

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 5th July, 2021

+ W.P.(C) 2134/2020

WG CDR RAVI KHANDELWAL Petitioner
Through: Mr. Tarun Sharma, Advocate.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Barkha Babbar, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

1. The present petition impugns order dated 10th February, 2020 passed in OA No.1548/2019 whereby the said OA was dismissed by the Armed Forces Tribunal, Principal Bench, New Delhi (AFT). The said OA was filed on behalf of the petitioner, seeking following reliefs:

- “(a) *Set aside the impugned order dated 04.04.2019;*
- (b) Direct the respondents, particularly Respondent Nos. 2 and 3, to immediately consider the applicant for an interview vide a third chance before the Departmental Special Permanent Commission Selection Board; or in the alternative,*

(c) *Direct the respondents to forthwith grant the applicant relief of Special Permanent Commission.”*

2. The petitioner, a serving Wing Commander in Indian Air Force having date of birth as 24.07.1983, applied for grant of Short Service Commission (SSC) in Army Medical Corps (AMC) on the basis of advertisement published in December, 2007. The said advertisement, *inter alia*, provided that on completion of two years service, SSC Officers are eligible for Departmental Permanent Commission provided they have not attained the age of 30 years on 31st December, 2007. The petitioner was granted SSC on 25th April, 2008. In terms of the aforesaid provision of the advertisement, the petitioner upon completion of two years of service as an SSC Medical Officer, applied for permanent commission. However, the Selection Board held in December, 2010 and in June, 2011, did not grant permanent commission to the petitioner as he failed to secure minimum qualifying marks in the interview. Subsequently, the petitioner applied for the third time for the said permanent commission in 2013 and 2017, however in view of the fact that the petitioner had crossed the age limit of 30 years as on 31st December of the year of receipt of application the petitioner was not allowed to appear before the permanent commission Selection Board. The petitioner submitted representations dated 7th May, 2016 and 26th February, 2019 which were rejected on 9th August, 2016 and 4th April, 2019 respectively. The petitioner also filed Statutory Complaints dated 26th October, 2017 and 25th June, 2018 under Section 27 of the Air Force Act, 1950 (the Act) which were rejected on 1st October, 2018 and 23rd July, 2018 respectively. Aggrieved by the rejection orders, 2019, the

petitioner approached the AFT by filing the aforesaid OA from which the present petition arises.

3. The said OA was contested by the respondents, who filed a counter affidavit in response to the OA. The said OA was dismissed by the AFT vide the impugned order, observing/holding that (i) no SSC Officer can claim Permanent Commission as a matter of right, they only have a right to be considered in terms of the extant Rules; (ii) the petitioner applied for permanent commission twice in 2010 and 2011, but failed to qualify; (iii) thereafter the petitioner applied for third attempt at permanent commission in 2013 and 2017, but the same was rejected on account of the petitioner being overage i.e. more than 30 years; (iv) in terms of Paragraph 1(b)(ii) of Army Instruction (AI) No.74/76, serving AMC Officers would be eligible to take up AMC Examination for grant of Permanent Commission provided they are within the age limit (30 years) on 31st December of the year of receipt of application; (v) the petitioner was therefore not eligible for permanent commission in terms of the aforesaid Rules/Instruction at the time of his third attempt; (vi) merely because there was an inadvertent error in the advertisement of December, 2007, the petitioner cannot claim eligibility for permanent commission on the ground that he happened to be below 30 years on 31st December, 2007 and therefore not overage; (vii) the error in advertisement cannot overrule the basic terms and conditions of the service as provided by the aforesaid Army Instruction. Reliance was placed on the decision dated 28.05.2009 in OA No. 312 of 2011 titled as ***Capt. Prabhat Chaturvedi Vs. Union of India*** given by a Coordinate Bench of the AFT on 28th May, 2012; (viii) the mistake in the advertisement was

corrected by the respondents in 2009 by issuing a letter dated 15th June, 2009, in terms of which the chance was given to all the officers who had missed consideration for permanent commission without even availing a single chance. Since the petitioner had already availed two chances to apply for permanent commission, he was not entitled for an additional chance; and, (ix) decision dated 11.09.2018 in O.A No. 775 of 2015 titled as ***Surg Lt Cdr Rohit Verma Vs. Union of India & Ors.*** was specific to facts and circumstances of that case and could not be applied in the present case.

4. Mr. Tarun Sharma, learned counsel appearing on behalf of the petitioner has assailed the impugned order of the AFT on the following grounds:

- (i) denial to the petitioner to appear before the permanent commission selection board is against the terms and conditions contained in the said advertisement;
- (ii) the advertisement clearly provides that the age limit of 30 years has to be seen as on 31st December, 2007;
- (iii) the defense of inadvertent error in the advertisement was never taken by the respondents while rejecting the Statutory Complaints filed on behalf of the petitioner and has been taken for the first time in the counter affidavit;
- (iv) the letter dated 15th June, 2009 is not applicable in the case of the petitioner; and,
- (v) the case of the petitioner is covered by the decision in ***Surg Lt Cdr Rohit Verma*** (supra)

5. Per contra, Ms. Barkha Babbar, Advocate appearing on behalf of the respondents has opposed the present petition. Reliance is placed by her on the counter affidavit filed on behalf of the respondents to contend that (i) petitioner has already availed two chances in 2010 and 2011 and therefore, was not eligible for another chance on the basis of letter dated 15th June, 2009 for grant of permanent commission, when he was already more than 34 years old; (ii) the eligibility of the petitioner to apply for permanent commission was laid out in terms of Paragraph 4.(a) of Annexure to AI No.74/76. In terms of the said instructions, the candidate must not have attained the age of 30 years as on 31st December of the year of receipt of application from them; (iii) there was an ambiguity in the advertisement published up to December, 2007 with regard to cut-off date regarding age criteria for permanent commission. The permanent commission clause mistakenly provided eligibility of the candidates not having attained the age of 30 years as on 31st December, 2007; (iv) since this was contradictory to the terms of the aforesaid AI No.74/76 and would have resulted in some of the SSC Doctors on SSC not getting even a single chance to appear for grant of permanent commission, DGAFMS decided to give one-time relaxation up to Selection Board of December, 2010 only to those officers who had been granted SSC in response to DGAFMS advertisements up to December, 2007 provided they were fulfilling the age criteria of 30 years (MBBS) as on 31st December of the year of application for SSC. One-time age relaxation was granted vide letter dated 15th June, 2009 and was only to enable those officers who had applied and joined AFMS as SSC in response to DGAFMS advertisements published up to December, 2007 and could not avail even a single chance to appear for Permanent Commission interview; (v) since the

petitioner had successfully availed two chances in December, 2010 and June, 2011, he was not eligible in terms of the aforesaid letter dated 15th June, 2009 as he was more than 30 years of age on 31st December of the year of receipt of application for permanent commission i.e. 2013 and 2017; (vi) the Statutory Complaint filed by the petitioner on 26th October, 2017 for grant of permanent commission was dismissed after due consideration vide order dated 1st October, 2018 and subsequent representations of the petitioner were also rejected vide letters dated 9th August, 2016 and 4th April, 2019; (vii) the Statutory Complaints filed by the petitioner under Section 27 of the Act on 25th June, 2018 was also rejected by the DGAFMS on 23rd July 2018; and, (viii) Decision in *Surg Lt Cdr Rohit Verma (supra)* is distinguishable from the present case.

6. Since the respondents have laid emphasis on the contradiction between the terms of the advertisement and the terms of AI No. 74/76, it may be useful to set out the relevant provisions of the AI No. 74/76 as well as the advertisement of December, 2007:

“AI No. 74/76

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

Advertisement of December 2007

Maximum age limit for MBBS degree and Post Graduate Diploma/Degree holders desirous of Permanent Commission, on becoming eligible during service, will be 30 years and 31/35 years respectively as on 31 Dec 2007 while applying for SSC.”

7. Comparing the above, it cannot be denied that there was a contradiction between terms of the advertisement and the provisions of AI. Whereas the AI No. 74/76 clearly provided that the applicant has to be less than 30 years as on 31st December of the year in which he applies for permanent commission, the advertisement provided the age of 30 years to be as on 31st December, 2007. Surely, it could not be the intent of the respondents that candidates who were eligible as on 31st December, 2007 in terms of age, would continue to apply for permanent commission as many times as they wish and at any point of time. Therefore, the AFT has correctly observed that there was an inadvertent error in the advertisement and the petitioner cannot be allowed to take advantage of the said error. In any event, if there is a contradiction between Airforce Instruction and the advertisement, it is the terms of the Airforce instruction which would prevail.

8. It may further be noted that the employment of the petitioner with the respondent was not a contractual employment on the basis of the advertisement. Rather, it was a statutory employment and therefore the terms and conditions of employment would be governed by the relevant statutory rules/instructions. It is a settled principle of law that there cannot be any estoppel against a statute. Therefore, the petitioner cannot claim any estoppel based on the advertisement, when the said advertisement is contrary to the statute (AI No. 74/76). In fact, the respondents noted the said error and issued a letter dated 15th June, 2009 by giving one opportunity to all the officers who had applied and joined AFMS in response to advertisements till December 2007 and had become overage by 31.12.2009

and 31.12.2010. But, the said benefit was only given to officers who had not availed a single chance. The benefit of the aforesaid letter dated 15th June, 2009 could not be extended to the petitioner as he had already availed two chances earlier. The respondents have rightly applied their Policy/Instructions in the present case and no discrimination has been done against the petitioner.

9. Comparing the AFT has rightly placed reliance on the decision of the Coordinate Bench in ***Capt. Prabhat Chaturvedi*** (supra) wherein in respect of the same advertisement, it was observed by the Coordinate Bench of the AFT that, the date of 31st December 2007 in the advertisement was contrary to the service conditions in clause 4(a) of Army Instructions 74/76 that stipulates that the candidates must not have attained the age of 30 years on 31st December of the year of application. Therefore as the date of 31st December 2007 in the advertisement was on the face of it erroneous, it was realized that persons applying should not be made to suffer and the DGAFMS passed the order dated 15th June 2009 giving relief of one chance to all candidates who have been commissioned under the aforesaid advertisement. The said decision in ***Capt. Prabhat Chaturvedi*** (supra) was followed by the subsequent benches of AFT in decision dated 10th February, 2020 in OA No. 285 of 2019 titled Surg ***Cdr Manisha Thakur Vs. Union of India & Ors.*** and decision dated 22nd January, 2020 in OA. No 1100 of 2019 titled ***as Lt. Col R.P. Singh Vs. Union of India & Ors.,*** wherein it was held that merely because there was an inadvertent error in the advertisement of 2005, the applicant cannot claim eligibility for permanent commission forever. It was further observed that every organization has a right to

correct its inadvertent mistakes and the respondents have corrected this mistake in 2008 and 2009 by giving a fair chance to all those officers who were willing but had missed consideration for permanent commission without availing a single chance. We are in full agreement with the aforesaid view taken by the AFT.

10. The facts and circumstances in the case of ***Surg Lt Cdr Rohit Verma (supra)*** are different from the present case as in that case the applicant had availed only one chance for the permanent commission. However, in the present case the petitioner has already availed two chances. Also, while granting relief to the applicant in that case the AFT clearly specified that the decision shall not be treated as precedent for others seeking similar relief. Accordingly, the said decision has been rightly distinguished by the AFT in the impugned order.

11. No SSC officer can claim permanent commission as a matter of right. They only have a right to be considered as per extant rules. The respondents have acted in terms of the extant Rules and Policies framed for grant of permanent commission and the petitioner has rightly been denied the grant of permanent commission by the respondents.

12. No grounds are made out for interference with the impugned order passed by the AFT. Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

JULY 05, 2021/ak