

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.89 of 2012

Tuesday, the 30th day of July, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Ex Lt A Arockia Selvarani

... Applicant

By Legal Practitioners:
M/s. M. Duraiselvan and
M. Dharmarajan

Vs.

1. A.D.G.M.N.S
Army Headquarters,
New Delhi.
2. The Director General,
Armed Forces Medical Services,
New Delhi.
3. Honorable Defence Ministry,
Central Secretariat,
New Delhi.

... Respondents

By Mr.B.Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah,
Member(Judicial)

1. Heard Mr. M. Duraiselvan and Mr. M. Dharmarajan, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Major Jitender Singh, Learned JAG Officer appearing for the respondents, on admission.
2. Admit.
3. This application has been filed by the applicant for a direction against the respondents 2 and 3 to re-absorb the applicant as a Nursing Officer in the Indian Army either on a short service commission or on permanent commission and to direct the respondents to pass suitable orders, deemed fit in the facts and circumstances of the case.
4. The factual matrix as put forth in the application would be as follows :-

The applicant was working as a Military Nursing Officer at Command Hospital, Chandimandir, Chandigarh/Panchkula. She was commissioned as an M.N.S under Short Service Commission on 22.11.2002. In the year

2003, the applicant got married to an Advocate, namely Mr. M. Dharmarajan, practicing at Coimbatore, Tamil Nadu State. During 4th year of her service, the applicant requested the 1st respondent to transfer her to Tamil Nadu on the ground that she could get a child by joining her husband who is practicing as a Lawyer in Tamil Nadu since he could not do his practice at Chandigarh/Panchkula due to lack of knowledge in local languages. She also had certain medical reasons for her transfer from Chandimandir to Sulur Air Force Hospital, Coimbatore, Tamil Nadu. The applicant never wanted to leave her service from Indian Army. The request for transfer was not acceded to. On completion of her Short Service Commission period, she made oral requests to consider her application for transfer to Tamil Nadu area, but the same was not acceded to and the applicant was further told to give her unwillingness to continue. With reluctance, the applicant had no option but to comply with the said request. Accordingly she gave her unwillingness to continue after the completion of the Short Service Commission and thus the applicant was discharged on 22.11.2007 vide Order No.B/690137/DGAFMS/MNS dated 28.3.2007. After her release from Indian Army service, the applicant delivered a male child on 23.2.2010, namely Bharathi Vallarassu. The unwillingness to continue her service as an MNS Officer in Indian Army was given only in those circumstances. The applicant is still prepared to join the army as a Nursing Officer even on permanent commission. The applicant completed five years

of service from 22.11.2002 to 21.12.2007 in the army. However, the applicant was not ranked as Captain as per Army Rules. The applicant is, therefore, requesting for absorption in Short Service Commission or even on permanent commission and also to direct the respondents to grant the rank of Captain and also the benefits of the Captain rank. Thus the application may be allowed.

5. The objections raised by the respondents in the Reply Statement would be as follows :-

The applicant was commissioned in SSC in MNS as a Lieutenant on 23.11.2002 in the Officer Training School, AMC Centre, Lucknow. After her basic military training, she was posted as a ward sister in Command Hospital (Western Command), Chandimandir, from 15.12.2002, where she continued to serve till her release from SSC service on 22.11.2007, on completion of her prescribed tenure of five years of SSC Commission. The date of her birth is 23.5.1972 and she was 30½ years age at the time of her entry into SSC Commission. The upper age limit for SSC Commission in MNS is 35 years. The grant of Short Service Commission (SSC) and its terms and conditions in the Military Nursing Service (MNS) is governed by Army Instructions 17/1996. As per Para-3B of AI 17/96, officers serving in MNS (SSC) may apply, six months before expiry of their initial tenure of five years for extension of the commission. She did not exercise the option to apply for

extension of her tenure of SSC. No unwillingness to serve beyond the initial tenure of five years of SSC is required as per rules. The case of the applicant that she submitted unwillingness to continue in the service is not required to be furnished. The applicant had continued the Short Service Commission and since she did not apply for extension, she was released automatically on completion of five years of commission. At the time of her release, she was aged 35½ years and had crossed the upper age limit of 35 years for applying afresh for SSC commission from civil. Even otherwise, as per Para-5 of AI 17/96, an officer released from SSC MNS can apply for grant of a fresh commission within one year from the effective date of release of previous SSC service in which case, such applicants will not normally be required to appear for test and interview. However, the grant of fresh SSC commission is subject to review by a screening board based on the service record (performance criteria) in the first SSC tenure. The applicant did not apply for such a grant of fresh commission under this provision within the period of one year from the date of her release i.e. 22.11.2007. Now it is for her to apply for fresh SSC commission like other candidates from civil and to qualify the selection process of test and interview, if eligible. There could not be any re-absorption into the service since the criteria for extension of Short Service Commission were of no avail to the applicant. As regards the promotion to the rank of Captain, the qualification for such rank of Captain is five years as per Corrigendum

B/70037/DGAFMS/MNS/2447/D(Med) dated 31.7.2000. The applicant committed an offence of over stayal of leave and was charged under Section-63 of Army Act, 1950, and was tried summarily and awarded severe reprimand. The said period of unauthorised absence of 18 days can only be regularised by EOL without pay and allowances, which had resulted in shortfall of qualifying service by 18 days. Therefore, the applicant is not having reckonable service required for promotion to the rank of Captain (MNS). Therefore, the application filed by the applicant has no cause of action and it is not sustainable and thus it may be dismissed.

6. On the above pleadings, the following points are framed for consideration :-

- 1) Whether the reliefs sought for by the applicant for re-absorption into MNS-SSC in the army and for the promotion of the applicant to the rank of Captain are grantable ?
- 2) To what relief the applicant is entitled for ?

7. Heard further arguments of Mr. M. Duraiselvan and Mr. M. Dharmarajan, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Major Jitender Singh, Learned JAG Officer appearing for the respondents.

8. The Written Arguments on behalf of applicant is also filed and perused.

9. According to the applicant's Counsel, the applicant was not aware of the fact that she ought to have applied for re-absorption into service within one year from the date of her discharge from the army. He would also submit that the applicant was not informed by the respondents or anybody about the right accrued to her. He would also submit that the unwillingness certificate was obtained from the applicant while she was requesting for a transfer to Tamil Nadu area and, therefore, there is no intention on the part of the applicant to discontinue the Short Service Commission. He would also submit that the applicant could not continue her service at Chandimandir/ Chandigarh, since she could not join her husband after her marriage and she was not able to procure a child. He would further submit that the applicant is likely to complete the age of 40 years and if her request is not considered by this Tribunal, the applicant has to meet a lot of hardship in her future life and, therefore, she may be permitted to have extension of service on the ground of natural justice. He would further submit in his argument that the applicant had no intention to over stay her leave and the punishment was only severe reprimand and, therefore, the over stayal of 18 days could have been adjusted towards the EOL and if it is done so, she would not be in

shortfall to the qualifying service of five years. Therefore, suitable orders may be passed for the conferment of the rank of Captain to the applicant.

10. However, the Learned Senior Panel Counsel would counter the arguments of the Learned Counsel for the applicant. He would reiterate the pleadings submitted in the Reply Statement and would submit that the absorption rules for re-employment of the applicant cannot be changed to suit the convenience of the applicant. He would also submit that the extension or re-absorption ought to have been applied for by the applicant within one year of her completion of SSC commission and if she failed to do so, she ought to have applied for the commission afresh along with other candidates from civil and to qualify the selection process of test and interview, if eligible. He would also submit that the applicant was aged 30½ years at the time of entering into the Short Service Commission as her date of birth was 23.5.1972 and she had completed 35½ years of age on the completion of SSC and the qualification for applying SSC should not exceed 35 years of age. The applicant herself admitted that she is nearing 40 years and, therefore, she could not apply for fresh commission to the MNS. He would further submit that the applicant cannot say that she had given unwillingness to continue her service at the time of seeking her transfer to Tamil Nadu area. There is no rule required to submit unwillingness to continue in service, but there is a rule to submit her willingness to get extension of the SSC within six months, before the

completion of her SSC. He would further submit that the applicant having failed to submit her willingness to continue in service or to apply for re-absorption within one year of her completion of service cannot seek for re-absorption in the SSC as a matter of right. If for any reason, the rule is relaxed for the applicant, there will not be any control in appointing officers in SSCs or in any other recruitment. Therefore, the request of the applicant to invoke natural justice is not sustainable. He would also submit that the rules prescribed in AI 17/96 are to be strictly followed and since the applicant had not resorted to any of the particulars contemplated in the said Rules is not entitled for re-absorption. Therefore, he would request us to dismiss the application.

11. We have given anxious thoughts to the arguments advanced on either side. We have also considered the Written Arguments submitted.

12. **Point No.1:** The undisputed facts in this case would be that the applicant was commissioned in the SSC of MNS as a Lieutenant (NS-21119X) on 23.11.2002 in the Officer Training School, AMC Centre, Lucknow. After her basic military training, she was posted as a ward sister in Command Hospital (Western Command), Chandimandir, from 15.12.2002, where she served till her release from SSC service on 22.11.2007. While she was serving in the said hospital, she got married. The applicant was seeking for

her transfer to Tamil Nadu area in order to join her husband and to procure a child for them. It was not possible and, therefore, she served in the said Command Hospital till 22.11.2007 and was released from service.

13. The service in which she was absorbed, a Short Service Commission (SSC) in Military Nursing Service (MNS), governed by the provisions of Army Instructions 17/96. The said grant of SSC commission was for five years and it would automatically expire on completion of the said term of service. Thus the applicant was released from service on her completion of five years of service.

14. According to the applicant, she was asked to submit her unwillingness certificate to continue from service in order to consider her request of transfer to Tamil Nadu. The said fact of submitting unwillingness certificate was admitted by the applicant, but she had stated that it was given by her in order to get a transfer to the State of Tamil Nadu. The Army Instructions 17/96 does not contemplate any submission of unwillingness certificate during the period of Short Service Commission. However, it has been shown to us that an officer absorbed in Short Service Commission may be required to submit her willingness certificate to continue in service as per Para-13A of Army Instructions 17/96. According to the said Rule-13A of amended SAI 1/S/92, Women Special Entry Scheme (Officers), the lady cadets who are

initially granted commission for a period of five years will be required to give an option for extension of commission by five years. However, the applicant did not give any option to continue or seeking extension of commission by five years during her initial tenure. On the other hand, she had given unwillingness to continue after the initial period of five years. The circumstances as put forth by the applicant should have been established by the applicant only so as to prove that the applicant was having willingness to have an extension of service. If really the applicant has any willingness to extend SSC for another five years, she would have immediately recalled her unwillingness to continue and submitted her willingness to have another five years of service. It was not explained by the applicant properly in her pleadings, as well as no proof was produced by her to dispel the unwillingness of the applicant to have an extension of service.

15. Further more, the option for having another Short Service Commission is also available to the applicant and she could have applied for further SSC immediately within one year after her release from the initial commission. The reason put forth by the applicant for not applying for another commission within one year was to the effect that she was not made aware of such right and it was not brought to her notice by anybody. The said reason cannot be accepted since the applicant served in the Short Service Commission throughout for five years at Chandimandir and she ought to

have known the service conditions during her tenure of service. Nobody can bring them to her knowledge as available to her in the Short Service Commission.

16. Admittedly, the applicant was aged 30½ years at the time of the initial commission and her date of birth was 23.5.1972. On the completion of the initial Short Service Commission for five years, she became aged 35½ years. If really she wanted to continue her service, she ought to have applied for second SSC within one year of her completion of initial commission. Admittedly, she did not apply within such time limit. If for any reason, she wanted to apply a fresh SSC along with other civil candidates, she ought not to have completed 35 years of age. Therefore, she is found over aged for applying for the second SSC afresh along with other civil candidates. The request of Learned Counsel for the applicant is that she may be considered under natural justice to relax the rules since she is about to complete 40 years of age and she can not have any future commission in the army except by an order by this Tribunal to absorb the applicant into the SSC of MNS.

17. The said argument of the Learned Counsel for the applicant cannot be accepted for the following reasons - The initial SSC in MNS are governed by the Army Instructions 17/96 and SAI 1/S/92. Those rules were framed for

regulating the SSC in MNS. If for any reason, the rules are relaxed on the basis of lack of knowledge of rules by the applicant and on consideration of growing age of the applicant, it would be a confusion in the set up of the Short Service Commission in MNS. Therefore, the rules framed thereunder should have been strictly maintained and enforced. Therefore, there is no question of entertaining any relaxation of rules in favour of the applicant.

18. For the reasons discussed above, we are of the considered view that the applicant's request for extension of Short Service Commission, cannot be acceded to, on any count.

19. As far as the conferment of the rank of Captain for the applicant is concerned, the shortfall of 18 days in 5 years of qualifying service has been alleged by the respondents. The rules would stipulate that the conferment of the rank of Captain on the applicant would be possible if she had completed five years of SSC service in full. But she had over stayed leave by 18 days and she was awarded 'Severe Reprimand' as punishment. It has also been resisted by the respondents that she had pleaded guilty to the offence of over stayal of 18 days and, therefore, she is estopped from challenging the proceedings and the loss of 18 days of service. The said summary trial under Section 83 to 85 of the Army Act, is produced in Annexure R-III in which we could see that the applicant pleaded guilty and

was found guilty and the punishment was given as 'severe reprimand' and her period of absence to be adjusted as 'furlough'. In the said circumstances, the applicant is found not eligible for the conferment of the rank of Captain since she does not have qualifying service of five years. Of all, she has not prayed for such a relief of conferment of the rank of Captain in the relief paragraph even though she had pleaded in the body of the application. For the aforesaid reasons, the applicant is not found entitled to both her claims and thus the point is decided against the applicant accordingly.

20. **Point No.2:** In view of our discussions held above, the applicant was found not entitled to the reliefs sought for by her. Accordingly, we are inclined to dismiss the application filed by the applicant.

21. In fine, the application is dismissed being devoid of merit. However, there is no order as to costs.

Sd/-
LT GEN (Retd) ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

30.7.2013
(True Copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

To,

1. A.D.G.M.N.S
Army Headquarters,
New Delhi.
2. The Director General,
Armed Forces Medical Services,
New Delhi.
3. Ministry of Defence,
Central Secretariat,
New Delhi.
4. M/s. M. Duraiselvan and
M. Dharmarajan
Counsel for applicant.
5. Mr. B. Shanthakumar, SPC
Counsel for respondents.
6. OIC, Legal Cell (Army),
ATNK & K Area HQ,
Chennai.
7. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

O.A.No.89 of 2012

30.7.2013