Professional Competence.
- (ii) Task Achievement and Quality of Output.
- (iii) Communication Skills.

(b) Behavioural Factors.

- (i) Integrity and Loyalty.
- (ii) Dependability and Sense of Responsibility.
- (iii) Capacity to withstand stress.
- (iv) Bearing, Demeanor and Discipline.

8. Medical Category. Medical category required for the purpose would be as follows :-

(a) Flying Branch- A₂ G₂(P/T) or above

(b) Ground Duty Branch. - A, G₂(P/T) or above.

(c) Officer on temporary low medical category who in all likelihood is expected to regain his/ her medical category could be granted two successive 'Temporary Extensions' of six months each. In case of failure to regain requisite category, the officer would have to relinquish further extension of service.

Procedure

9. The following procedure shall be applicable:-

(a) Responsibility. The onus of responsibility for seeking further continuation of service would be that of the individual officer.

(b) Time Frame. SSC cadre officers are to submit their willingness/ unwillingness for extension in a manner that it reaches DPO-3, at least 12 months before the date of release. Main application is to be processed through normal channel of correspondence. An advance copy is to be sent by the unit of the individual officer directly to DPO - 3.

10. Selection Process. All Officers who have opted for 'Extension of Service' would be empanelled for consideration by the Board. These officers would be placed in the order of merit and a Provisional Merit List would be drawn. The BOO will assemble seven months before the date of release of SSC course under consideration. Preferably, the result of 'Grant of Extension'/ Release will be declared six months before the date of release.

11. Favourable/ unfavourable recommendations from the Units/ Stations/ Commands must be justified by the concerned authority. BOO may override a positive or a negative recommendation with due justification. Adverse reports from Dte of PS, Int and PM (Air) are to be given due weightage by the BOO before making its final recommendations to the ACAS (PO). If considered necessary, the BOO may call an SSC officer for interview before 'Grant of Extension'. The recommendations of BOO will be approved by the AOP

12. Composition of the Selection Board. The Provisional Merit Panel will be considered by the Board. Composition of the board will be as follows:-

- | | | |
|-----------------|---|--|
| (a) PDPO | - | Presiding Officer |
| (b) DPO-3 | - | Member |
| (c) Director/JD | - | Member (To be nominated by the specialist Branch head) |
| (d) JDPO-1 | - | Member (Concerned Branch JD) |
| (e) JDPO-3(E) | - | Secretary |

CONCLUSION

13. This HRP lays down the guidelines for grant of Extension to the SSC officers and attempts to streamline the process by clearly defining the QRs and responsibilities of various Sub Dtes. The procedures and guidelines, enumerated in this HRP, will ensure that the most deserving and optimum number of SSC officers are granted Extension of SSC. This will also ensure long-term cadre management of IAF.

14. This HRP supersedes all previous instructions on the subject.

Sd/**
(VR Iyer)
Air Mshl
AOP

Distribution

<u>External</u>	<u>No. of copies</u>	<u>Method</u>
1. HQ WAC, IAF (AOC-in-C)	2	By DR
2. HQ EAC, AF (AOC-in-C)	2	By SDS
3. HQ CAC, IAF (AOC-in-C)	2	By SDS
4. HQ SWAC, IAF (AOC-in-C)	2	By SDS
5. HQ SAC, IAF (AOC-in-C)	2	By SDS
6. HQ TC, AF (AOC-in-C)	2	By SDS
7. HQ MC, IAF (AOC-in-C)	2	By SDS
8. IDS (DC IDS - DOT)	1	By DR
9. HQ ANC (C-in-C)	2	By SDS
10. HQ SFC, IAF (C-in-C)	2	By DR
11. HQ ARTRAC	1	By SDS
<u>Internal</u>		
12. VCAS	1	By hand
13. DCAS	1	By hand
14. DG (I&S)	1	By hand
15. AOM	1	By hand
16. AOA	1	By hand
17. AA to CAS	1	By hand
18. DPO - 1	1	By hand
19. DPO - 3	1	By hand
20. DPP	29	By hand

[Note: Important aspects have been underlined for ease of reference]

28. Having perused the letter, we find that the candidate to be considered eligible for grant of extension for the first time must have minimum average marks of 6.5 in last three ARs and for second extension and extension (Rationalised Schemes) they must have a minimum average of 7.0 in last three ARs and similarly minimum desirable grading for professional and Behavioural factors is required to be 6.0. Since all other criteria listed in the HRP are not in debate, we shall restrict our discussion to gradings of the ARs considered for grant of

extension to the applicant. On perusal of records placed before us, it is observed by us that the case of the applicant is in the category of "Rationalised Scheme" as given at Para 6 (c) of HRP 11/2007 and, therefore, the minimum average of last three ARs ought to be 7.0.

29. Consequent to above, we note the response of Air HQ to the representation of the applicant dated 18.05.2020 praying for review of the AR and grant of extension wherein Para 3 to 5 read as under:-

Tele: 21115347

*Dte of PO-4
Air HQ (VB)
New Delhi- 106*

Air HQ/C 21901/30345/PO-4

20 July 20

*Sqn Ldr Anu Vashisht (Released)
Flat No- 432,
Plot- 6B, 3rd Floor,
Sapna Ghar Society,
Sector-11, Dwarka,
New Delhi- 110078*

"REVIEW OF AR FOR GRANT OF EXTENSION OF SERVICE"

- 1. Refer your letter dated 18 May 20 to the CAS regarding review of AR for grant of extension of service.*
- 2. ARs raised during your service career were studied at length and verified. Cognizance of the good work carried out by you has been taken into account by your reporting and reviewing officers while grading the AR. Performance has been recorded based on the underlying principle of IAF's appraisal philosophy and the grading has been awarded based on your demonstrated performance. Your concern regarding extension of service is understandable and due consideration of all aspects of your performance during your service career has been carried out.*

3. *Your perception on the Appraisal Report Feedback is incorrect, as ARF is provided to help officers in self-analysis and personal development. This also provides an individual an idea of his / her performance vis-à-vis other officers in his / her peer group. The ARF is limited in its scope and the feedback letter provided to the officers clearly states that "the ARF only" gives the average numerical assessment during the last five years and it should not be construed as the only input for promotional prospects / career advancement". It is also mentioned in the ARF that no representation on the ARF or any other query will be entertained by Air HQ. Your claim of incorrect assessment in the AR due to your pregnancy or maternity leave is not substantiated and the situation has been incorrectly perceived by you. On the contrary, while making the assessment reporting officers have given due weightage to this fact.*

4. *E-PR is a confidential document and production of a confidential document by you to support your argument is not in the right spirit. Therefore, the same may be avoided in future.*

5. *It is reassured that all your ARs have been initiated, processed and reviewed in consonance with AFO 06/12. Review of ARs at different levels, including Air HQ is a robust mechanism in place to address anomalies in the assessment. Therefore, be confident of the strengths of time tested system of appraisal of officers in IAF and do not have any apprehensions.*

Sd/-
(SS Atwal)
Gp Capt
Gp Capt PO-4

30. However, at this moment before undertaking the analysis of the ARs of the applicant and without causing any prejudice to the case under consideration, we must observe that we are not inclined to agree with the contents of Para 3 of the letter, which we find is contrary to the provisions of the policy letter, which has very clearly relied on the numerical assessment of the candidate in ARs even if the same is an average assessment of the last five years.

31. In our considered opinion, the average numerical assessment is a fair input on the overall performance of the officers and indicates to the employees whether there has been a drop or rise in performance in comparison to the previous period. The purpose of ARF is clearly defined in the statement in Para 3 that it provides to help officers in self-analysis and personal development.

32. The third document which has a related relevance to this case is HRP 01/2019 issued by the Air HQ on 16.01.2019 as policy guidelines for Grant of Permanent Commission (PC) to serving SSCOs of GD Branches which did not exist earlier; for the SSC officers commissioned after 25.05.2006 thus, making the applicant commissioned on 24.12.2009 eligible for PC now. It is pertinent to extract relevant Paras of this HR Policy which reads as under:-

AFNET: 21115300

Air HQ/98807/6/PO-5

*Air Headquarter
Vayu Bhawan
New Delhi- 110016
16 Jan 19*

*Air Headquarters HUMAN RESOURCES POLICY
PART I/PO/CM/01/2019*

*CONSIDERATION FOR GRANT OF PERMANENT COMMISSION (PC)
TO SERVING SHORT SERVICE COMMISSION OFFICERS (SSCOs) OF
GROUND DUTY BRANCHES (EXCLUDING MEDICAL AND DENTAL
OFFICERS)*

XXX

XXX

XXX

XXX

INTRODUCTION

1. *Short Service Commission Officers (SSCOs) of the Ground Duty Branches (excluding Medical and Dental officers) commissioned prior to 25 May 2006 were being considered and granted Permanent Commission (PC) by the IAF as per the eligibility specified in the Hon'ble High Court order dated 12 Mar 10. Grant of PC to all SSCO's was stopped vide Air HQ HRP 21/06 dated 25 May 06. Keeping in mind the aspirations of SSCO's, it has been decided to provide an opportunity to serving SSC officers of all the GD branches who were commissioned even after 25 May 06 to be considered for grant of PC.*

2. *All serving SSC officers in the IAF (irrespective of gender) commissioned after 25 May 06 would now be eligible for consideration for grant of PC in the last three years of service, subject to fulfilment of conditions laid out in this HRP. Mere eligibility for consideration for grant of PC is not to be construed as an automatic qualification for the same. Grant of PC shall be subject to availability of vacancies, willingness and suitability of officers and merit as determined by the IAF, subject to their medical fitness.*

XXX

XXX

XXX

XXX

GUIDELINES FOR CONSIDERATION AND GRANT OF PC

4. *Eligibility for Consideration of Grant of PC. All serving Ground Duty Branch SSCO's, granted extension (as per HRP/PO/CM/11/2007 dt 07 Nov 07 and as amended from time to time for grant of extension), will be considered for grant of PC in the last three years of service. All ARs available in the last five years would be taken into consideration. All officers, irrespective of seniority or rank should have successfully completed the Mandatory In-Service Courses (MISC) as applicable for being considered for grant of PC. The eligibility criteria applicable to various schemes is as follows: -*

(a) *Serving SSCO's Commissioned in the 10+5 Years Scheme. All eligible and serving Ground Duty Branch SSCO's of the rank of Sqn Ldr and Wg Cdr who have completed 12 years of service would be considered together for grant of PC by the BOO constituted for the same in the month of May every year.*

(b) *Serving SSCO's who were commissioned for 10+4 years Scheme. All eligible and serving Ground Duty Branch SSCO's of the rank of Sqn Ldr and Wg Cdr who have completed 11 years of service would be considered together for grant of PC by the BOO constituted for the*

same in the month of May every year along with officers in Para 4(a) above.

Note 1. Officers who are not granted PC till completion of applicable SSC tenure would be released from service.

Note 2 Only for year 2019 the BoO will be conducted in the month of Mar 19.

XXX

XXX

XXX

XXX

6 Uniform Qualitative Requirements (QRs). All eligible and serving Ground Duty Branches SSCOs eligible as per para 4 would be considered for grant of PC (irrespective of gender) by a BoO constituted once a year in the month of May. All eligible SSCOs of the Ground Duty Branches would be considered for grant of PC in the last three years of service, provided they have been granted extension of service as per HRP/PO/CM/11/2007 dated 07 Nov 07 and as amended from time to time for grant of extension of service beyond the initial term of engagement. Grant of PC shall be subject to availability of branch/stream vacancies, willingness and suitability of officers and merit as determined by the IAF and also, subject to their medical fitness. Such consideration shall be subject to the following conditions:-

(a) Service requirement.

(b) Cadre vacancy

(c) Willingness of the SSC officer.

(d) Suitability of the SSC officer on basis of Qualitative Requirements (QRs)/ Medical category as laid down in this HRP (may be revised from time to time) as well as necessary DIVAS (Discipline, Intelligence, Vigilance and Aerospace Safety) clearances. QRs are as laid down in Appendix A.

(e) Position of the concerned SC officer in the order of merit.

(f) Recommended by BoO duly constituted for the purposed.

(g) Grant of approval by the Competent Authority.

Note. 'Service Requirement' refers to exigencies of service all of which cannot be listed or anticipated. Exigencies like court rulings, directions from GoI, etc may have to be considered and duly factored in while processing cases for grant of PC; due to prevailing cadre management imperatives at a particular point of time.

7. Procedure for Application. All eligible, serving and willing Ground Duty Branch SSCOs are to apply for being considered for grant of PC as per format placed at Appendix B. In this regard, the following aspects are to be in mind:-

(a) Responsibility. Responsibility of applying for being considered for grant of PC, within the time frame prescribed, solely rests with the individual officer. All eligible and serving SSCOs are to submit the application (as per format placed at Appendix B) clearly conveying their willingness/unwillingness at Para 11 of said Appendix in a manner that it reaches Air HQ (Wg Cdr PO-3E) by 31 Jan of the year of the BOO. In case no application is received from the eligible SSC officer within the stipulated time frame, it shall be presumed that he/she is 'unwilling' to be considered for grant of PC in that year and case will be dealt as per the provisions of Para 5 above. Applications received at Air HQ after due date would not be accepted in any case and no representations would be entertained in this regard.

(b) Time Frame. In order to ensure adequate time for processing the application at intermediate levels, the maximum time frame available after receipt of application at various levels is as tabulated below:-

Sl No.	Level	Last Date of receipt
(i)	Unit/Station	15 Dec
(ii)	Comd HQ	31Dec

Note 1. Considering the above mentioned time frames, it is in the interest of individual officers that the application in prescribed format is submitted well in time.

Note 2 To facilitate speedier processing of the application, an advance copy of the same is to be faxed to Air HQ (Gp Capt PO-3 (011-23016119)) after due recommendation at unit level.

Note 3. A consolidated list of names of SSCOs whose application has been received at Air HQ will be published by 15 Feb.

Note 4 Since the BoO for 2019 will be conducted in Mar, the last date of receipt of application at Air HQ, for the year 2019 will be 11 Feb.

(c) Withdrawal of Willingness. The willingness for PC may be withdrawn by the officer at any stage by submitting a written application, by 30 Apr. However, under no circumstances, can unwillingness be allowed to be changed to

willingness, after the last date of receipt of application at Air HQ, i.e, 31 Jan.

Note 1. Since the BoO for 2019 will be conducted in Mar, the last date of withdrawal of willingness for the year 2019 will be 28 Feb.

Note 2. To facilitate speedier processing of the application/withdrawal of willingness, an advance copy of the same is to be faxed to Air Hq {Gp Capt PO-3 (011-23016119)} after recommendations at unit level by the individual officer within seven days.

XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX

Appendix A

(Refers to Para 6(d) of Air HQ/98807/6/PO-5 dated 16 Jan 19

MINIMUM PERFORMANCE CRITERIA FOR CONSIDERATION –

1. The grant of PC would be subject to stream/branch wise vacancies available. In case of no vacancies, up to 10% of officers meeting minimum performance criteria would be granted PC. These officers would be considered Branch wise for all Branches other than Aeronautical Engineering Branch and Stream-wise for the Aeronautical Engineering Branch.

2. Assessment Criteria.

(a) No of ARs. ARs covering a period of last five years preceding the BoO would be considered for grant of PC.

(b) Minimum AR Aggregate. SSCOs should have minimum average of 7.00 in the last five years available ARs (AR avg is not to be rounded off).

(b) Mandatory Qualities. A minimum grading of 6.00 (in ARs under consideration) in Mandatory Qualities (MQs) in the ARs under consideration as listed in AFO 06 of 2012 on "Appraisal Report: /AF Officers" for Sqn Ldrs and Wg Cdrs and as amended from time to time. In case, the grading is below 6.00 in any MQ, the officer would become ineligible for consideration for grant of PC.

3. Mandatory In-Service Courses (MISC). The officer should have scored a minimum average CGPA of 6.00 in the applicable MISCs (BASCO, BPKC, ISCO & APKC).

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33. In addition to above, we consider it relevant to take note of Para 5, which lays down the methodology for preparation of merit list of the eligible candidates for the grant of a permanent commission, as the applicant has prayed for not only the grant of extension of service but also for grant of Permanent Commission w.e.f. date of release, i.e. 23.12.2019 vide Para 8 (B) and (D) of the OA as she was neither considered for extension of service nor for grant of Permanent Commission and consequently, released from service after 10 years of being in service.

34. It has also been the averment of the applicant that in Dec 2018, she had opted for extension and as the Board of Officers had not yet been convened for grant of PC and therefore, she had mentioned in the extension application form itself that she was seeking both extension of service and Permanent Commission. It is pertinent to observe that Permanent Commission (PC) qua the applicant is can only be considered provided the applicant is granted extension of service and consequently, can be eligible for consideration by

appropriate Board for PC. However, the same was denied due to lack of minimum AR criteria. Para 5 hereinabove reads as under:-

5. Merit list. A merit list would be prepared Branch wise for all Ground Duty Branches/Stream-wise {AE (M) and AE(L)} for the Aeronautical Engineering Branch on the basis of total marks attained in the constituent factors as illustrated in the table below:-

<i>S No</i>	<i>Factors</i>	<i>Max Marks</i>
<i>(a)</i>	<i>AF Aggregate (5 ARs x 18 (9+9))</i>	<i>90.00</i>
<i>(b)</i>	<i>CGPA of Mandatory In-service Courses (BASCO, BPKC, ISCO & APKC)</i>	<i>2.00</i>
<i>(c)</i>	<i>Categorisation/Professional Courses</i>	<i>2.00</i>
<i>(d)</i>	<i>Decorations/Awards Commendations</i>	<i>3.00</i>
<i>(e)</i>	<i>Discipline (if applicable)</i>	<i>Minus 3.00</i>
	<i>Total</i>	<i>97 (-3.00)</i>

35. At this juncture, we find that with respect to the interference in the policy decision of the executive, it is a well-settled position of law that a Tribunal functioning within the strict boundaries of the governing legislation, would not have the power to direct the formation of policies or normally interfere in the policy matters.

36. While it is acknowledged that disputes pertaining to promotions and the filling of vacancies fall within the Tribunal's jurisdiction, it is equally clear that the Tribunal lacks the authority to compel those vested with the responsibility of policy-making to adopt a particular course of action in their policy decisions. The Tribunal must,

therefore, refrain from issuing directives that would encroach upon the domain of policy formulation, as such actions would exceed its mandate and undermine the established principle of separation of powers.

37. There are a catena of cases ranging from Krishnan Kakkanth v. Govt. of Kerala, (1997) 9 SCC 495; Food Corpn. of India v. Bhanu Lodh, (2005) 3 SCC 618; Govt. of Orissa v. Haraprasad Das, (1998) 1 SCC 487; State of Orissa v. Bhikari Charan Khuntia, (2003) 10 SCC 144 to Delhi Pradesh Registered Medical Practitioners v. Director of Health Services, (1997) 11 SCC 687], which have reiterated the basic principle: that unless a policy decision taken by the Government is demonstrably capricious or arbitrary or if it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, this Court is not to question the propriety of such a policy decision. This Tribunal does not concern itself with whether a more comprehensive decision could have been taken by the Government.

38. In this background analysis, we take note due note of the service record of the applicant which have been detailed in her service records as well as her representation

to The Chief of Air Staff vide personal applications dated 18.05.2020 placed as Annexure A-8 to this AO.

39. On a cursory look, we find that the applicant was considered for grant of extension by a BOO in Jun 2019 along with six other women candidates. However, since the applicant did not meet the stipulated minimum AR criteria as per HRP 11/074, i.e. minimum average of 7.0 in last three ARs, she was not granted extension. It is further observed that the applicant's average of last three ARs considered for extension was 6.87 which was below the minimum acceptable AR criteria as QR. Until then there is no previous representation on record against the low assessment in her ARs.

40. We observe that while the applicant was posted at AF Stn Gorakhpur from Dec 2009- April, 2012, the applicant performed two secondary duties. However, it has been reflected by the IO at Para 12 (b) of AR 2011 that the applicant was not holding any secondary duty on a permanent basis. Further, although the ARs of 2012, 2013 and 2014 earned by the applicant while being posted at AF Stn Jamnagar have record of good performance of the applicant, unfortunately these ARS have not been

considered for the grant of extension to the applicant by BOO being beyond the purview of the reckonable AR profile.

41. It is further observed by us that while going through the applicant's record during her service in Air Force Academy, Dundigal, Secunderabad, three ARs were raised for years 2015, 2016 and 2017; out of which AR 2017 has been recorded as 'Inadequate Knowledge' (IK) report and, therefore, the first report to be considered for grant of extension was that of 2016 which has taken note of her additional duties of Hony Jt Secretary AFWWA (L).

42. On perusal of AR- 2015, even though the same was not considered for BOO for extension, we note that the applicant has a final grading of 7.10 in accordance with the review methodology undertaken Air HQ as per policy based on the aspects of variance with overall performance profile of the applicant; which in fact is an upgradation from the actual gradings received by the applicant from the reporting officers.

43. However, in a contrast to the quality of report in 2015, the report earned by the applicant in 2016 is much lower, even though all the reporting officers for the AR-2016 were same as 2015. On perusal of the report raised by the same set

of reporting officers except SASO (The Higher Reviewing Officer) during the previous report, we observe a substantial drop in performance of the ratee in comparison to her performance in the AR 2015.

44. Even though there is a likelihood of the same being attributable to the pregnancy and later the maternity leave of the applicant from 04.04.16 - 29.11.16, we do not find any reason to set aside a report at this stage as the same has been challenged by the applicant through the established deptt channels of complaint redressal through an application addressed to Chief of Air Staff and appropriately addressed. However, it is pertinent to note that the AR was initiated before the applicant proceeded on leave and on posting of her IO as per Para 20 (a) of AFO 06/12.

45. The next successive AR due on the posting of the applicant on 18.12.16 was raised at 'IK' report as she was not available for duty due to her maternity leave. We have observed that although the period of report includes leave and TD in the AR period as per policy, however, the IO's decision to record 'Inadequate Knowledge' (IK) cannot be questioned as the same is based on the personal opinion of

the reporting officer owing to the absence of the ratee during the said period on maternity leave.

46. In our considered opinion, any direction to the respondents to initiate a definite figurative report through a judicial order may render the report subjective and thus, being detrimental to the interest of the applicant cannot be ruled out. We have also taken note of remarks of the reporting officers to substantiate the average performance in respect to the applicant including her capability to develop new software and capability to carryout investigation into weather phenomenon.

47. It is also pertinent to note that even though the ARs have not been raised for the entire year of reporting, by virtue of being for shorter duration cannot be a reason to set them aside for purpose of calculation for Permanent Commission or extension of service.

48. Further, we have also observed that even though the rating of the applicant has been low, the policy of Air HQ to conduct review of AR in consonance with the earlier performance of the ratee have benefited her in enhancing her AR average by 0.4 marks for professional factors and the behaviour factors in both the ARs discussed until now.

49. Carrying out a detailed analysis of the ARs for 2018 and 2019 while the applicant was posted at AF Stn Jamnagar as both the CRs were considered for grant of extension to the applicant, we observe that even though the applicant's ratings are relatively higher in comparison to the earlier ARs, there are developmental advisory remarks by various reporting officers in the ARs which reflect upon the performance of the applicant during the period of reporting and particularly in the domain of behavioural factors.

50. It is relevant to note that AR 2019 has been initiated on 31st January whereas the second maternity leave of the applicant commenced about two months later and further there is no evidence or record provided by the applicant to establish that she was forced to proceed or maternity leave.

51. It is on record that AR 2019 from 01 April, 2018 to 31 January, 2019 is outside the leave period. While, the report under consideration is low compared to the earlier report, the reasons for same have been adequately explained through the pen picture/ remarks of the three reporting officers which can be classified as developmental or advisory in nature and therefore, we find no reason to interfere with the report even

though the applicant has submitted to the effect due to the pregnancy and later on necessity to look after the child, she was not able to devote complete time to her various professional responsibilities.

52. It has been further observed by us that there is record of her being counselled by IO for average or performance in traits of organisational skills, sense of responsibility and leadership traits and similar but not identical remarks by IO, RO and SRO in various qualities in Performance Review dated 09 January, 2019.

53. Therefore, in our considered opinion, there is a drop in her performance for the period roughly from 2015-2019; particularly in ARs 2016 & 2019 compared to her other ARs on record, thereby, ultimately leading to her AR marks being below 7.00. However, it is relevant to place on record here that her low performance has nowhere being attributable to her pregnancy or motherhood, and, therefore, we consider the same to the personal apprehensions of the applicant, and we do not find any substance in the same.

54. It is noteworthy that the pen picture recorded in AR 2016, 2018 and 2019 describe to the effect that the applicant managed her personal and professional affairs in the midst of her pregnancy and later on while having the toddler at home. Although the applicant has raised the issue that she was harassed by her IO, a woman officer herself post her childbirth, we have not come across any such verifiable facts or incidents on record and therefore are not inclined to grant credence to the same.

55. We have perused the entire record of analysis of her complaint against her CRs, which have been done by the concerned authority with great detail, and therefore, we have no further reasons to interfere with the finding and the conclusion of the respondents. Accordingly, we uphold the ARs thus considered by the BOO for extension of service of the applicant.

56. In conclusion, we have noted beyond doubt that the BOO has been held as per HR policy guidelines, and the applicant was not granted an extension of service due to reasons of not meeting the minimum AR criteria, and


thus, we are of the considered opinion that the present OA fails on merit.

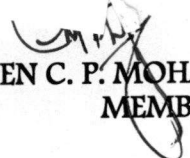
57. Hence, the OA 1549/2020 is dismissed as being devoid of merit.

58. No order as to costs.

59. Pending miscellaneous applications, if any, stand disposed of.

Pronounced in the open Court on 17 day of March, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN C. P. MOHANTY]
MEMBER (A)

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