



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 266/2020

Lt. Col. Eklavya Tak S/o Dr. P.c. Tak, Aged About 42 Years, R/o
Eklavya Sobhag Club, Civil Lines, Ajmer.

----Appellant

Versus

1. Union Of India, Through The Secretary, Ministry Of
Defence, New Delhi.
2. Director General Armed Forces Medical Services,
Integrated Hq, Ministry Of Defence (Army), M-Block, New
Delhi.
3. Director General Dental Services, Integrated Hq, Ministry
Of Defence (Army), L-Block, New Delhi.

----Respondents

For Appellant(s)	:	Mr. Kuldeep Kumar Shah
For Respondent(s)	:	Mr. Mukesh Rajpurohit, Dy.S.G. assisted by Mr. Uttam Singh Rajpurohit.

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI**

Judgment

Reportable

Reserved on 13/02/2025

Pronounced on 28/02/2025

Per Dr. Pushpendra Singh Bhati, J:

1. By way of this Special Appeal under Rule 134 of the
Rajasthan High Court Rules, 1952 read with Article 225 of the
Constitution of India, the appellant (writ petitioner) lays a
challenge to the judgment dated 26.02.2020 passed by the
learned Single Judge of this Hon'ble Court in S.B. Civil Writ



Petition No.1010/2019, dismissing the writ petition preferred by the appellant (writ petitioner).

2. Briefly put, the facts of the case are that the appellant was commissioned on 01.03.2006 as Short Service Commissioned officer (SSCO) in the Army Dental Corps (AD Corps). The said appointment of the appellant, as SSCO, was initially for a period of five years, extendable by further five years, followed by last extension of four years, i.e. total service tenure of 14 years.

2.1. The appellant was granted two extensions, and was continuing till passing of the impugned order and his term was to expire in the year 2020.

2.2. As per the Army Manual, amended from time to time, three opportunities, by way of a Departmental Examination for grant of Permanent Commission to an SSCO, were prescribed.

2.3. Being desirous and willing for grant of Permanent Commission, the appellant appeared in the requisite Departmental Examination, comprised of Clinical Test and Interview, in the years 2008, 2009 & 2011, in the meanwhile, but failed in all the said three attempts, thereby his opportunities to get the Permanent Commission as an SSCO, stood exhausted.

3. To be specific, a communication dated 10.06.1996 (Annexure-10 to the writ petition) was addressed by the Government of India, Ministry of Defence, New Delhi to the Director General, Armed Forces Medical Services, New Delhi, while endorsing a copy thereof to the Director General of Medical Services (Army), Director General of Medical Services (Navy) & Director General of Medical Services (Air Force), which was a



Policy with regard to 'Procedure to be followed by the AD Corps Selection Board For Selection of Officers for Appointment to Commission in the Army Dental Corps' (*henceforth referred to as 'Policy of 1996'*), to be followed, in particular, for selection of SSCO for Permanent Commission in the AD Corps.

3.1. While following the said policy and after examination of the contents of the Statutory complaint of the appellant submitted on 12.07.2016, it was observed in the order dated 11.04.2017 passed by the Under Secretary to the Government of India, Ministry of Defence that the claim of the appellant was devoid of merit as he did not make it to the merit list of the Departmental Examination when evaluated against the laid down criteria. It was also mentioned therein that the office's apprehension that he has not been granted Permanent Commission due to under assessment in the Delayed CR 2010-11 was misplaced, as the CR Profile was not included in the parameters considered by the Board for grant of Permanent Commission.

3.2. The appellant (writ petitioner) was aggrieved of the aforesaid order dated 11.04.2017 and the Policy of 1996 (to the extent of criteria adopted for departmental examination), the appellant has preferred the writ petition. As reflected from the record, the appellant was seeking consideration of his case for Permanent Commission on the basis of Policy dated 24.02.2012 forwarded vide letter dated 20.03.2012 i.e. Revision of Criteria for Grant of Permanent Commission to Short Service Commissioned Officers (*hereinafter referred to as 'Policy of 2012'*), while pointing out, amongst others, that the said Policy provides for consideration of



performance of the Officer, Special Achievements, Honours, Awards etc., but in contrast, the Policy of 1996 prescribes a single clear test criteria for the purpose of granting Permanent Commission to an SSCO. Thus, while impugning the aforesaid action on the part of the respondents and seeking consideration of his case in light of the Policy of 2012, the appellant has preferred the writ petition (registered as S.B. Civil Writ Petition No.1010/2019), which was dismissed by the learned Single Judge, vide the impugned order dated 26.02.2020.

4. Learned counsel for the appellant submitted that the impugned Policy of 1996 is discriminatory & irrational, inasmuch as it lays down a single clear test criteria for considering the case for grant of Permanent Commission to an SSCO, depending upon the assessment made by the Selection Board, while clearly ignoring the entire work experience, ACRs in particular, of an SSCO. While in contrast, as submitted by the learned counsel, the Policy of 2012 had a clear and specific mention about consideration of performance of the Office, Special Achievements, Honours, Awards etc. for the purpose of assessing the suitability or otherwise of an SSCO pertaining to grant of Permanent Commission.

4.1. Learned counsel further submitted that a single clear test criteria, in negation of the entire service record, cannot be said to be a proper manner & method of assessment for a person's (appellant-SSCO in the present case) suitability for the assignment (Permanent Commission in the present case), sought to be granted thereby, inasmuch as the said assessment is a one



single day assessment in contradistinction to the entire service record of the person/candidate concerned, which in the given circumstances, is not sustainable in the eyes of law.

4.2. Learned counsel also submitted that till the year 2017, the appellant was not knowing as to whether unlike the other Corps, no weightage is being given to the ACRs of an Officer for grant of Permanent Commission, while doing away with the Policy of 2012, which unlike the Policy of 1996 was a uniform, transparent and rational Policy, nor such criteria so specified was communicated to the appellant. Moreover, as per learned counsel, there was no cogent or justifiable reason available with the respondents to have applied the prescriptions of the Policy of 1996, in deviation from the Policy of 2012, and adopting an entirely different criteria, only qua the SSCO of AD Corps, for grant of Permanent Commission, while the Policy of 2012 was clearly in relation to both the purposes i.e. extension of services as well as grant of Permanent Commission, qua the SSCO.

5. On the other hand, Mr. Mukesh Rajpurohit, learned Deputy Solicitor General assisted by Mr. Uttam Singh Rajpurohit, appearing on behalf of the respondents, opposed the aforesaid submissions made on behalf of the appellant (writ petitioner).

5.1. Learned Deputy Solicitor General submitted that having exhausted, without any protest, objection or otherwise, all the three opportunities available to the appellant for establishing his suitability for grant of Permanent Commission in the AD Corps, as per the Policy of 1996 read with Army Instructions stipulating a procedure of tests & interviews, the aforesaid arguments



advanced on behalf of the appellant while relying on the Policy of 2012, are completely misplaced and thus, not worthy of any acceptance, in the given circumstances.

5.2. Learned Deputy Solicitor General further submitted that as per the Policy in vogue i.e. Policy of 1996, the ACRs are not considered as a criterion for evaluating an SSCO in the Departmental Examination for grant of Permanent Commission in AD Corps, and that, the assessment is purely on the basis of performance of candidate in Clinical Test, Oral Professional Test and Interview only, for preparation of the merit list; such assessment is done independently by each member of the Board in respect of the aforesaid Tests & Interview.

5.3. Learned Deputy Solicitor General also submitted that framing and application of the Policy of 1996 was well within the domain of the Government or the Appointing Authority for that matter, and thus, is not amenable to judicial review, more particularly, when the appellant has miserably failed to show that the same is arbitrary or prejudicial to the rights of any *bona fide* candidate. He further submitted that the respondents were well within their authority and rights to frame & apply the Policy of 1996, owing to the requirement of a particular Corp(s), and present challenge as laid by the appellant is nothing but a vexatious attempt to carve out a relief by placing reliance, amongst others, on the Policy of 2012, more particularly, after exhausting all his available opportunities to prove his suitability or otherwise for grant of Permanent Commission, while working as an SSCO in the AD Corps.



5.4. As against lack of knowledge about the criteria in question and non-communication thereof by the respondents, learned Deputy Solicitor General has drawn the attention of this Court towards para 16 of the impugned order dated 26.02.2020 passed by the learned Single Judge of this Hon'ble Court, which reads as under:

"16. The petitioner has set up a case that at the time of appearing in the departmental exams, he was not aware of the fact that the ACR's of the petitioner have no bearing whatsoever for the purpose of grant of Permanent Commission. This Court is unable to fathom such stand of the Petitioner inasmuch as a candidate is required to know at least the provisions concerned with such services and any future avenues. Ignorance of the provisions governing the recruitment in question cannot be a ground to lay challenge to the procedure of recruitment at such a belated stage, particularly when he has appeared thrice in pursuance of such policy."

Thus, as per learned Deputy Solicitor General, in the given circumstances, the appellant is now estopped from challenging the Policy of 1996, coupled with the apparent fact that he completely failed to show, amongst others, that the Policy of 2012, so far as the present issue is concerned, has superseded the Policy of 1996, and thus, the Policy of 2012 has no relevance and application so far as grant of Permanent Commission in AD Corps is concerned, as the said Policy regulates the grant of Permanent Commission / extension of services of serving SSCO of other Arms & Services Officers Commissioned under different Army Instructions.

6. Heard learned counsel for the parties as well as perused the record of the case.



7. This Court observes that apart from challenging the Policy of 1996, to the extent of criteria adopted for the departmental examination for grant of Permanent Commission to the SSCO in AD Corps, he has also sought a direction for consideration of his case for such Permanent commission on the basis of Policy of 2012.

8. This Court further observes that to substantiate the case of the appellant, the appellant tried to project the Policy of 1996, in contrast to the Policy of 2012, as discriminatory and irrational, having prescribed a single clear test criteria, while ignoring the ACRs, in particular. In support of the appellant's case, it has also been pleaded that after exhausting all the three opportunities in the years 2008, 2009 & 2011, it was only in the year 2017, that the appellant came to know about the said criteria in question, wherein his ACRs have no bearing whatsoever in the process of assessing the suitability for grant of Permanent Commission in AD Corps and that the complete assessment was depending upon the whims & wishes of the Selection Board.

9. This Court also observes that it is a settled proposition of law that "*Ignorance of law is no excuse*", and when the same is juxtaposed to the present perspective, it is an admitted fact that the appellant had participated in the process in question without any protest and/or objection, thrice, but it was only upon his being unsuccessful to make it to the merit list, as per the Policy of 1996, he has tried to portray the said Policy as irrational and discriminatory, so also prejudicial to the rights of the *bona fide* candidates, like the present appellant.



10. As per the settled position of law on the subject, the ignorance or lack of knowledge about the criteria governing the issue in question, is on the same pedestal as that of ignorance of law, which is not excusable and particularly, when at no point of time, prior to his unsuccessful attempts thrice which were apparently voluntary in nature, he laid any such challenge, as laid herein, and therefore, he is now estopped from making any attempt to persuade this Court to believe that it was only due to arbitrariness or otherwise on the part of the respondents, that he could not become aware about the criteria in question, thereby inducing confidence of this Court so as to make any interference, as prayed for, in the present appeal.

11. This Court is conscious of the legal jurisprudence that while considering validity, legality & correctness or otherwise, of any policy decision regarding personnel of Armed Forces taken by the Government, the Courts should refrain themselves from interfering with such Policy decision, unless the same is proved to be absolutely capricious and not being informed by any reason. This Court is also conscious of the settled legal position that neither it is in domain of this Court nor within the power of judicial review, to embark upon an enquiry to find out, whether a particular policy is better or a better policy could have been evolved.

11.1. In the present case, the appellant has clearly failed to establish in any manner whatsoever, that the impugned action of the respondents amounted to changing the 'Rules of Game' during continuation of the process in question, nor was he able to show that the impugned Policy or action of the respondents have caused



unwarranted prejudice to the lawful rights & interests of the candidates like the present appellant, qua the grant of Permanent Commission in the AD Corps. Thus, merely on count of the fact that at the behest of the appellant, without there being any strong legal ground, it has been urged that a different Policy (i.e. Policy of 2012) would have been fair, transparent, rational & logical, this Court does not feel inclined to strike down the Policy of 1996, qua the process in question, in the given circumstances, and also looking into the fact, which is writ large on the face of the record, that it would not be appropriate for this Court, to embark upon an enquiry that a better, fairer or wiser alternative (Policy of 2012 in the present case) is available, instead of the impugned Policy of 1996.

11.2. Thus, while agreeing with the well reasoned & detailed determination made by the learned Single Judge of this Hon'ble Court in the impugned order, this Court observes that the impugned Policy of 1996 framed and adopted by the respondents does not suffer from any legal infirmity, more particularly, when it is a settled legal proposition that legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. Moreover, no substantial ground has been raised on behalf of the appellant so as to persuade this Court to arrive at a conclusion that the impugned Policy of 1996 is arbitrary, discriminatory or prejudicial to the rights of any *bona fide* candidate, or the present appellant, for that matter, and rather, in accordance with the said Policy itself, the appellant has not only participated in the process in question, but also failed to make it



to the requisite merit, and thus, the learned Single Judge, in the impugned order, has rightly observed that the appellant is now barred by the principle of acquiescence, from laying and sustaining the present challenge.

12. In light of the aforesaid observations, this Court does not find it a fit case so as to make any interference in the impugned order dated 26.02.2020 passed by the learned Single Judge of this Hon'ble Court.

13. Consequently, the present appeal is **dismissed**. All pending applications stand disposed of.

(CHANDRA PRAKASH SHRIMALI),J (DR.PUSHPENDRA SINGH BHATI),J

SKant/-