

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 241 of 2021**Wednesday, this the 5<sup>th</sup> day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**DS-12301W Lt Col Suprita Chandel  
W/o IC-60828H Lt Col Sarthak Biswas  
12 AFDC AF Station, Agra

..... Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Director General of Dental Services (DGDS-2), IHQ of MoD (Army), AG's Branch, Room No-25A, 'L' Block, New Delhi – 110001.
3. Director General Armed Forces Medical Services, Ministry of Defence, 'M' Block, New Delhi – 110001.

..... Respondents

Ld. Counsel for the Respondents : **Shri Sunil Sharma**,  
Central Govt Counsel**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-

- “(a) This Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 15 Sep 2014 (Annexure A-19) and letter dated 09 Nov 2017 (Impugned Order) filed with the Original Application as and marked as Annexure A-27 being perverse and illegal.

- (b) This Hon'ble Tribunal may graciously be pleased to direct the respondents to relax the age criteria for applicant and duly consider her for a chance to appear in departmental examination for grant of permanent commission in Army Dental Corps for at least one chance.
- (c) The Honourable Tribunal may graciously be pleased to direct the respondents to grant permanent commission to the applicant in the light of judgment of Secretary Ministry of Defence vs. Babita Puniya.
- (d) This Hon'ble Tribunal may graciously be pleased to pass any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.
- (e) This Hon'ble Tribunal may graciously be pleased to award cost as deemed appropriate.”

2. Brief facts of the case are that applicant having a degree of Bachelor in Dental Surgery (BDS) was commissioned as a SSC officer in AD Corps on 10.03.2008 at the age of 27 years, 11 months and 28 days in terms of AI 15/79 as amended. The applicant availed two chances of Permanent Commission (PC) available to her within first 4 years of commissioned service as SSC officer in 2010 & 2011. Therefore, applicant became overage for her third chance falling in her 5<sup>th</sup> to 8½ years of service being above 30 years of age as per the extant policy in vogue. Being aggrieved with amended provisions of AI 37/78 and from denial of permanent commission, the applicant submitted a representation on 06.09.2014 to the office of DGAFMS which was rejected vide order dated 15.09.2014. Being aggrieved, the applicant has filed present Original Application to relax age criteria giving one chance

to appear in departmental examination for grant of permanent commission.

3. Learned counsel for the applicant submitted that applicant has a degree of Bachelor of Dental Surgery (BDS). She applied for grant of Short Service Commission (SSC) and received a Call up letter by office of DGAFMS on 24.09.2007 for SSB interview. The office of DGAFMS issued appointment letter to the applicant with terms and conditions of Army Instruction (AI) 15/79 as amended vide AI 2/85. Grant of Permanent Commission (PC) was however governed by terms and conditions of AI 37/78. On 23.06.2010, HQ 16 Corps (Med) forwarded AFMSF-2 (Medical Examination Report on entry) for grant of permanent commission to the office of DGAFMS (Dental-2). On 06.02.2012, DGAFMS issued a letter to Director General of Dental Services (DGDS) for grant of Permanent Commission to serving SSC officers of Army Dental Corps (ADC) and the name of applicant appeared at serial 15 of the nominal roll. On 15.11.2012, DGAFMS issued a letter to DGDS regarding extension of service to the applicant for another 5 years. On 04.03.2013, DGDS issued posting order of AD Corps officers, the name of applicant appeared at serial (h) of the posting order. The applicant was posted from MDC, Malad to MDC, Bareilly. On 20.03.2013, DGDS issued a letter to all Commands (Med) to forward medical examination report and make arrangement for clinical test and interviews. Applicant was however, not permitted to appear in the interview alongwith some other officers because

she became over age as stipulated in AI 37/78 as amended vide para 4 (a) vide letter dated 20.03.2013.

4. Learned counsel for the applicant further submitted that after posting to MDC Bareilly, the applicant developed some pregnancy related complications and proceeded on maternity leave w.e.f. 16.05.2013. During mid May/June 2013, some of the officers who were not given opportunity to appear for the clinical test and interviews filed OA No. 111/2013 before AFT (PB), New Delhi. The applicant could not file any case or become party to the case because of her complicated pregnancy, maternity leave and delivery of a new born baby. On 22.01.2014, AFT (PB), New Delhi granted one time relaxation in age to these officers vide their order dated 22.01.2014. Consequent to orders of AFT (PB), DGDS forwarded a letter dated 06.03.2014 to DGAFMS for grant of permanent commission to serving SSC officers. The name of the applicant did not appear in this letter as she was not a party of the Original Application. On 30.07.2014 posting of the applicant was received from MDC Bareilly to 202 MDC in J&K Sector. On 06.09.2014, aggrieved with the denial of permanent commission the applicant submitted a representation to the office of DGAFMS which was rejected vide order dated 15.09.2014 with a cryptic order. The respondents have failed to apply the ratio of the judgment vide order dated 22.01.2014 and 19.05.2014 passed by AFT (PB), New Delhi.

5. Learned counsel for the applicant further submitted that the Hon'ble Supreme Court has taken decision to extend the benefit

of court judgment to similarly situated persons whether or not they were parties to the original writ in **G.C. Ghosh vs. UOI** (1992) 19 ATC 94 (SC), dated 20.07.1998, **K.I. Shepherd vs. UOI** (Jt 1987 (s) SC 600), **Abid Hussain vs. UOI** (Jt 1987 (1) SC 147), **Amrit Lal Berry vs. CCE** (1975) 4 SSC 714 and **Inder Pal Yadav vs. Union of India** (1985) 2 SCC 648. A similar view has also been taken in the judgment of CAT, Bangalore in **C.S. Elias Ahmed and others vs. UOI & Ors** (OA Nos. 451 and 541 of 1991). The Hon'ble Apex Court in a recent judgment in **Secretary Ministry of Defence vs. Babita Puniya & Ors**, Civil Appeal No. 9367-9369 of 2011, decided on 17.02.2020, equivalent citations, **2020 AIR (SC) 1000, 2020 (2) SCT 207 and 2020 (3) SLJ 75** has given decision to grant permanent commission to all SSC officers. The applicant sent another representation to DGDS on 04.10.2017 regarding grant of permanent commission in the light of AI 15/1979 and also AI 37/1978 which stipulated three chances to appear for clinical test and interview. Since applicant has availed only two chances due to circumstances explained above, she requested for a third chance as a special case by relaxing the age criteria. The applicant was granted extension of service for another 4 years vide order dated 31.10.2017. On 09.11.2017, representation of the applicant was rejected by office of DGDS on the pretext that applicant does not meet the laid down criteria. From 18.06.2019 to October 2020, AFT Regional Bench, Lucknow was closed for COVID-19 and due to non availability of Judicial and Administrative Member, therefore, applicant could not file the Original Application.

6. Learned counsel for the applicant further submitted that terms and conditions of permanent commission in Army Dental Corps are enshrined in the AI 37/1978. Relevant para 4(a) & (b) of AI are reproduced below:

“(a) Candidates must not have attained 28 years of age on 31<sup>st</sup> December of the year of receipt of the application from them. This age limit may be extended up to 30 years by the Government of India on the recommendation of the AD Corps Selection Board in the case of candidates with additional Post Graduate qualifications.

(b) A candidate with previous commissioned service in the Army Dental Corps will be entitled to extension of the above age limits as given below :-

“Full period of previous reckonable service if such service was rendered while in possession of dental qualification recognized by the Dental Council of India (vide para 3 above).”

Accordingly, applicant appeared for first attempt in the year 2010 after completion of two years of service but not selected for grant of permanent commission. The applicant made a second attempt in the year 2012 but could not get selected. That as per policy in vogue the applicant was allowed to take her third and final chance only after completion of 5 years and before completion of 8 years of service. Therefore, the applicant was constrained to seek extension of service so as to complete her five years of service to avail her third chance. The applicant was granted extension vide communication dated 15.11.2012. The applicant was fully eligible to apply for third chance for permanent commission in terms of AI 37/1978 but the respondents all of a sudden in most arbitrary and perverse manner amended the provisions of AI 37/1978 on 20.03.2013. Para 4 (a) amended as follows :-

“(a) Candidates must not have attained 28 years of age on 31<sup>st</sup> December of the year of receipt of application from them. This age limit may be extended up to 30 years by the Government of India on the recommendation of the AD Corps Selection Board in the case of candidates with additional Post Graduate qualification.”

7. Learned counsel for the applicant further submitted that four SSC officers being aggrieved with amendment in AI 37/78 filed cases in AFT (PB), New Delhi which were decided in bunch vide order dated 22.01.2014 directing *“the respondents to consider the case of the petitioners who were eligible in the year 2012 but became ineligible in the year 2013 for grant of permanent absorption on account of amendment of policy after clubbing the selection of 2012 with 2013 and their case shall be considered in terms of the previous policy granting one time age relaxation”*. Based on the judgment of AFT (PB), AD Corps issued a policy letter dated 06.03.2014 for grant of SSC (PC) interview for the year 2012 & 2013 and therefore, consequent to the changes with regard to age, the applicant became ineligible for appearing in third and final attempt of seeking permanent commission. As per provisions contained in Para 6 of the aforesaid policy letter, officers who were eligible for 2012 vacancies were only given one time age relaxation and officers eligible for 2013 vacancies were not given age relaxation. The applicant on 06.09.2014 applied for grant of a chance to appear in examination for grant of PC for the vacancy of 2013 relying upon the judgments of AFT (PB) dated 22.01.2014 and 19.05.2014 but the same was rejected by the respondents vide order dated 15.09.2014 stating that one time age relaxation is to be given to the petitioners who filed OA No. 108, 111, 170 and

171 of 2013 in AFT (PB) and not to the applicant. He pleaded to relax age criteria giving one chance to the applicant to appear in departmental examination for grant of permanent commission.

8. Learned counsel for the respondents, in reply, submitted that applicant was commissioned as a SSC officer in AD Corps on 10.03.2008 at age of 27 years, 11 months and 28 days in terms of AI 15/79 as amended. The applicant availed two chances of DPC available to her within first 4 years of commissioned service as SSC officer in 2010 & 2011. Therefore, applicant became overage for her third chance falling in her 5<sup>th</sup> to 8½ years of service being above 30 years of age as per the extant policy in vogue. The terms and conditions of Permanent Commission (PC) in AD Corps are governed under AI 37/78, as amended, the terms and conditions of officers granted SSC in AD Corps are governed under AI 15/79, as amended. As per Annexure 'A' to AI 15/79, terms and conditions for PC, age limits, number of chances for departmental examination are as under :

**“Permanent Commissions.**

12. Officers granted Short Service Commission will be given two chances for taking up the departmental examination for permanent commission at any time after completion of two years SSC service and before completion of four years of service provided they fulfil the conditions of eligibility laid down in Army Instruction containing terms and conditions of service for grant of permanent commission in AD Corps”.

AI of 1979 dealing with terms and conditions of SSC officers in the Army Dental Corps, were amended vide corrigendum No. 15-16, issued on 01.08.1998, wherein Para 12 of Annexure 'A' to AI 15/79 was amended as under :-

“.....Officers granted Short Service Commission will be given three chances for taking up the departmental examination for permanent commission. Two chances will be given after completion of 2 years of service and before completion of 4 years of service and third chance in extended tenure after completion of 5 years of service and before completion of 8 years of service provided they fulfil the conditions of eligibility as laid down in AI 37/78, as amended”.

**“Age Limits.**

4. (a) Candidates must not have attained 28 years of age on 31<sup>st</sup> December, of the year of receipt of application from them. This age limit may be extended upto 30 years by the Govt. of India on the recommendation of the AD Corps Selection Board in the case of candidates with additional Post-Graduation qualification.

(b) A candidate with previous commissioned service in the Army Dental Corps will be entitled to extension of the above age limits as given below :-

Full period of previous reckonable service if such service was rendered while in possession of a dental qualification recognized by the Dental Council of India (vide para 3 above)”.

(MoD clarified that the term “previous commissioned service’ implied that the service rendered by an officer who has left AD Corps after a spell as SSC officer and again rejoined after a break and has applied for grant of Direct Permanent Commission).

9. Learned counsel for the respondents further submitted that para 4 of the AI was amended on 14.03.2013 vide amendment No. 8 which is reproduced as under wherein provision contained in earlier Para 4(b) was deleted :-

“Para 4 (a). Candidates must not have attained 30 years of age on 31<sup>st</sup> December of the year of receipt of application from them for Departmental Permanent Commission. The age limit is extended upto 35 years in respect of those candidates who are in receipt of PG qualification of Masters in Dental Surgery duly recognized by Dental Council of India, at the time of initial commission to Army Dental Corps.

Para 4 (b). Deleted.

10. Being aggrieved due to amendment in AI 37/78, 18 SSC officers filed petitions in AFT (PB), New Delhi and applicant was not a petitioner in those petitions. An officer is not entitled to be

absorbed permanent, if he/she has crossed the upper age limits. Holding this as intra-vires, in the order dated 22.01.2014, the AFT (PB) observed that *“a person who might have joined before completion of 28 years of age can seek permanent absorption before he attains 30 years of age on completion of two years service. In case he joins after completion of 28 years, he would be ineligible for seeking absorption as before completion of 30 years of age, he would be required to complete two years of service. In case he chooses to seek his absorption after crossing 30 years of age, he would not be entitled to seek permanent absorption”*.

11. Learned counsel for the respondents further submitted that AFT (PB), New Delhi vide its order dated 22.01.2014 partly allowed all the four petitions directing the respondents *“to consider the case of the petitioners who were eligible in the year 2012 but became ineligible in the year 2013 for grant of permanent absorption on account of amendment of policy after clubbing the selection of 2012 with 2013 and their case shall be considered in terms of the previous policy granting one time age relaxation”*. In compliance to order passed by AFT (PB), the Selection Board for grant of Departmental Permanent Commission for the vacancies of year 2013 was conducted in Sept. 2014 and 9 petitioners were granted one-time age relaxation. Any other officer, who were not petitioners to aforementioned Original Applications filed before AFT (PB), were not considered in terms of the order dated 22.01.2014. Thus, eligibility for the vacancies of the year 2013 was decided in accordance with the amended policy AI 37/78 and eligible SSC officers were called for appearing in clinical test and interview for

grant of Departmental Permanent Commission. As the applicant was not eligible for the year 2013 due to her age as on 31.12.2013 was 33 years and 9 months and she was not in receipt of PG qualification of Master of Dental Surgery at the time of initial commission to Army Dental Corps, her application was not considered.

12. Learned counsel for the respondents further submitted that a representation dated 06.09.2014 submitted by the applicant was scrutinized by the competent authority and it was found that applicant was overage in accordance with amended AI 37/78, hence the applicant was not called for clinical test and interview for the vacancies of the year 2013. He also said that none of the grounds taken by the applicant are tenable in the eyes of law and the same are liable to be rejected. The applicant is not entitled for any relief as per rules and therefore, Original Application is liable to be dismissed being devoid of merits.

13. Heard learned counsel for the parties and perused the material on record.

14. Having heard submissions of both sides and from perusal of records, we find that :-

- (a) The applicant was commissioned as a SSC officer in AD Corps on 10.03.2008 at the age of 27 years, 11 months and 28 days in terms of AI 15/79. The applicant availed two chances of DPC available to her within first 4 years of commissioned service as SSC officer in 2010 & 2011. Therefore, applicant became overage for her third chance

falling in her 5<sup>th</sup> to 8½ years of service being above 30 years of age as per the extant policy in vogue.

(b) The applicant was overage in accordance with amended para 4 (a) of AI 37/78, hence the applicant was not called for clinical test and interview for the vacancies of the year 2013.

(c) The benefit of age relaxation cannot be granted to the applicant in view of amended para 4 (a) of AI 37/78 as it can be extended upto 35 years in respect of those candidates who are in receipt of PG qualification of Masters in Dental Surgery duly recognized by Dental Council of India, at the time of initial commission to Army Dental Corps.

(d) The applicant was not a petitioner in those petitions filed before AFT (PB), New Delhi, therefore, applicant cannot be granted any relief with regard to relaxation of age limit which is clarified by AFT (PB) in its judgment dated 22.01.2014 that 'an officer is not entitled to be absorbed permanent, if he/she has crossed the upper age limits'. The benefit of age relaxation was granted to the petitioners of Original Applications who were eligible in the year 2012 but became ineligible in the year 2013 for grant of permanent absorption on account of amendment of policy after clubbing the selection of 2012 with 2013 considering the terms of the previous policy and were granted one time age relaxation.

(e) The benefit of judgment of **Babita Puniya** (supra) cannot be extended to the applicant since the facts and circumstances of the case are quite different.

15. In view of aforesaid observation, we are of the opinion that applicant is not eligible for age relaxation to appear in departmental examination for grant of permanent commission under the provisions of AI 37/78 being overage. The O.A. lacks merit, deserves to be dismissed. It is accordingly **dismissed**.

16. We also find that judgments relied upon by the applicant being either based on different facts and circumstances or overruled are of no help in the present case.

17. No order as to costs.

18. Pending Misc. Application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated : January, 2022

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