

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 14<sup>th</sup> January, 2008

+ **WP(C) No.155/2008 and CM No. 307/2008**

Lt. Col. Garima Maheshwari .... Petitioner

Versus

1. Union of India
2. Chief of Army Staff
3. Director General of Medical Services ... Respondents

Advocates who appeared in this case :

For the petitioner : Col. N.L.Bareja with Mr.Mohan Kumar,  
Advocates

For the respondents : Ms.Barkha Babbar, Advocate

CORAM :

**HON'BLE MR. JUSTICE A.K. SIKRI**

**HON'BLE MR. JUSTICE J.M. MALIK**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**A.K.Sikri, J. (Oral)**

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1. The petitioner, who was recruited as a Short Service Medical Officer in Army Medical Corps (AMC) is seeking extension of her tenure by another four years on the strength of the decision taken by the Ministry of Defence and communicated to the Chief of Army Staff vide letter dated 2<sup>nd</sup> November, 2007. As per this communication, in partial modification of the provisions contained in Army Instructions 75/78, Army Instructions 15/79 and Army Instructions 17/96, the total period of service of certain officers is extended from 10 to 14 years. List includes AMC from Civil as well. As per the amended provision the person is to be appointed initially for a period of five years and extension for another period of five years can be given thereafter on the completion of five years and second extension of four years can also be granted. Before we consider this prayer of the petitioner as to whether the petitioner is entitled to the benefit of the aforesaid amended provision or not, it would be appropriate to scan through the service carrier of the petitioner as a 'Short Service Commissioned Officer'.

2. The petitioner was initially commissioned as Short Service Commissioned Officer in AMC on 17<sup>th</sup> August, 1983. After serving

for ten years and twenty eight days, she was released on 14<sup>th</sup> September, 1993. She was again allowed to join in the same capacity with effect from 4<sup>th</sup> September, 1997 vide letter dated 17<sup>th</sup> January, 2003. This tenure was extended by another five years which is coming to an end on 17<sup>th</sup> January, 2008. The petitioner was served with release order dated 21<sup>st</sup> August, 2007 as per which she would be released on 17<sup>th</sup> January, 2008. In the meantime, the aforesaid amendment in the instructions has been brought into force vide policy instructions dated 2<sup>nd</sup> November, 2007.

3. The respondents do not dispute that after the aforesaid amendment in the policy instructions, the officer who is commissioned as Short Service Commissioned Officer can now be given extension after ten years of service, for another four years. However, in the case of the petitioner it is denied on the ground that the petitioner has served for more than twenty years, namely, ten years and twenty eight days from 17<sup>th</sup> August, 1983 to 14<sup>th</sup> September, 1993 and she has again completed ten years of service after joining in the same position second time and therefore, she cannot be given the benefit. The respondents have produced the records as per which the case of the petitioner

along with certain other officers was taken up for extension of tenure of Short Service Commissioned Officers and in terms of revised instructions dated 2<sup>nd</sup> November, 2007. This exercise was done on 13<sup>th</sup> December, 2007 and as per the minutes recorded various officers have been given the extension, however, two officers, namely, the petitioner and one Shri Ashok Kumar Jha were not given the extension on the ground that it was their second tenure and they have already put in total service of twenty years under two spells.

4. The Army Instructions Nos. 75-81 dated 4<sup>th</sup> November, 1978 deal with the terms and conditions of service for officers granted short service grades in the AMC. Para 4 stipulates the length of such a Commission and further extensions. The same read as under:

**“LENGTH OF COMMISSION AND FURTHER EXTENSION**

4. Commissions will be granted for a period of 5 years in the first instance and will be extended for such periods as the DGA-FMS may decide subject to the conditions that the total SSC service of the officer does not exceed 10 years or beyond the age of 55 years.

On being granted a commission, the officer will be subject to the Army Act, 1950 (XLVI of 1950) under Section 2(1)(a) thereof.”

5. As per the aforesaid provision, the commission is to be granted for a period of five years in the first instance which can be extended for such further periods as may be decided by the competent authority. It is however subject to the condition that total service cannot exceed ten years or beyond the age of 52 years. As per this provision, therefore, the total service has to be ten years. The amendment contained in communication dated 2<sup>nd</sup> November, 2007 is to be read in that context as the aforesaid provision is amended to the extent stipulated in this communication. For our benefit we reproduce the relevant portion of communication dated 2<sup>nd</sup> November, 2007:-

“Subject : Extension of tenure of Short Service Commissioned Officers of the Armed Forces Medical Services(AFMS) from 10 years to 14 years.

Sir,

In partial modification of the provision contained in AI 75/78, AI 15/79 and AI 17/96 as amended, I am directed to convey the sanction of the President for extension of total tenure of Short Service Commission(SSC) in respect of AMC, AD Corps and MNS from 10 years to 14 years in the following manner :-

| Source of Candidates                           | Initial period | First extension | Second extension | Total period of service |
|------------------------------------------------|----------------|-----------------|------------------|-------------------------|
| <b><u>AMC</u></b><br>(From AFMC)               | 07             | 07              | NA               | 14                      |
| <b><u>AMC</u></b><br>(From civil)              | 05             | 05              | 04               | 14                      |
| <b><u>MNS</u></b><br>(From Schools of Nursing) | 05             | 05              | 04               | 14                      |
| <b><u>MNS</u></b><br>(From civil)              | 05             | 05              | 04               | 14                      |
| <b><u>AD Corps</u></b><br>(From civil)         | 05             | 05              | 04               | 14                      |

6. It is clear from the aforesaid quoted portion that the sanction of the President for extension of total tenure of Short Service Commissioned Officer is obtained which is now made as 'total period of service' as fourteen years. The intention is manifest, namely, entire period of Short Service Commissioned Officer which was earlier ten years is now extended to fourteen years. It is thus clear that those who have already rendered fourteen years of service and above would not be entitled to the benefit of this amendment. The case of the petitioner would fall in this category as she has already rendered more than twenty years of service as Short Service Commissioned Officer.

7. Learned counsel for the petitioner had submitted that in case this was the position as per the Army Instructions, she was not even entitled to be appointed second time in the year 1997. He further submitted that though her initial period of appointment was five years, even in the year 2003 she was given extension for a further period of five years. From the records produced by the learned counsel for the respondent, it is borne out that this practice of appointing the Short Service Commissioned Officers for more than ten years, namely, given a break and then appointing again was objected to by the Audit as well as by the CDA and the notings show that the concerned departments were advised not to adopt this practice which was in violation of the aforesaid Army Instructions. Therefore, if the petitioner herein or any other such officers were given the second tenure as Short Service Commissioned Officer in violation of the said rules, that would not mean that such an illegality is to be perpetuated and the petitioner should now be given extension for other four years. We do not, therefore, find merit in this petition and the same is accordingly dismissed.

8. As this stage, learned counsel for the petitioner submits that since as per the respondent's own showing the petitioner has

rendered more than twenty years of service she would be entitled to pension. It would be open to the petitioner to raise this issue with the appropriate authorities.

**A.K. SIKRI, J.**

January 14, 2008  
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**J.M. MALIK, J.**