

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION NO. 36 OF 2016

Tuesday this the 15th day of January, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

M.K. Chandrasekharan (Lt Col Retd.)
Son of Shri M.K. Kochunny
Resident of House No. G.G.S. Marg, Dilkusha
Lucknow Cantonment
Lucknow (Uttar Pradesh)

..... Applicant

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

Versus

1. Union of India, through Secretary,
Ministry of Defence, Central Secretariat,
New Delhi-110001.
2. Director General of Armed Forces Medical Services, Ministry of
Defence, 'M' Block, New Delhi – 110011.
3. Director General of Medical Services (Army), Integrated
Headquarters of the Ministry of Defence, Adjutant General's
Branch, 'L' Block, New Delhi.
4. Commandant/Officer-in-Charge Records, Army medical Corps
Centre and College, Lucknow.
5. Brigadier Records, Army Medical Corps Records, PIN – 900450,
C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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 following reliefs:-

- “(a) Issuing / passing of an order setting aside the decision of the respondents as communicated vide letter dated 09.12.2014 issued on behalf of the Director General of Medical Services (Army) (Respondent No. 3) vide which claim of the applicant for re-fixation of the date of permanent commission and grant of consequential service benefits has been rejected.*
- (b) Issuing / passing of an order directing the respondents to reconsider the case of the applicant for re-fixation of the date of permanent commission and grant of consequential service benefits with effect from the date the same has been granted to the candidates who had applied in the year 1987 along with the applicant.*
- (c) Issuing / passing of any other consequential order or direction as this Hon’ble Tribunal may deem fit under the circumstances of the case.*
- (d) Allowing this Original Application with cost.”*

2. As per report of the Registry, there is delay of about 26 years and 03 months in filing this O.A. However, the said delay has been condoned by the Coordinate Bench of this Tribunal vide order dated 02.02.2016.

3. In brief the case of the applicant is that the applicant was enrolled in the Army Medical corps on 04.01.1978. He was subsequently promoted to the rank of Naik/Pharma and continued as such upto 29.12.1989 when he got permanent commission in the Army. As per practice in vogue in the year 1987, a letter was originated from the Army Medical Corps Record, Lucknow and circulated to all units of the Army Medical Corps inviting applications against the vacancies/quota of 1988 from eligible candidates. Having been eligible and qualified, the applicant had applied for permanent commission in the Army

Medical Corps (Non Technical) in the year 1987. He appeared before the Services Selection Board, Allahabad and had been selected. In the merit list prepared by the Board of 17 selected candidates, the name of the applicant was placed at serial no.10. The Board forwarded the select list with its recommendations to the Office of Director General of Armed Forces Medical Services for final selection/commission upto the required number, but the applicant was not given commission for the reasons best known to the authorities concerned, although the candidates placed at serial no.12th ,14th and 17th were given commission. In the year 1989 the applicant again applied for permanent commission and appeared before the Services Selection Board, Bangalore and again got selected for permanent commission in the Army Medical Corps (Non Technical). This time vide letter dated 21.12.1989 issued by the Office of Director General of Armed Forces Medical Services, Ministry of Defence, New Delhi the applicant was given permanent commission and accordingly, the applicant joined the service as a commissioned officer w.e.f. 30.12.1989. In the entire service career of about 36 years, the applicant has performed his duties and assignment with utmost dedication and devotion.

4. The grievance of the applicant is that despite being selected by the Services Selection Board and being placed at 10th position in the merit list, the applicant was not given commission for the reasons best known to the authorities concerned, although the candidates who were placed at lower merit list at serial nos. 12th, 14th and 17th positions, were granted commission.

5. Under similar situations, some candidates, who had appeared before another Services Selection Board in the year 1987, but could not get commission despite the fact that they were placed in merit list and recommended by the Board have challenged their illegal exclusion from getting commission which ultimately came up to the Hon'ble Supreme Court. Hon'ble Apex Court vide its judgment and order dated 09.09.1994 passed in Civil Appeals No.2352 of 1988 (Hav Virender

Singh vs Union of India & others) and 2363 of 1988 (Hav Hans Raj Sharma vs. Union of India & others) allowed the appeals and directed the respondents therein to grant permanent commission to the appellants from due date with all consequential service benefits including notional seniority and promotion. The benefits given by the Hon'ble Apex Court in the aforementioned judgment were further extended by the Principal Bench of this Hon'ble Tribunal vide judgment and order dated 28.07.2010 in T.A.No. 326 of 2009 (W.P.(C) No.7534 of 2009 (Shashi Kumar vs. Union of India & others) after its transfer from the Hon'ble Delhi High Court.

6. The grievance of the applicant is that two other candidates, namely Col Ashok Kumar and Col Mohan Singh, who were denied commission in 1987, but were commissioned in 1988 and 1989, respectively, have been extended such benefits and, therefore, on the basis of this discrimination, the applicant has raised his grievance for his promotion w.e.f. 1988, though this O.A. has been filed in the year 2016. It has also been argued that the judgment of the Hon'ble Apex Court in the case of Hansraj Sharma (supra) must operate retrospectively and the applicant is also entitled to the benefit of the same.

7. On behalf of the respondents, in the counter affidavit it has been pleaded that the Hon'ble Apex Court vide its judgment and order dated 09.09.1994 in Civil Appeal No.2563 of 1988 in the case of Hav/Clk Hansraj Sharma & others vs. Union of India has held as under :

".... Since the Department till 1987 adopted the practice of appointing candidates in order of merit on the recommendations made by the Board, and the procedure was altered from May, 1987 which did not apply to 1986 quota the respondents were not justified in not following the recommendation in the case of appellants and denying them permanent commission to which they were entitled by virtue of their selection."

8. It is further submitted that DGAFMS being the competent cadre controlling authority for AFMS has been vested with explicit power to

restructure the modalities of selection process in order to obtain the best possible select lot for the wider Service Interest. The notification issued vide DGAFMS letter no. 32433/PC/NT/87/DGAFMS/DG-1A dated 05.05.1987 clearly stated that AMC (NT) PC would be strictly based on the merit of the candidates depending on their performance in the SSB followed by selection interview by the board as constituted by DGAFMS if the candidates were otherwise eligible as per AI 69/76 as amended. It is a matter of record that till 1986 candidates recommended by the Service Selection Board were appointed by the Director General in accordance with merit as determined by the Service Selection Board. Thus no illegality whatsoever was committed by the respondents and no right infringed by the act of holding an interview after giving adequate notice to the petitioner for the wider service benefits. It is submitted that the applicant could not be selected as he could not find the place in merit list prepared after interview by SSB in accordance with the policy in vogue at that time.

9. The respondents have placed reliance on the pronouncement of Hon'ble High Court of Delhi in **Bhavneet Singh vs Union of India** vide order dated 05.12.2014, wherein the Hon'ble Delhi High Court has held as under :

".....it is settled law that if a candidate participates in the selection process without laying a challenge to the procedure adopted by the employer at the first available opportunity, then after being declared as unsuccessful in the results, he is barred from questioning the said process at a later stage.

*6. Reference in this regard may be made to the decision of the Supreme Court in the case of **Madan Lal v. 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. 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 v. 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 disentitles 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 judgments in **Madan Lal v. State of J&K** (1995) 3 SCC 486, **Marripati Nagaraja v. Govt. of A.P.** (2007) 11 SCC 522, **Dhananjay Malik v. State of Uttaranchal** (2008) 4 SCC 171, **Amlan Jyoti Borooah v. State of Assam** (2009) 3 SCC 227 and **K.A. Nagamani v. Indian Airlines** (2009) 5 SCC 515." (emphasis added)*

10. Regarding the applicant's case, it has been pleaded that the applicant had participated in the year 1988 without any protest and he has challenged the selection of 1988 after a long period of 26 years. The applicant was not only selected and got permanent commission in 1989, wherein same procedure of SSB interview as well as selection interview by the Board constituted by DGAFMS was followed and having been a

beneficiary of the same procedure, the applicant cannot question it at this belated stage. It has also been pleaded that the applicant had moved an application on 14.10.2014 wherein he has requested for grant of seniority w.e.f. 30.06,1988. In the abid application he has sought parity with the candidates of 1986 quota commissioned in the year 1987 which was granted to them pursuant to the Hon'ble Supreme Court order dated 09.09.1994. It has also been pleaded that the applicant has not claimed that he was part of the candidates who appeared for the 1986 quota and therefore, he was not entitled to any relief. Apart from it, the claim of the applicant is liable to be dismissed on the ground of delay and laches, as for the first time, the applicant claimed his promotion w.e.f. 30.06.1988 after a delay of more than 26 years.

11. In support of his submission, learned counsel for the respondents has also placed reliance on the pronouncement of the Hon'ble Apex Court in the case of **Union of India & others vs. A Durairaj** (2010 (14) SCC 389).

12. Before proceeding further, we would like to go through the judgment passed by the Hon'ble Supreme Court in the case of **Hansraj Sharma (supra)**, on which the entire claim of the applicant rests. The operative portion of the aforesaid judgment reads as under :

“In the result, these appeals succeed and are allowed. The respondents are directed to allow Permanent Commission in the Army Medical Corps (Non- Technical) to the appellants from the date it was granted to other candidates selected for 1986 quota. The appellants shall be entitled nationally to all consequential benefits including promotion and seniority, except the payment of back wages. It is, however, made clear that while determining seniority of the appellants the seniority or promotion given to any selected candidate who is already working on a promotional post shall not be disturbed. Parties shall bear their own costs.”

13. Thus, whatever direction was given by the Hon'ble Apex Court, was restricted only to the appellants in that appeal, who had challenged their denial of promotion. The unsuccessful candidates had approached

the Hon'ble High Court, which had rejected their claim and thereafter they preferred appeal before the Hon'ble Apex Court in the year 1988, but the appellant, who is claiming parity, has approached this Tribunal after a long lapse of 26 years. It is submitted on behalf of the respondents that the case of the applicant is entirely different because the person, in whose favour the judgment has been given by the Hon'ble Apex Court, were the candidate of 1986 batch, while the applicant was considered in 1988 and was finally commissioned in the year 1989. A document Appendix 'A' to the proceedings of the AMC Selection Board (Non Tech) Cadre No.32433/PC/NT-87 has also been placed before us, wherein the name of the applicant figures at serial no.12. It is informed by the learned counsel for the respondents that there were only 11 vacancies, therefore, the applicant could not get commission in the selection of 1988 and finally he was cleared in the year 1989. Hon'ble Apex Court in the case of **A Durairaj (supra)** has considered the late claims of promotion and the Hon'ble Apex Court has opined in Paras 13, 14 and 15 as under :

“13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection,

treating the date of rejection of the representation as the date of cause of action).

15. *This Court had occasion to examine such situations in [Union of India v. M.K. Sarkar](#) [2010 (2) SCC 58] and held as follows:*

“14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.

15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect.”

14. The argument of the learned counsel for the applicant that the judgment of the Hon’ble Supreme Court must operate retrospectively has no substance, because the judgment operates retrospectively unless and until there is an indication that it will operate retrospectively. Hon’ble Supreme Court in the case of **Kusumam Hotels Private Limited vs. Kerala State Electricity Board & others** (2008 (13) SCC 213) has considered this aspect and the relevant part of Para 36 is being reproduced as under :

“36. In our constitutional scheme, however, the statute or statutory direction issued thereunder must be presumed to be prospective unless an retrospectivity is indicated either expressly or by necessary implication. It is a principle of the rule of law. A presumption can be raised that a statute or statutory rule has prospective operation only.”

15. Thus, the submission of the learned counsel for the applicant has no substance. The applicant when he could not qualify for 1987 batch, the reason behind it was that he could not get his place on the basis of the interview conducted by the Service Selection Board. Since subsequently the said policy was set aside, therefore, now at this belated stage, i.e. after about 26 years, the applicant's claim that he ought to have been promoted at that point of time is a dead or too stale claim. Keeping in view the pronouncement of the Hon'ble Apex Court, referred to in the earlier part of the judgment, if such a plea is entertained at such a belated stage, then it will involve huge complications for the respondents and the entire seniority would be disturbed. Apart from it, a person, who has slept over his rights for about 26 years, cannot be permitted to invoke the same after such a huge delay. Simply because the delay has been condoned, that does not mean that the O.A. has to be allowed. It only means that it has to be considered on merit and while we consider the O.A. on merit, we do not find any case on merit.

16. The aforesaid view expressed by the Hon'ble Supreme Court applies in full force in the case of the instant case. The applicant is claiming parity with the persons, who have agitated their claims within a reasonable period and the same was considered, while the applicant was not even considered by the said Board. The applicant slept over his right and for the first time, he has approached this Tribunal after a huge lapse of 26 years. Apart from it, pronouncement of Hon'ble Apex Court in the case of **Hansraj** (supra) came in the year 1994. The applicant is challenging the selection board of 1987. As discussed in the earlier part of the judgment, the pronouncement of Hon'ble Apex Court cannot

operate retrospectively unless specifically or impliedly directed. So the applicant's claim on the basis of the said judgment has no substance. Even apart, the applicant is not entitled to the parity with the members of 1986 batch because the applicant was not part of 1986 batch. Therefore, we do not find any substance in this O.A.

17. This O.A. is absolutely devoid of merits, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : January , 2019.
PKG