

Court No.3  
**ARMED FORCES TRIBUNAL (CIRCUIT BENCH,  
 JABALPUR)**  
**REGIONAL BENCH, LUCKNOW**

**Original Application No. 478 of 2012**

Monday, this the 11<sup>th</sup> day of January 2016

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

MS-14053-K, Air Force No-25586K, Wg Cdr Yogesh Chandra,  
 S/o Dr. Ram Das Vaishya, Commanding Officer, 3 Air Force  
 Hospital, Amla (Depot) Betul Distt. (M.P.).

...Applicant

Ld. Counsel for the : **Shri K.C. Ghildiyal, Advocate**  
 Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Air Staff, Air Headquarters, Air Force Bhawan, Air Headquarters, New Delhi.
3. Director General, Armed Forces, Medical Services, DG-1A, Ministry of Defence, M-Block, New Delhi-11.
4. Director General of Medical Services (Air Force), Air Headquarter R.K. Puram, West Block-6, R.K. Puram, New Delhi-66.

...Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Central**  
 Respondents. **Govt Counsl assisted by Capt**  
**Manisha Yadav, OIC Legal Cell.**

*Dr*

*Manisha*

ORDER (Oral)

1. Heard Ld. Counsel for the parties and perused the record.
2. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 with the prayer that the policy laying down procedure for interview/test may be set aside and the applicant, who is a Wing Commander in the Army Medical Corps (for short Service Commissioned Officer), may be granted permanent commission without subjecting him to any further process of selection or oral interview on the basis of service record. While assailing the impugned policy, Ld. Counsel for the applicant submitted that certain persons have been given more than three chances, but the applicant has been given only three chances and he has not been given four chances. It has further been submitted by Ld. Counsel for the applicant that certain candidates have been promoted after nine and half years of service and fifteen years of service.
3. On the other hand, Ld. Counsel for the respondents submits that the applicant has appeared in the test on three occasions but failed, hence has not been granted commission. It is submitted that the applicant has got no right to challenge the procedure policy.
4. There appears no dispute that the applicant appeared in the examination three times and could not succeed. Hence he has not been granted permanent commission. On account of

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unsuccessful result three times, the applicant approached the Tribunal challenging the policy which provides written test as well as interview. Preliminary objection raised by the Ld. Counsel for the respondents is that the applicant has no right to challenge the procedure since he voluntarily appeared in the examination but failed to get success. Reference has been made to paragraphs 6 and 7 of the judgment rendered by the Delhi Court in W.P. (C) No. 8545 of 2014 decided on 05.12.2014 wherein it has been held as under:

*“6. Reference in this regard may be made to the decision of the Supreme Court in the case of Madan Lal Vs. State of J&K, reported as (1995) 3 SCC 486, wherein it was observed as below :-*

*“9. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. **It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla Vs.***

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Akhilesh Kumar Shukla [1986 Supp SCC 285:1986 SCC (L&S) 644:AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner". (emphasis added).

7. Similarly, in the case of Manish Kumar Shahi vs. State of Bihar reported as **(2010) 12 SCC 576**, while deprecating the conduct of the petitioner therein of challenging the process of selection after his name did not appear in the merit list, the Supreme Court reiterated the settled legal position, in the following manner:-

"16. We also agree with the High Court that after having taken part in the process of Selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. **The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the commission. This conduct of the petitioner clearly disentitled him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.**

Reference in this connection may be made to the

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*judgments in Madan Lal Vs State of J&K (1995) 3 SCC 486, Mrippati Nagaraja Vs. Govt of A.P. (2007) 11 SCC 522, Dhananjay Malik Vs. State of Uttaranchal (2008) 4 SCC 171, Amlan Jyoti Borooah Vs. State of Assam (2009) 3 SCC 227 and K.A. Nagamani Vs. Indian Airlines (2008) 5 SCC 515". (emphasis added).*

5. So far as the maintainability of the O.A. is concerned, whereby earlier decision of the Government laying down procedure for interview/test is concerned, the objection raised by the Ld. Counsel for the respondents seems to be correct. Since the applicant has approached the Tribunal after failing thrice in the test, he does not seem to have right to impugn the procedure policy that too after unsuccessful result in view of settled proposition of law.
6. Hence, we decline the interference with the procedure policy impugned by the applicant.
7. So far as submission of Ld. Counsel for the applicant that certain persons were permitted to appear in the test and given another fourth chance after nine and half years of service and fifteen years of service is concerned, it is disputed question of fact and we permit the applicant to approach the appropriate authority within one month from today with a representation and a certified copy of this order. If such a representation is made within the time stipulated, the appropriate authority shall decide the same within next three months with due communication to the applicant.

- 8. The O.A. is accordingly disposed of.
- 9. We clarify that we have not entered into the merits of the controversy with regard to additional chance given to other persons.

No order as to costs.

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**(Air Marshal Anil Chopra)  
Member (A)**

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**(Justice D.P. Singh)  
Member (J)**