

2. The appellant on 10.03.2008 was commissioned as a Short Service Commissioned Officer in the Army Dental Corps (AD Corps). She was at that time 27 years 11 months and 28 days of age. The regulation, as it then stood, entitled her to three chances for taking up the departmental examination for permanent commission. It also provided extension of age limit. The relevant clauses, namely, Para 12 of Army Instruction 15 of 79 and Para 4(a) and 4(b) of AI 37 of 78 read 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 fulfill the conditions of eligibility as laid down in AI 37/78, as amended.”

Paras 4(a) and 4(b) of Annexure ‘A’ to the AI 37/78

“(a) Candidates must not have attained 28 years of age on 31st December of the year of receipt of application from them. This age limit may be extended upto 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).”

(Emphasis supplied)

3. It is undisputed that the appellant could not qualify in the first two chances on completion of two years of service and four years of service respectively. On 15.11.2012, her services were extended for another five years. By 9th of March 2013 the appellant had completed five years of service and was eligible to avail of her third chance, subject to age relaxation up to the full period of reckonable service.

4. However, on 20th of March, 2013, amendments were carried out to clause 4(a) and 4(b) of AI 37 of 78 as amended in AI 15 of 79, inasmuch as, while Para 4(a) was amended, Para 4(b) came to be deleted. The amended Para 4(a) of AI 37 of 78 introduced on 20.03.2013, reads as under:

“(a) Para 4(a) of Annexure ‘A’ to AI 37/78

Candidates must not have attained 30 years of age on 31st December of the year of receipt of application form from them for Departmental Permanent Commission. The age limit may be extended up to 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.”

5. The net result was the appellant was deprived of her third chance since the extension was capped at 35 years and was confined to those who were in receipt of PG qualification of Masters in Dental Surgery on and from 20.03.2013.

6. According to the appellant, Officers similarly situated with the appellant who were also not given an opportunity to appear for the clinical test and interview, in view of the amendment, quickly moved applications before the AFT, Principal Bench in O.A. No. 111 of 2013 and batch of matters raising various contentions and contended that they have been wrongly deprived of availing the third chance for no fault of theirs. Though the amendments to the policy were upheld, the Principal Bench of the AFT granted relief in the following terms in the said batch of matters.

“35. The other contention of the learned counsel for the petitioners is that the Government can grant age relaxation in the given facts and circumstances of the case. It is trite that the Government has the power to relax the upper age limit if it is found that operation of the rule or policy has hardship on the persons working in the Corps. Nothing has been shown that the Government has no power to relax the upper age limit. Now coming to the question as to whether the operation of the policy has hardship, it would be seen that an exception was provided for SSC Officers for giving the benefit by extending the upper age limit. It is also admitted by the respondents in para-41 of their counter that one time age relaxation in the upper age limit has been granted in the case of an AMC officer who had joined as SSC Officer prior to the issuance of the impugned amendment. By deletion of para-4(b) some of the SSC Officers became ineligible for permanent absorption. The petitioners, who were working in the Corps continuously, expected to be given three chances to seek their permanent absorption. However, due to impugned amendment, they have been denied these chances. Therefore, as one time exception, the Government can relax the upper age limit in respect of those petitioners who have become ineligible on account of the impugned amendment.

36. In view of the above discussions, all the four petitions stand partly allowed with following directions:-

- (1) The impugned policy of 2013 is held to be *intra vires*.
- (2) A direction is issued to 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. Their case shall be considered in terms of the previous policy.

(3) A further direction is issued to the respondents to grant one time age relaxation in favour of the petitioners for seeking permanent absorption as has been done in the case of AMC officers who had joined as SSC Officer prior to the issuance of the impugned amendment. The entire exercise for consideration of the petitioners for grant of permanent commission shall be completed within a period of two months from the date of receipt of a copy of this order. The petitioners' case thereafter shall be considered by the ensuing Board for their permanent absorption in the Corps.”

7. According to the appellant, she could not join the applicants therein in the litigation as she was in her advance stage of pregnancy and while posted at Bareilly, she proceeded on maternity leave on 16.05.2013. The appellant delivered a child on 01.07.2013.

8. Consequent to the order of the Principal Bench, permanent commissions were granted to officers who were eligible prior to the amendment to avail a third chance but could not avail in view of the amendment of 20.03.2013. The appellant was not considered because she was not part of the Original Application.

9. A representation submitted by the appellant on 06.09.2014 did not yield any favorable result and was rejected with the following endorsement on 15.09.2014:-

“1. Ref advance copy of your application No DS-12301/05/2004 dated 06 Sep 2014.

2. As per directions of MoD communicated vide DGAFMS letter No12252/CC/AKJ/DGAFMS/LC dated 12 Aug 2014, hon'ble Armed Forces Tribunal (Principal Bench). New Delhi has granted 'one time' age relaxation in the eligibility criteria 'only to the petitioners'. Hon'ble AFT has further clarified that this order will not form a precedence.

3. For your info please.”

(Emphasis Supplied)

10. At the outset itself, we may say that the phrase “Only to the Petitioners” in the order rejecting the representation is patently erroneous. While the AFT Principal Bench granted relief to the petitioners, it did not prohibit the department from considering similarly situated persons. Another representation was disposed of on 9th November 2017, *inter alia*, on the primary ground that she did not meet the criterion. In the meantime, the appellant's services were further extended for a period of 4 years on 31.10.2017.

11. The appellant thereafter filed Original Application No. 241 of 2021 before the AFT, Regional Bench, Lucknow seeking relief similar to the ones granted to the batch of petitioners in O.A. 111 of 2013 by AFT, Principal Bench, New Delhi which attained finality. For the sake of completion of record, it should be mentioned that the appellant had in 2014 itself moved to the Armed Forces Tribunal by filing an application in Diary No. 1761 of 2014. However, the said application was withdrawn with liberty to move afresh. Thereafter, again she filed O.A. 70 of 2017 before the Principal Bench which was again withdrawn with liberty to move the appropriate Tribunal. It was thereafter that after making the representation on 4th October 2017 which was rejected on 09.11.2017 and after returning from the Arunachal Pradesh posting and further after the Covid-19 ordeal had reasonably subsided in January, 2021, she moved the AFT, Regional Bench, Lucknow by filing O.A. No. 241 of 2021, which has been dismissed by the impugned order.

12. The only reasoning given in the impugned order is in the following terms.

“(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.”

13. We have heard Ms. Vibha Datta Makhija, learned senior counsel for the appellant and Mr. R Balasubramanian, learned senior counsel for the respondents. Having considered the submissions of the learned counsels and perused the records, we are of the opinion that the appellant is entitled to parity with those applicants who succeeded before the AFT, Principal Bench in O.A. No. 111 of 2013. We say so for the following reasons.

14. It is a well settled principle of law that where a citizen

aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See *Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others*, (1975) 4 SCC 714]

15. In *K.I. Shephard and Others vs. Union of India and Others*, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:-

“19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners.”

(Emphasis Supplied)

16. No doubt, in exceptional cases where the court has expressly prohibited the extension of the benefit to those who have not approached the court till then or in cases where a grievance in personam is redressed, the matter may acquire a different dimension, and the department may be justified in denying the relief to an individual who claims the extension of the benefit of the said judgment.

17. That is not the situation here. In the submissions too, the respondents have not been able to point out any valid justification as to how the applicants who obtained the benefit from the AFT, Principal Bench in OA No. 111 of 2013 and batch are not identically situated with the appellant. Like the applicants who succeeded, the appellant was also ripe for the third chance before the amended para 4(a) of AI No. 37 of 1978 was introduced on 20.03.2013. The Principal Bench of the AFT in OA No. 111 of 2013 after clearly holding that the applicants therein were denied the third chance directed consideration of their cases for permanent absorption by granting one-time age relaxation by considering them

under the unamended policy.

18. The respondent authorities on their own should have extended the benefit of the judgment of AFT, Principal Bench in OA No.111 of 2013 and batch to the appellant. To illustrate, take the case of the valiant Indian soldiers bravely guarding the frontiers at Siachen or in other difficult terrain. Thoughts on conditions of service and job perquisites will be last in their mind. Will it be fair to tell them that they will not be given relief even if they are similarly situated, since the judgment they seek to rely on, was passed in the case of certain applicants alone who moved the court? We think that would be a very unfair scenario. Accepting the stand of the respondents in this case would result in this Court putting its imprimatur on an unreasonable stand adopted by the authorities.

19. The stand of the Department relying on the judgment of this Court in *State of Maharashtra and Another* vs. *Chandrakant Anant Kulkarni and Others*, (1981) 4 SCC 130 to contend that mere reduction in chance of consideration did not result in deprivation of any right does not appeal to us. The appellant's case

is founded on the principle of discrimination. What is sauce for the goose ought to be sauce for the gander. If the applicants in O.A. No. 111 of 2013 whom we find are identically situated to the appellant were found to be eligible to be given a third chance for promotion, because they acquired eligibility before the amendment to AI No. 37 of 1978 on 20.03.2013, we find no reason why the appellant should not be treated alike.

20. The order dated 13.03.2014 in the application for clarification of the AFT, Principal Bench, order of 22.01.2014 and the order dated 19.05.2014 in the review relied upon in the counter affidavit do not in any manner dilute the case of the appellant herein. In fact, the order dated 13.03.2014 fully supports the appellant since it extended the benefit to those persons who acquired the eligibility in 2013. As far as the order in review dated 19.05.2014 directing that there would be no dilution in the laid down criterion and the further direction that the order in review shall not form a precedent does not imply that the main order of 22.01.2014 of the Principal Bench, AFT, should not be extended to similarly situated

individuals like the appellant, who has been knocking the doors for relief since September, 2014.

21. We see no delay in the appellant approaching the Tribunal. The appellant has been seeking justice from 2014 and the only delay between 2017 to 2021 after the withdrawal of the earlier applications with liberty, was due to the fact that between August, 2017 and 2019 she was posted in Arunachal Pradesh and it was during this time that the appellant made a second representation. Thereafter, the period between March, 2020 and January, 2021 was on account of Covid-19 pandemic. In any event, since a clear case of discrimination has been made out, we do not want to non-suit the appellant on the ground of delay. We say so on the special facts of this case.

22. We also find that the appellant - a woman officer has continuously worked since 2007 and even as late as on 31.10.2017, she was granted extension of another four years of service, and she continues to be in service thereafter also on account of the status quo granted by this Court on 08.03.2022. Not only this, the

appellant was awarded Commendation Card by the Chief of Army Staff on 14.01.2019. It is also undisputed that the appellant has had a distinguished service and is now posted as Lieutenant Colonel in the Army Dental Corps at Agra.

23. We hold that the appellant was wrongly excluded from consideration when other similarly situated officers were considered and granted permanent commission. Today, eleven years have elapsed. It will not be fair to subject her to the rigors of the 2013 parameters as she is now nearly 45 years of age. There has been no fault on the part of the appellant.

24. On the peculiar facts of this case and since nothing adverse has been placed on record with regard to performance of the appellant, in exercise of powers under Article 142 of the Constitution, we direct that the appellant ought to be given Permanent Commission. We direct that the appellant's case be taken up for grant of Permanent Commission and she be extended the benefit of Permanent Commission with effect from the same date the similarly situated persons who obtained benefits pursuant

to the judgment dated 22.01.2014 in O.A. No. 111 of 2013 of the Principal Bench of the AFT. All consequential benefits like seniority, promotion and monetary benefits, including arrears shall be extended to the appellant. The above directions shall be implemented within a period of four weeks from today.

25. The appeal is allowed and the order of the AFT, Regional Bench, Lucknow, dated 05.01.2022 in O. A. No. 241of 2021 is quashed and set aside. No costs.

.....J.
[B.R. GAVAI]

.....J.
[K. V. VISWANATHAN]

New Delhi
December 09, 2024.