

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

OA 3262/2023

Lt Col Manpal Singh Yadav ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Rajiv Manglik, Advocate with
Mr. Rajesh Nandal, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC with
Mr. R.S. Chillar, Advocate

CORAM :

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant being aggrieved by rejection of his third chance to appear in Department Promotion Committee for grant of Permanent Commission and prays for the following reliefs:-

- (a) *To declare the action of respondents as unjust, arbitrary and illegal; and*
- (b) *To direct the respondents to permit applicant third chance as per the policy to appear in Department Promotion Committee after joining the service after putting in hard work and*
- (c) *To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.*

Facts of the case

2. The applicant was commissioned in Army Medical Corps as an MBBS Graduate, and was granted Short Service Commission on 06.11.2012. He appeared for two Department Promotion Committee (DPC) Boards held in the year 2015 & 2016, but could not be granted DPC being low in comparative merit on both occasions. Subsequently, the applicant pursued PG DNB Anesthesia, post which he applied for grant of DPC by DPC Board held in 2021. However, his application for DPC consideration was rejected for not meeting the stipulated age criteria. The applicant filed a Statutory Complaint dated 06.07.2022 against non grant of DPC which was rejected by the Central Government vide MoD note dated 12.07.2023. Aggrieved by the aforesaid rejection and denial of an opportunity to appear before DPC Board, the applicant has filed this OA.

Submissions on behalf of the applicant

3. Taking us through the service profile of the applicant, learned counsel for the applicant submits that the applicant was inducted into Army Medical Corps after his MBBS degree on 06.11.2012. He was initially selected for a period of 5 years SSC which was extendable further for a period of 5

years and then further for a period of 4 years, i.e. total 14 years.

4. Learned counsel submits that applicant was eligible for consideration of PC after 2 years of SSC service and MBBS degree holders should not exceed the age of 30 years on 31 Dec of the year of receipt of application for grant of PC. PG Diploma and Degree holders should not exceed the age of 31 years and 35 years of age respectively on 31 Dec of the year of receipt of application for grant of PC.

5. It is submitted by the applicant that two chances were to be availed in first 5 years and third chance in next 5 years and before the completion of nine and half years of service, and the applicant was meeting all the criteria to be eligible for Third chance.

6. Deliberating on the issue of applicability of the policy letter, learned counsel for the applicant submits that the applicant was granted Short Service Commission with effect from 06.11.2012 vide DGMS letter No42190/SSC/Feb/2012/Army/DGAFMS/DG-1A dated 09 Oct 2012, and in the said letter was categorically mentioned that the Commission will be governed by the terms and conditions of service laid down in

Army Instructions 75/78 & 74/76 as amended, which clearly implies that the conditions of service will be applicable as mentioned on 09.10.2012.

7. Stressing further, it is submitted by the applicant that subsequently an amendment to the Army Instructions 75/78 & 74/76 regarding terms and conditions of service for officers granted Short Service Commission was issued on 05.05.2021, of which it was specified by the Respondents that the said letter will have a prospective effect i.e. from the date of issue of the amendment.

8. It is contended by the applicant that the applicant when joined the service was having qualification of MBBS and since he wanted to continue with AMC service, he decided to put in more efforts and while in service also cleared his Post Graduation Degree, as he was aware that being a Postgraduate Degree Holder, he will get extra chance for DPC as well as he will get benefit of age relaxation for appearing in the test as per respondent's policy.

9. It is further submitted by the learned counsel for the applicant that the logic of giving one additional third chance for DPC to the Officers who were having Post Graduate degree at joining time is without logic and against the

principles of natural justice, especially when the Respondents too will gain with his enhanced qualification.

10. Learned counsel stresses that if an officer clears Post Graduation degree while in service by taking extra load and pain, then he should be rewarded and not penalized and that it is well settled that Article 14 condemns discrimination not only by a substantive law but also by a law procedure, and that all persons situated in similar circumstances shall be treated alike both in privileged conferred and liabilities imposed, and thus, he should be given a chance to appear for third DPC Board.

Submissions on behalf of the respondents

11. Per Contra, learned counsel for the respondents submits that the service bracket and number of chances for grant of DPC stipulated at Para 12 of Annexure to 'A' to AI 75/78, have been amended vide GoI, MoD letter No.3569/DGAFMS/DG-1B(1)/1347/06/D(Med) dated 05.05.2006, as under:-

"Officers granted Short Service Commission will be given three chances for taking up the departmental examination for permanent commission at any time after completion of two years of SSC service and before completion of 9½ years of service provided they fulfill the conditions of eligibility laid down in the AI 74/76 as amended subject to the condition that no more than two chances shall be given in the one tenure of five years. During second or subsequent tenure, if not done in

continuation of the first tenure, no chance for departmental permanent commission will be given.”

12. With respect to the age criteria, it is submitted by the learned counsel that the age criteria for DPC consideration has been laid down at Para 4(a) of the Annexure to AI 74/76 amended vide GoI MoD letter No. 34528/DPC/DGAFMS/DG-1A/2493/D(Med) dated 21 Sep 2001 which reads as under:

“Age limits:-

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

(i) Those possessing post graduate diploma like DOMS, DPH, DA etc ... 31 years

*(ii) Those possessing post-graduate qualifications like MD, MS etc acquired prior to commissioning
... 35 years*

13. It is asserted by the Respondents that the DGAFMS is the cadre controlling authority and has been vested with delegated administrative power in respect of medical personnel as per Appendix to GoI/MoD letter No. MoD/IC/1027/32/11614/JS (O/N)/2006 dated 29.11.2006 as well as Para 4 of AI 75/78 and to ensure subjection of equal parameters of desirability on all short service commissioned officers applying for grant of PC, the DGAFMS under the delegated power had formulated Standard Operative Procedure (SOP) on grant of Departmental

Permanent Commission to serving SSC officers and amended from time to time as per functional needs of the cadre.

14. It is further asserted by the Respondents that it is a settled proposition of law that a candidate has the right to be considered for the selection process in accordance with the relevant rules but no one has any fundamental or vested right towards empanelment as such, and also, the terms and conditions of service of an employee are governed by the statutory rules of recruitment.

15. With respect to the age relaxation, it is submitted by the Respondents that the applicant in 2017 was granted DNB Anesthesia course as a SSC Officer, and that the SSC officers granted in service PG are required to serve their SSC commission till 14 years of service and no provision for relaxation of age limit for DPC exists for such officers under extant Army Instructions. The age limit of 35 years is applicable only to the candidates who join the service with a PG Degree, and not to those who undertake their PG degree within service tenure.

Consideration

16. We have given our balanced consideration to the submissions of both the parties and have perused the

documents placed on record including the relevant policy letters under which the applicant has been considered for grant of Permanent Commission.

17. The limited question for consideration before us is whether the applicant is entitled for the age relaxation along with a third chance of consideration in DPC for grant of Permanent Commission in view of the PG Degree passed by him in his service tenure.

18. Before proceeding to address the issue on merits, we find it relevant to refer to relevant para of Army Instruction 74/76, reproduced as under:

*“Appointment
Permanent Commissions in the Army Medical Corps will be granted to persons in accordance with the conditions mentioned in the Annexure to this Instruction. Serving officers will also be governed by the terms of service mentioned in the Instruction.”*

19. We find it relevant to refer to Annexure to the Army Instruction 74/76 providing for Permanent Commissions, Army Medical Corps, Terms and Conditions of Service, and the same is reproduced as under:

Appointments

Permanent Commissions in the Army Medical Corps will be granted by the Government of India in accordance with the conditions mentioned below to candidates of the following categories:-

(a) Such of the civilian medical practitioners who after having qualified in the competitive AMC Examination conducted annually by the office of the DGAFMS followed by the tests/interview conducted by the AMC Selection Board are placed in the final merit list for appointments to Direct Permanent Commissions against vacancies notified from time to time.

(b) (i) Such of the serving AMC/SSC/EC/Reserve Officers who after having satisfied the terms of eligibility vide AI 208/59, AI 15/S/62 and AI 176/65 respectively are found suitable for grant of Permanent Commissions by the AMC Selection Board.

(ii) Serving AMC/SSC/EC/Reserve Officers will also be eligible to take up AMC Examination for grant of Permanent Commission along with other civilian candidates provided they are within the age limit as per Para 4(a) below on 31st December of the year of receipt of application and found eligible in all respects.

(c) Such of the civilian medical practitioners who possess high post-graduate qualifications such as FRCS, MRCP, MRCOG etc and have served in their specialties under recognized medical institutions for a period of at least 5 years and who are recommended by the AMC Selection Board for grant of Direct Permanent Commission.

(d) Stipendiary Medical Cadet of the Graduate Wing of Armed Forces Medical College, PUNE, on successfully passing the final MBBS Examination will be eligible for grant of Permanent Commissions under the terms and conditions laid down in this Army Instruction.

NOTE: *Lady Medical Doctors are also eligible for grant of commissions under this Army Instruction.*

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Age limits

4. *(a) Candidates must not have attained 30 years of age on 31 December of the year of receipt of application from them. But in*

the case of candidates possessing additional medical qualifications, the following age limits will apply:-

*(i) Those possessing post-graduate diploma like DOMS, DPH, DA etc
... .. 31 years*

*(ii) Those possessing post-graduate qualifications like MD, MS etc acquired prior to commissioning
... .. 32 years*

20. A cursory look at the aforesaid Annexure of AI 74/76 would reveal that the age criteria as far as individuals possessing post graduate qualifications like MD, MS, etc is clear which is 32 years. However, the overriding additional requirement is that the relevant post-graduate qualification must be acquired prior to commissioning. Thus, there is not even an iota of doubt about the mandatory requirement of acquisition of PG Degree prior to commissioning.

21. We find that the aforesaid AI 74/76 has been amended vide GoI, MoD Policy Letter No 34528/DPC/DGAFMS/DG-1A/2493/D(Med) dated 21.09.2001 reproduced as under:

“ *No 34538/DPC/DGAFMS/DG-1A/2493/D(Med)*
Government of India
Ministry of Defence
New Delhi, the 21 September 2001.

To,
The Director General
Armed Forces Medical Services
New Delhi (39 copies)
Sub: GRANT OF PERMANENT COMMISSION IN THE
ARMY MEDICAL CORPS TO POST GRADUATE AMC
SSC OFFICERS

Sir,

1. I am directed to convey the sanction of the President to enhance the age limit from the existing 32 years to 35 years for grant of Permanent Commission to Short Service Commissioned officers in Army Medical Corps who are in possession of Post Graduate Degree acquired by them prior to commissioning.

2. This letter will come into effect from the date of issue.

3. The provisions of Para 4(a) (ii) of Annexure to AI 74/76 may be deemed to have been amended accordingly, with effect from the date of issue of this letter.

4. This issues with the concurrence of the Ministry of Defence (Finance/AG)-PA, vide their ID No 698-AG/PA dated 28.08.2001.

*Yours faithfully
Sd/-"*

22. This aforesaid letter makes it categorically clear that while the age for grant of PC to SSC officers in AMC has been increased to 35 years from 32 years, the overriding mandatory requirement of possession of PG Degree prior to commissioning itself holds its ground substantially, without any change, thus, making the intention of the drafters clear that the aforesaid policy letter dealt only with an age increase for grant of PC, and not with any change in the mandatory requirement of possession of PG degree prior to commissioning.

23. Before we proceed to examine terms and conditions for grant of SSC to the applicant, we find it important to refer to the Policy Letter No 3569/DGAFMS/

DG-1B(1)/1347/06/D(Med) dated 05.05.2006, of which relevant amendment is reproduced as under:

FOR

"Officers granted Short Service Commission will be given three chances for taking up the departmental examination for permanent commission at any time after completion of 2 years SSC service and before completion of 8 years service (third chance after completion of five years) provided they fulfil the conditions of eligibility laid down in AI 74/76 as amended. During second or subsequent tenure no chance for departmental permanent commission examination will be given. However, officers already serving in second tenures will be given one chance for the departmental examination".

READ

"Officers GRANTED Short Service Commission will be given three chances for taking up the departmental examination for permanent commission at any time after completion of two years of SSC service and before completion of 9½ years service provided they fulfill the conditions for eligibility laid down in the AI 74/76 as amended subject to the condition that not more than two chances shall be given in one tenure of five years. During second or subsequent tenure, if not done in continuation of the first tenure, no chance for departmental permanent commission will be given".

24. On an examination of the aforesaid amendment, we observe that the time limit for availing three chances of appearing before DPC for grant of PC in AMC has been increased from 8 years to 9½ years, with the other substantial amendment being that the no chance for DPC would be given in second tenure, if the same is not in continuation of first tenure. Thus, we find that there is no amendment as far as

mandatory requirement of possession of PG Degree for consideration by DPC is concerned.

25. At this moment, we find it relevant to refer to the letter dated 09.10.2012 granting Short Service Commission to the applicant in the Army Medical Corps Batch Feb 2012, of which relevant Paras read to the effect:

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3. You are requested to report to the Commandant/Commanding Officer of the unit mentioned against your name in Appendix to this letter on 05 Nov 2012. On your initial medical examination you have been found fit by the Medical Board convened at Armed Forces Clinic, New Delhi in Jul/Aug 2012. However, you are required to undergo medical inspection on reporting to the unit mentioned against your name to simply confirm that there is no deterioration in your health status. Your date of commission will be the next day of your reporting, provided you are found fit in medical inspection. If you fail to report on 05 Nov 2012 this appointment letter will automatically be cancelled. Please note that:-

(a) Your seniority for pay and promotion will be from the date of your Commission.

(b) You will be on probation for a period of one year from the date of your Commission. In case you are reported upon during your probationary period as unsuitable to retain your commission, it may be terminated at any time before or after expiry of the probation period on one month's notice.

(c) You will be eligible for consideration of Permanent Commission after 2 years of SSC service and MBBS degree holders should not exceed age of 30 years on 31 Dec of the year of receipt of application for grant of Permanent Commission. PG Diploma and Degree Holders should not exceed 31 years and 35 years of age respectively on 31

Dec of the year of receipt of application for grant of Permanent Commission.

26. Examining the Para 3(c) of the aforesaid letter, we find that the letter specifies the age limit for consideration as far as grant of PC for AMC officers is concerned. However, noting the fact that the letter has been issued dated 09.10.2012, the same has to be read subject to AI 74/76 as amended by MoD Policy Letter No 34528/DPC/DGAFMS/DG-1A/2493/D(Med) dated 21.09.2001 and Policy letter No 3569/DGAFMS/ DG-1B(1)/1347/06/D(Med) dated 05.05.2006, and thus, we are of the observation that the mandatory requirement of possession of PG Degree before commissioning into service remains unchanged.

27. Lastly, we now find it prudent to examine the DGAFMS Policy Letter No 34526/AMC(DPC)/2019/DGAFMS/DG-1A dated 09.04.2019 titled 'Grant of Departmental Permanent Commission to serving Short Service Commissioned Officers in Armed Forces Medical Services, 2019', of which Para 3 is produced herein as under:

3. The eligibility criteria for grant of DPC has been laid down vide Paras 1 to 5 Annexure to AI 74/76, as amended from time to time as given below:

(a) Age Limit. Candidates must not have attained 30 years of age on 31 December of the year of receipt of application for Departmental Permanent Commission from them. But in the

case of candidates possessing additional medical qualification, the following age limits will apply:-

(i) Those possessing post-graduate diploma like DOMS, DPH, DA

etc 31 years (as on 31 Dec 2019)

(ii) Those possessing post-graduate qualifications like MD, MS

etc 35 years (as on 31 Dec 2019)

28. A perusal of aforesaid letter would make it clear that for those SSC Officers possessing post graduate qualifications like MD, MS etc, the age limit as on 31 December of the year of receipt of application is 35 years. However, the contention of the applicant that aforesaid letter has to be read independently and the applicant should be considered for a third chance by virtue of possessing PG Degree is wholly unfounded, since we are of the view that the aforesaid letter has to be read with AI 74/76 by virtue of deriving its authority from the AI 74/76, and subsequently, as amended by MoD Policy letter No 34528/DPC/DGAFMS/ DG-1A/2493/D(Med) dated 21.09.2001 and Policy Letter No 3569/DGAFMS/ DG-1B(1)/1347/06/D(Med) dated 05.05.2006, which lays down a clear intention of the drafters that the requirement of PG Degree prior to commissioning is a mandatory requirement, and there has been no intention to change the same as such.

29. Observation the aforesaid, we find that the issue under consideration has been earlier dealt at length by this Tribunal in Maj Navdeep Banyal Vs. Union of India & Ors [OA 2002/2020; Date of decision: 10.12.2021], wherein vide Para 18, this Tribunal while addressing the issue under consideration has observed as under:

18. That apart, the contention of the applicant that discrimination in the matter of granting age-relaxation to candidates who acquired a Post-Graduate degree before being commissioned and candidates who acquire Post-Graduate degree after being commissioned are concerned, we find that Candidates who are there is no such discrimination. Candidates who are commissioned into the Short Service Commission without having acquired a Post-Graduate degree holding only an MBBS degree form a different class than the candidates who apply for grant of SSC after obtaining the Post-Graduate degree. The time, approximately of about 3 to 4 years spent by a candidate for acquiring a Post-Graduate degree after completing his MBBS course with internship etc. entitles him for grant of age- relaxation when he enters service as a SSC officer after he acquired a Post-Graduate degree in comparison of an MBBS candidate who gets commissioned without a Post-Graduate degree. Both these categories of employees form two different class, having different criterias with regard to the qualifications possessed by them when they are commissioned into the service and if taking note of this basic difference, the respondents have laid down different provisions for grant of age relaxation in the manner done, this being purely an administrative/ executive policy of the respondents, which is seen to be reasonable, we find no reason to interfere into the same. The contention of the applicant that both classes of persons belonging to the same category are being discriminated in the matter of age-relaxation is a misconceived and unsustainable argument. Both the categories of officers fall in two different categories on account of the circumstances and the qualifications acquired by them before undergoing the selection process for entry into service as a SSC officers and if keeping that in view, two different policies in the matter of

age- relaxation are evaluated by the respondents for the purpose of seeking Permanent Commission, we see no illegality or irregularity in the same.

30. Keeping in view that the issue under consideration has been substantially addressed and settled by this Tribunal in Maj Navdeep Banyal (supra), and with no cogent reason to differ with the observations of the coordinate bench of this Tribunal, we are of the considered opinion that the applicant in the instant OA is not entitled for any relief as such, and thus, this OA is held to devoid of merit.

31. Consequently, OA 3262/2023 is dismissed.

32. No order as to costs.

33. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open Court on 30^H day of January 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.R. MOHANTY)
MEMBER (A)

/Akc/