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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.09.2023

+ W.P.(C) 12253/2023 & CM APPL. 48166/2023

MAJ SHIVENDRA SINGH

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Ms. Indra Sen Singh and Mr. Aditya Bari, Advocates.

For the Respondents: Ms. Pratima N. Lakra, CGSC with Ms. Vanya Bajaj, Ms. Kashish G. Baweja, Advocates for UOI with Maj. Deepak Ravnah and Maj. Parthokatyayan

CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE MANOJ JAIN****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Issue notice. Notice is accepted by learned counsel for the respondents.
2. With the consent of the parties, the petition is taken up for final disposal today.
3. Petitioner impugns judgment dated 23.12.2022 passed by the Armed Forces Tribunal (Principal Bench) whereby the original application filed by the petitioner impugning the release order dated 02.07.2021 has been



dismissed.

4. Petitioner was commissioned in the Army Aviation Corps (AAC) on 19.03.2011 as a Short Service Commissioned Officer (SSCO) and was required to serve for mandatory period of 10 years extendable by another four years.

5. As per the petitioner, his confidential reports were always graded above average with a figurative assessment of 8.5 or above. Petitioner is also alleged to have completed all the courses meant for the Army Aviation Corps successfully and was even bestowed with the coveted 'Flying Wings' which made him a trained Aviator to fly Helicopters.

6. Since the petitioner's Short Service Commission Service of 10 years was coming to an end, the case of the petitioner along with other similarly situated Short Service Commissioned Officer was considered by the No. 5 Selection Board for grant of a permanent commission/extension. The result thereof was declared on 02.07.2021. Petitioner was neither granted permanent commission nor extension of service.

7. Petitioner filed the subject Original Application impugning the non-grant of permanent commission and extension of service.

8. Respondents in their counter affidavit before the Tribunal contended that grant of permanent commission/extension of Short Service Commissioned Officer is considered as per policy dated 24.02.2012 read with policy dated 15.01.1991 and as per the policy all officers who are not selected for grant of permanent commission but are otherwise fit and



suitable are granted four years extension of service. It is contended that petitioner was not approved for both – permanent commission and extension of service by the Selection Board and as such no extension was granted.

9. The relevant policy dated 15.01.1991 lays down the criteria for grant of permanent commission to Short Service Commissioned Officer and stipulates as under:-

(a) A maximum of 250 SSCOs will be granted Permanent Commission per year. The number of vacancies for the batches within the year will be allotted in proportion to their inter-se strength.

(b) Minimum acceptable cut-off grade for grant of Permanent Commission to SSCOs will be 60%. This may, however, be reviewed by Army HQrs. Every two years, keeping in view the rating tendencies as at that time.

(c) In case more than the specified number of officers make the grade from the batches considered in a year, the requisite number only, i.e. 250 will be granted Permanent Commission on competitive merit.

(d) All SSCOs, other than non-optees and those considered unfit for retention by the Selection Board, will be granted five year extension.

10. Policy dated 15.01.1991 stipulates that a maximum of 250 SSCOs would be granted permanent commission per year and the number of vacancies within the year would be allocated in proportion to the batches in terms of their inter-se strength.



11. The policy further stipulates that minimum acceptable cut-off grade for grant of Permanent Commission would be 60%. However, this is to be reviewed every two years, keeping in view the rating tendencies as at that time. The policy further stipulates that in case more than the specified officers make the grade from the batches considered in a year, only 250 would be granted permanent commission on competitive merit.

12. The policy further stipulates that all SSCOs other than those not opting for permanent commission or those considered unfit for retention by the Selection Board shall be granted extension.

13. In the case of the petitioner, petitioner along with his other batchmates of SSCOs was considered by No. 5 Selection Board and petitioner has been rated as unfit for permanent commission.

14. Since the petitioner has been rated as unfit for permanent commission, petitioner was also found to be unfit for retention and as such has not been granted an extension.

15. The Tribunal, in the impugned order, has held as under:-

11. We have gone through the proceedings of the No. 5 Selection Board held on 15th - 18th June 2021 and we find that in the case of the present applicant, the Selection Board awarded him 'Z' grading and, therefore, he was denied grant of extension and on merit, the applicant was awarded overall 55.02 marks, which was less than the minimum cut off mark of "66" and further, the last officer, who was granted Permanent Commission received "79.32" marks. That being so, it is clear that the case of the applicant was placed before the No. 5 Selection Board, which considered the case of the applicant strictly in accordance with the policies and has been found



unfit for grant of Permanent Commission/Extension, based on the recommendations as are available on record.

12. From the aforesaid proceedings of the Selection Board, it is clear that the case of the applicant was considered by the Selection Board in accordance with the policy and for the reason indicated therein and reproduced hereinabove, the applicant has not been selected. Even though, by referring to clause 9(c) of the General Instructions to the No S Selection Board (Annexure A-11) dated 10th February, 2021, it was argued that the medical category of the applicant permits him to continue in service, we find that the No. 5 Selection Board has taken note of all these factors and found the applicant unfit to be granted any extension. The Selection Board is an expert body in the matter of grant of extension or Permanent Commission to an Officer and the Selection Board having conducted its proceedings in accordance with the mandate of the policy and the qualification criteria fixed and there being nothing available on record to hold that the proceedings of the Selection Board were held in a manner not permissible under law, we see no reason to interfere with the recommendations of the expert body.

16. The Tribunal has examined the proceedings of No. 5 Selection Board which had considered the petitioner and other officers. The Tribunal noticed that the Selection Board had noticed that petitioner had an overall profile of 55.02 marks which was less than the stipulated percentage of 60% as per the policy. The Tribunal further noticed that the last person who got permanent commission had a score of 79.32 marks. Since the petitioner did not meet the cut-off as stipulated by the policy of 60%, the Selection Board declared the petitioner as unfit for permanent commission and consequently for absorption.

17. The Tribunal has examined the proceedings of the Selection Board



and noticed that the Selection Board has taken into account all factors and then graded the petitioner as unfit for grant of permanent commission or extension.

18. The policy obtains only one interpretation i.e. that for grant of permanent commission, a cut-off percentage of 60% is the minimum. Though the same may be reviewed from time to time keeping in view the rating tendencies prevalent at that time. However, all those who do not meet the minimum criteria of 60% are ineligible for permanent commission and consequently extension. The same parameter has been applied in the case of the petitioner and found by the Tribunal to be correctly applied by the Selection Board.

19. Accordingly, we find no infirmity in the view taken by the Tribunal in rejecting the Original Application or any other ground to interfere with the same.

20. In view of the above, we find no merit in the petition. The petition is consequently dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 18, 2023

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