

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

M.A. No. 62 of 2018

WITH

O.A. NO. 86 OF 2018

DATED THE gth DAY OF MARCH, 2019.

CORAM :

Hon'ble Dr. (Mrs.) Justice Indira Shah, Member (J)

Hon'ble Lt Gen Gautam Moorthy, Member (A)

NR-18660A, LT Col (TS) Jyotsna Mondal
 Military Hospital, Ambala Cantt
 Haryana-133001.

.....APPLICANT

BY MR. S. K. CHOUDHURY, LD. COUNSEL

VERSUS

1. Union of India, service through the
 Through Secretary
 Ministry of Defence,
 South Block, D.HQ P.O.
 New Delhi - 110011.
2. The Chief of the Army Staff,
 Through Adjutant General
 IHQ of MOD (Army)
 D. HQ P.O. New Delhi-110011.
3. The Director General of Armed Forces Medical Services
 Directorate General of Armed Forces Medical Services
 Ministry of Defence
 South Block, New Delhi-110001.
4. The Director General of Medical Services (Army)
 Adjutant General's Branch
 Integrated HQ of MOD (Army)
 L Block, New Delhi-110011.

..... RESPONDENTS

BY MR. AJAY CHAUBEY, CENTRAL GOVT. COUNSEL

ORDER

**PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
 MEMBER (ADMINISTRATIVE)**

1. This is an application being O.A. 86 of 2018 filed Under section 14 of the Armed Forces Tribunal Act, 2007 praying for review of the reckonable CRs setting aside inconsistency or aberration in CRs, if any, and holding a Special Promotion Board in respect of the applicant.

2. Along with the O.A., the applicant has submitted a M.A. for condonation of delay of 3 months and 18 days in submission of the O.A. on the ground that the husband of the applicant was suffering from illness and the applicant was involved in arranging treatment for her husband.

3. The respondents have objected to both the M.A. and O.A. The main thrust of the affidavit-in-opposition to the M.A. is that the applicant has not sufficiently explained the delay of 3 months and 18 days. The counsel for the applicant had also argued that this delay should not be condoned in terms of Section 22 of the Armed Forces Tribunal Act, 2007.

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4. While considering the issue of condonation of delay, we are of the opinion that the reasons put forth by the applicant for the delay are genuine and hence the delay is liable to be condoned. The delay is accordingly condoned and M.A. 62 of 2018 is disposed of accordingly.

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5. The factual matrix of the case is that the applicant is a Nursing Officer who was commissioned in 1986 and was Major when she was considered for the rank of Lt. Col (Selection Grade) on 04.04.2014. She was, however, graded "NS" i.e. '*not selected for promotion*'. Consequently she submitted a statutory complaint on 1st July 2014. When that statutory complaint was being processed, the next Promotion Board of the applicant was held on 17.06.2015 and the applicant was graded again as "NS". Subsequently, on 23.09.2015, the applicant was granted relief in the statutory complaint submitted by her by way of a expunction of ACR-2006 and her selection for consideration for Lt. Col was again held on 03 March 2016 consequent to the expunction of this ACR 2006. However, she was again graded as "NS". Consequently the applicant again submitted a Second Statutory Complaint on 15.04.2016 which was registered by the Central Government on 08 August 2017.

6. The respondents' case is that despite setting aside of the ACR 2006 on the basis of the Statutory Complaint, the applicant could not be promoted to the next rank due to her being low down to be comparative merit. Paragraph 4 of the affidavit-in-opposition (Preliminary Submission) is set out as under ;

- (4). *Accordingly, with the amended profile she was reviewed by the Review Promotion Board (Med) No 4 (MNS) held on 03.03.2016 against the parameters of the Promotion Board (Med) No. 4 (MNS) held on 04.04.2014 (chance 1) & 17.06.2015 (chance 2). The applicant was again graded 'NS' by both the Review Promotion Board and also by the Promotion Board (Med) No. 4 (MNS) (Chance 3) held on the same day 03.03.2016. The comparative merits position of the applicant in the said promotion boards are as under :*

<i>Promotion Board (Med) No 4</i>	<i>Total Officers Considered</i>	<i>Merit position of Last empanelled</i>	<i>Merit position of The applicant</i>	<i>No of offrs with High merit to Applicant and not Empanelled.</i>
04 Apr 2014 (chance 1)	130	32	105	72
17 Jun 2015 (chance 2)	147	37	127	89
03 Mar 2016 (chance 3)	145	39	116	76

<i>Review Promotion Board (Med) No</i>	<i>Reviewed against The Original Board held on</i>	<i>Result</i>	<i>Revised merit position</i>	<i>No of offrs with higher Merit to applicant and Not empanelled after Review.</i>
03 Mar 2016	04 Apr 2014	NS	64	31
	17 Jun 2015	NS	58	20

8. The respondents have also produced the following judgements as under ;

- (A) In C. Jacob Vs. Director of Geology and Mining and Anr., reported in (2008) 10 SCC 115 held that "a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled any Indulgence".
- (B) Noharlal Verma Vs. District Coperative Central Bank Ltd. Reported in AIR 2009 SC664 held that in case of suit, appeal or application is beyond the limitation, court of adjudicating authority has no jurisdiction to entertain the same.
- (C) State of Rajasthan Vs. Chanda @ Chandkori & Ors. reported in 2007 (11) SCC402, held that in case delay caused grave injustice to parties ordinarily it should not be condoned.
- (D) Nasiruddin & Ors. Vs. Sitaram Agrawal reported in 2003 (2) SCC held that the real intention of the legislature must be gathered from the language used.

9. Having regard to the judgements presented by both the parties, the point comes to light is that although the AFMS maintains a closed system, there is no reason to doubt that Selection Boards were not done in accordance with the policy and that Selection Boards would have been biased against the applicant in some manner or the other. From paragraph 4 of the Affidavit-in-Opposition it seen that even after

setting aside of the entire ACR of 2006, when the applicant was considered by the Review Selection Board on 03.03.2016, her revised merit position against the Original Board held on 04.04.2014 was 64 and in the review done by the Second Board on 17.06.2015 was 58. What is germane to the averment is that in the first instance, despite setting aside of the entire ACR 2006, there were 31 officers higher in merit to the applicant who were also not empanelled. After the review in the second instance there were 20 officers higher in merit to the applicant who were also not empanelled. Therefore, we observe that the applicant was significantly lower in the merit list and hence was not approved for promotion despite grant of a redress.

10. It is well-known that in the Armed Forces there is a Pyramidal structure in selection grade ranks. A number of officers who have done well in the service do not get selected not because of poor reports or adverse remarks and such like reasons, but simply because they are not able to make it to the select list because of lesser number of vacancies.

11. Even in this case, in the first instance, out of total of 130 officers who were considered, only 32 officers were empanelled while in the second instance out of 147 officers considered, only 37 were empanelled. Hence, even with the revised merit position of the applicant moving up from 105 to 64 in the first instance and from 127 to 58 from the second instance she falls well behind the merit position of 32 and 37 respectively and accordingly, was not selected.

12. Thus, there are no grounds whatsoever to uphold the contention of the applicant and grant the reliefs sought.

13. This O.A. is accordingly dismissed with no order as to costs.

14. A plain copy of this Order to be supplied to both parties by the Tribunal Officer upon observing all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)