



Wg Cdr Manishi Bharti v. Union of India, (AFT)(Regional Bench Chandigarh At Chandimandir) :  
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## ARMED FORCES TRIBUNAL

(Regional Bench Chandigarh At Chandimandir)

Before:- Mr. Justice Dharam Chand Chaudhary, Member (J) and Vice Admiral HCS Bisht, Member (A).

OA 610 of 2015. D/d. 20.10.2022.

Wg Cdr Manishi Bharti - Applicant

**Versus**

Union of India and others - Respondents

For the Applicant:- Mr. GS Ghuman, Advocate.

For the Respondent:- Mr. FS Virk Sr PC.

**Cases Referred :-**

[Annie Nagarajav. Union of India, 2016 \(2\) SLR 525](#)

Major Abhishek Singh v. Union of India

[Parmender Kumary. State of Haryana, 2012 \(1\) SCC 177 : 2012 AIR SC \(Civil\) 151](#)

[Ram Pravesh Singh v. State of Bihar \(2006\) 8 SCC 381](#)

Secretary, Ministry of Defence v. Babita Puniya, CC No.10437 of 2010

[Union of India v. Hindustan Development Corporation \(1993\) 3 SCC 499](#)

Wg.Cdr.Surender Singh v. Union of India, OA No.224 of 2013

## ORDER

**Justice Dharam Chand Chaudhary, Member (J).** - The applicant, herein, is Bachelor of Medicine and Bachelor of Surgery (M.B.B.S). Her degrees/ certificates are Annexures P-1 to P-3. The respondents invited applications from young Doctors for joining Army Medical Corps (AMC) vide Advertisement Annexure P-5 where last date for submitting applications is 15.04.2000. Incidentally, the applicant has filed an incorrect advertisement where last date for receipt of completed applications there-under is 10.02.1997. The applicant was appointed vide Appointment Letter dated 31.05.2001, Annexure P-5. She made an application for her selection consequent upon the advertisement so made by the respondents. She was selected and granted "Short Service Commission" in the Army Medical Corps Batch-2000 vide Appointment Letter dated 31.05.2001 (Annexure P-5). She being a "Short Service Commissioned Officer" was directed to report for duty in the office of the Commandant/Commanding Officer of 105 HU C/O Air Force Station, Gorakhpur on



06.06.2001. She was granted "Short Service Commission" in terms of the conditions of service as laid down in Army Instructions 75/78 for a period of five years in the first instance. Her tenure was extended for a further period of 10 years at the discretion of the 3rd respondent. As per further terms and conditions of service as "Short Service Commissioned Officer", she was eligible on completion of two years of service as such to apply for "Departmental Permanent Commission". She was given the extension on completion of five years of her service w.e.f. 06.06.2006 for a further period of four years. Later on, another extension of four years as "Short Service Commissioned Officer" was granted to her in the year 2011. The tenure of the applicant as a "Short Service Commissioned Officer" therefore stood extended up to 06.06.2015. She during the course of her service had taken part in "OP Parakaram" and served in remote parts of the country like Tezpur in the State of Assam. She accomplished all professional assignments entrusted to her successfully and always received appreciation from her superiors.

2. As per Instructions and she being eligible applied for "Permanent Commission" in December,2003 and June,2005. She, however, could not be selected being not in merit. As per terms of her appointment, she was left with one more chance to apply for "Permanent Commission". The respondents had invited applications from "Short Service Commissioned Officers" for "Permanent Commission" on or before 01.11.2009 as is apparent from the impugned Order-3, which reveals that in place of earlier criteria, new age criteria came to be introduced prescribing thereby the age limit of 30 years for a M.B.B.S "Short Service Commissioned Officer". Though, she had forwarded her application for the grant of "Departmental Permanent Commission" duly completed on 27.02.2009. The same was forwarded by the Unit Commander also vide letter dated 27.02.2009, Annexure P-7. However respondent No.2 had not called the applicant for interview for the reason "Overage" qua which she was informed vide impugned Order-2. She, therefore, was denied third chance to appear before the Selection Board for grant of "Departmental Permanent Commission" to her detriment. The applications were invited from "Short Service Commissioned Officer" for grant of her Departmental Permanent Commission in Army Medical Corps vide letter dated 25.07.2006 The eligibility criteria prescribed in the said communication reads as follows:-

- (i) Should have completed minimum two years of service as a Short Service Commissioned Officer;
- (ii) Should have not completed 9 ½ years of service as a Short Service Commissioned Officer;
- (iii) SSC Officers are allowed three chances at any time after completion of two years and before completion of 9 ½ years SSC service subject to fulfilment of other eligibility criteria as laid down in AI 74/76 as amended, subject to the condition that not more than two chances shall be given in one tenure of 5 years;
- (iv) The second tenure of five years is granted (i.e. after initial contractual 5 years tenure) should be done without break. Those officers who join AMC/SSC again after a break, irrespective of number of years of SSC service will not be eligible for PC"

3. The complaint is that the applicant has wrongly been denied to avail third chance for grant of "Permanent Commission" to her. She, therefore, made a representation Annexure at P-9 against rejection of her candidature for "Permanent Commission". The same was rejected on the following grounds:-

"That the applicant had forwarded a non-statutory complaint to the respondents, regarding rejection to grant her departmental permanent commission in the Army Medical Corps, on the



ground "the officer has already availed two chances for grant of PC but was not able to qualify due to comparative merit. The officer does not fulfil the age criteria and was hence not eligible to be considered for grant of DPC by AMC PC selection board held in June 2009".

4. The applicant, thereafter, served the respondents with legal notice dated 11.04.2015, Annexure P-10. The same was forwarded to respondent No.3 by Director General Medical Services (AI) Headquarters, New Delhi, for necessary action vide Annexure P-1.

5. As per further case of the applicant, the respondents had issued Army Instructions 75/78 (Annexure P-12) which govern the terms and conditions of service of the officers granted "Short Service Commission" . The Chief of Air Staff, Air Headquarters, New Delhi, vide AFO 130 dated 16.12.1978 (Annexure P-13) has enunciated the terms and conditions of service of officers granted "Short Service Commission" in the Army Medical Corps . Respondent No.1, however, without considering the legal notice of the applicant in accordance with the Instructions and law applicable, has issued order of release from service vide Impugned Order-1 (Annexure P-10) w.e.f. 06.06.2015.

6. It is in this back-drop and on the ground inter-alia that the eligibility criteria not applicable in her case for the grant of "Permanent Commission" being prospective, has sought the following reliefs to be granted:-

(a) to quash and set aside the impugned Order-I and impugned Order-5 being violative of Army Instructions and terms and conditions of her service governing her appointment as a "Short Service Commissioned Officer" ;

(b) to quash and set aside the condition of upper age limit i.e. 30 years in a case of M.B.B.S candidate a condition precedent for appearance before Departmental Selection Board introduced vide impugned Order -3 and impugned Order-4;

(c) the respondents be directed to consider the case of the applicant for "Permanent Commission" by holding Special Departmental Selection Board denovo for grant of "Permanent Commission" to her ;

(d) that the data sheet handed over to the Special Selection Board along-with the dossier and service record of the applicant be produced before this Tribunal;

(e) any other and further order or direction deem fit and proper in the given facts and circumstances of the case have also been sought to be passed against the respondents.

7. The respondents when put to notice have contested the claim of the applicant, however, only on the ground that she could not be considered for grant of "Permanent Commission" in the year 2009, pursuant to her application dated 27.02.2009, Annexure P-7 (Colly) as by that time, she had become "Overage". The rest of the averments in the Original Application have, however, have not been disputed.

8. In rejoinder, the applicant has denied the contentions to the contrary in reply being wrong and reiterated the entire case as set out in the Original Application.

9. On completion of the record, we have heard learned counsel representing the parties on both sides and also gone through the record as well as the Rules/Regulations as applicable and the law laid down by various Courts of law including the Principal Bench of this Tribunal.

10. The only question arises for determination in the present is as to whether the criteria for grant



of "Departmental Permanent Commission" as notified in the advertisement made for appointment of "Short Service Commissioned Officers" can be altered to the detriment of officers selected when it was not in existence at the time of advertisement of vacancies and the selection made?.

11. The answer to this poser in the light of the settled legal principles and also the given facts and circumstances of this case would be in negative. Meaning thereby that the guidelines for "Departmental Permanent Commission" prescribed in the advertisement could have not been changed subsequently to the detriment of the "Short Service Commissioned Officers" like the applicant selected at a stage when the same was not in existence.

12. In order to strengthen the conclusion so drawn by us, we would like to draw support from the law laid down by the Hon'ble Supreme Court, High Court and this Tribunal also. The Apex Court in *2012 (1) SCC 177= 2012 AIR SC (Civil) 151 titled Parmender Kumar and Ors v. State of Haryana and Ors*, though in different context (i.e. the eligibility condition for admission in Post Graduate Courses) has held that the eligibility criteria provided in the prospectus will only be relevant for the purpose of grant of admission and any Government Order prescribing certain criteria at a later stage introducing thereby change in the criteria prescribed in the prospectus, has to be ignored and the admission given on the basis of the criteria which alone was in existence at the time of inviting applications for the purpose. This judgment read as follows:-

"23.As has been pointed hereinbefore, this Court took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the Government Orders already in force and the prospectus." After ignoring the offending notification introducing a change at a later stage". In fact, this is what has been contended on behalf of the Appellants once the process of selection of candidates for admission to the Post Graduate and Diploma Courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government Orders to alter the provisions contained in the prospectus. If such Government Orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the result had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates who had already been selected, an opportunity of admission in the aforesaid course. It is no doubt true that the benefits of admission in the reserved category are many, but the same is the result of the policy adopted by the State Government to provide for candidates from the reserved category and since the Appellants had been selected on the basis of merit and keeping with the results of the written examination, the submission made by Mr.Patwalia that such admission in the reserved category will have to be made keeping in mind the necessity of upholding the standard of education in the institution, as was observed in Mamata Mohanty's case (supra), is not applicable in the facts of this case. The Appellants have shown their competence by being selected on the basis of their results in the written examination. The submission made by Mr.Vikas Singh, for the State, that the NOCs had been given to the Appellants from the open category, also does not appeal to us, since the Appellants were candidates in respect of the reserved category of the HCMS".

13. Now coming to the order dated 15.04.2015 passed by the Principal Bench of this Tribunal in *OA No.224 of 2013 titled Wg.Cdr.Surender Singh v. Union of India and Ors* (Annexure A-16) to the rejoinder involving identical questions of law and facts, the same was allowed and the respondents directed to grant one chance of consideration for the grant of "Permanent Commission"



to the petitioner. As a matter of fact, in that case also, the facts were similar because like the applicant herein, the applicant in that case was also appointed as "Short Service Commissioned Officer" in the year 2003 on applying the similar criteria that he would be eligible to apply for "Departmental Permanent Commission" provided he has not attained the age of 30 years by 31.12.2003 on completion of two years of service as such and up to 9 ½ year of service rendered by him in the capacity of an officer, however, when he applied for the grant of Commission, his candidature was rejected on the ground of being "Overage" like the applicant herein.

14. The Delhi High Court in *Annie Nagaraja and Ors v. Union of India and others, 2016 (2) SLR 525* has quashed the impugned order denying thereby the "Permanent Commission" to the petitioners and rather granted extension as "Short Service Commissioned Officer" to them who stood retired during the pendency of the writ petition and directed the respondents to grant "Permanent Commission" within a period of six months of course subject to the final outcome of S.L.P i.e. *CC No.10437 of 2010 titled Secretary, Ministry of Defence v. Babita Puniya and Anr.* Now coming to the factual matrix.

15. The advertisement against which the applicant was selected as "Short Service Commissioned Officer" as per the version of the respondents is at Annexure R-5. The same is dated NIL The applications thereby for selection as "Short Service Commissioned Officer" in the Army Medical Corps were invited by 15.04.2000. The criteria for promotion provided in the advertisement Annexure R-5 reads as under:-

"PROMOTION:SS officers are eligible for promotion up to the rank of Major only as they have service liability for a tenure of 5 years extendable to 10 years. However, on completion of 2 years service as SSC officer, they are eligible to apply for Departmental Permanent Commission provided they join AMC before attaining the age of 30 years (32 years for Post Graduates) Permanent Commissioned Officers are eligible for time scale promotion upto the rank of Lt.Col. and thereafter by selection up to the rank of Lt.General".

16. Meaning thereby that the applicant and other similarly situated officers were made to understand that on completion of 2 years of service as "Short Service Commissioned Officer", they will be eligible to apply for Departmental Permanent Commission provided they join the Army Medical Corps before attaining the age of 30 years (32 years for Post Graduates).

17. The applicant had admittedly availed two chances but being not on merit on both the occasions could not be selected. She, therefore, made another application dated 27.02.2009, Annexure P-7 (Colly) for grant of "Permanent Commission" in the suitability test which was conducted in the last week of June, 2009. Her candidature, however, was rejected and the reason therefor conveyed to her vide impugned Order-2 dated 18.06.2009.

18. The applicant against the rejection of her candidature made representation and also served the respondents with legal notice dated 11.04.2015, Annexure P-10. Reply to the legal notice pursuant to the orders passed in this application on 29.08.2018 and 24.05.2019 now stands placed on record. A perusal thereof reveals that the applicant having been commissioned on 06.06.2001 pursuant to the advertisement Annexure R-5 published in the year 2000, was eligible for "Departmental Permanent Commission" on completion of 2 years of service as "Short Service Commissioned Officer" provided that she joined the Army Medical Corps before attaining the age of 30 years (32 years for Post Graduates) . This criteria was, however, amended by Government of India, Ministry of Defence letter No.34528/DPC/DGAFMS/DG-1A/2493/D (Med) dated 21.09.2001. She applied for her consideration to the grant of "Departmental Permanent Commission" in December, 2003 and June 2005 and being



eligible on both the occasions as per the eligibility criteria in vogue was considered and called for interview. However, she could not qualify in the interview both times having scored less than 50% marks. The criteria like number of chances and the service units have to be availed by an officer for grant of "Departmental Permanent Commission" is governed by para 12 of Army Instructions 75/78 as amended from time to time subject to fulfilment of the age criteria laid down in the Army Instructions 74/76 from time to time and in force since 1976. The advertisement Annexure R-5 that an officer will be entitled to the grant of "Permanent Commission" on completion of 2 years of service provided he/she joins the Army Medical Corps before the age of 30 years with the qualification as M.B.B.S and 32 years for Post Graduates published wrongly being at variance with the Army Instructions 74/76 which provide that a candidate must be below the age of 30 years and 35 years at the time of applying for "Departmental Promotion Commission" .

19. We feel that had this been the criteria, the applicant could have not availed first and second chance also in the year 2003 and 2005. She being born on 07.11.1971 was above 30 years of age that she was considered on both the occasions for the grant of "Permanent Commission". Otherwise also, one special chance was given to those selected as a "Short Service Commissioned Officers" pursuant to the advertisement up to December 2007 vide advertisement (s) published with above said ambiguity, the applicant could also have been granted the third and last chance as a special case.

20. There is no nexus between the object sought to be achieved by allowing only those "Short Service Commissioned Officers" who had not availed even a single chance of consideration for grant of "Permanent Commission" and not to the applicant and other similarly situated persons. It is for this reason that the Principal Bench of this Tribunal in Wg.Cdr.Surender Singh case cited supra and its connected matters the lead case whereof was *Major Abhishek Singh v. Union of India and others*, while disagreeing with the explanation that the special chance was given only to those who could not avail even a single chance for "Permanent Commission", directed the respondents to extend the benefit of special chance to the Original Applicants also. The judgment is Annexure P-14 to this application

21. Not only this but the instructions that the special chance had to be given only up to the year 2010 and not thereafter were also held illegal, arbitrary and violative of Article 14 of the Constitution of India . The relevant portion of the order Annexure P-14 passed in Major Abhishek Singla's case cited supra reads as follows:-

24. What is being construed and contended by the petitioners is that AI37/78 itself conferred right on the petitioners to seek their permanent absorption after fulfillment of the laid down criteria. This by itself does not assure the petitioners absorption unless the laid down eligibility criteria are satisfied. The connected question which falls for consideration is as to whether the petitioners have a vested right to be absorbed permanently and what is the nature of that right?

25. While addressing on this question, it is trite that the State has to power to lay down the eligibility criteria and qualification for any post required to be filled up. It has also the power to change the criteria. The only impediment is that while changing the criteria any existing right of a person should not be disturbed which violates his fundamental right. The admitted legal norms postulate that the right of consideration cannot be taken away. The right of consideration is a right which is derived from Article 14 and 16 of the Constitution. Any legislative or executive order in this context will always be subject to the judicial review. Applying this principle in the present context, what is being contended by the petitioners is that on account of deletion of para 4(b) of AI 37/78, by not allowing them the benefit of



services rendered by them as SSC Officers. They have been denied their right for seeking relaxation in upper age limit. Admittedly, this position did exist before the deletion of para 4(b) which provided for giving the benefit of full serviced rendered by the SSC Officers in the matter of relaxation in the upper age limit . By deleting para 4(b) the petitioners have been denied the right of seeking permanent absorption in the Army Dental Corps. Undoubtedly, the petitioners right of consideration has been mitigated on this count. However, vide impugned amendment, the upper age limit has been extended to 30 years in respect of the BDS cadre and 35 years in respect of those candidates who are possessing PG qualification of Masters in Dental Surgery duly recognized by Dental Council of India. Therefore, it cannot be said that there is a total diminution of their right of consideration. All that has been done by the said amendment is that it has reduced the chances of seeing permanent absorption in respect of those candidates who seek permanent absorption after attaining the age of 28 years. It is not a case where the right of consideration as a whole has been denied to the petitioners. There might be some persons who may have fulfilled the conditions in terms of the impugned amendment. Therefore, a clear demarcation is to be made between the two where there is a total denial of consideration and where there is a reduced chance of consideration. Therefore, it cannot be said that the impugned amendment has denied the petitioners chance of consideration. The contention of the respondents in this behalf is that any policy relating to induction, retention, posting, career enhancement, release/ resignation is uniformly followed by the office of DGAFMS without any discrimination amongst the officers belonging to the three services. The existing policy has been applied uniformly to all similarly situated officers by the competent authority without any discrimination or prejudice.

26. It is settled principle of service jurisprudence that the exercise of administrative discretion must always be guided by standards or norms so that it does not degenerate into arbitrariness and operate unequally among the persons similarly situated. It is not the case of the petitioners that the amended Army Instructions have been applied arbitrarily or it is discriminatory in any manner. All that the amendment contemplates is that it has done away with the practice of giving the benefit of service rendered as SSC Officers in the matter of granting relaxation in the upper age limit. As a matter of fact, the upper age limit has been enhanced from 28 to 30 years in case of the Doctors who are possessing Graduation Degrees and from 30 to 35 years in case of the Doctors who are possessing Master Degree. The policy has been issued looking to the fact that SSC Officers might be affected by the policy, therefore, the benefit has been given to them. What is actually contemplated by the impugned policy is that it has done away with the practice of granting the benefit of previous services rendered by the SSC Officers in the matter of relaxation in the upper age limit. Therefore, it cannot be said that the right of consideration has been taken away. By deleting para 4(b) the concession granted to the SSC Officers, who had rejoined after quitting the service has been taken away and they have been brought at par with the SSC Officers who are serving in the present spell. Therefore, it cannot be said that the deletion of para 4(b) is discriminatory in nature.

27. Learned counsel for the petitioners has placed reliance upon a judgment of the Hon'ble Apex Court in *Ram Pravesh Singh & Ors v. State of Bihar reported in (2006) 8 SCC 381* wherein it has been observed as under:

"What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that



is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle and expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

28. The learned counsel for the petitioners has further placed reliance on a judgment of the Hon'ble Apex Court in *Union of India v. Hindustan Development Corporation reported in (1993) 3 SCC 499* wherein the Hon'ble Apex Court explained the nature and scope of the doctrine of "legitimate expectation" as under:

"For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

29. The Hon'ble Apex Court in the case of Hindustan Development Corporation (supra) has also explained the remedies flowing by applying the principle of legitimate expectation as under:

"It is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the





administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors."

30 The import of both the judgments clearly reflects that an expectation of a benefit must flow from a promise or established practice. The judgments also contemplate that a legitimate expectation even when made out, does not always entitle the expectant to a relief Public interest, change in Policy, conduct of the expectant or any other valid or bona fide reason given by the decision maker may be sufficient to negative the legitimate expectation. In this behalf the contention of the learned counsel for the petitioners is that in terms of the Government Order issued by the respondents, the petitioners had the right to be given, three chances which has been denied to them by the impugned policy. The earlier policy did not promise an automatic absorption in the department. It is always subject to satisfying the laid down eligibility criteria. This right has not been taken away by issuance of the impugned policy. By satisfying the requirement of the policy i.e. by having not crossed the upper age limit of 30 years, they will be entitled to get three chances for seeking permanent absorption. Therefore, it is wrong to say that their legitimate expectation of getting three chances has been taken away by the impugned policy. It is admitted case of the petitioners that the absorption was not as a matter of right but on fulfilling the laid down criteria which includes the upper age limit provided therein. The respondents, while effecting the change in the policy, did not violate any right of the petitioners. What has been stated herein supra is that the grant of three chances did not lead to an automatic absorption. The petitioners in terms of the earlier policy were required to apply for permanent commission while they had not crossed the upper age limit of 28 years. In terms of the impugned policy, they were entitled to seek permanent absorption before they had crossed the age of 30 years. Therefore, there is no question to say that by the impugned policy their legal expectation to be absorbed permanently has been taken away. So far as the deletion of para 4(b) is concerned the same is not discriminatory in nature. As a matter of fact, an authority who is competent to give the benefit, has also the



right to withdraw the same.

x x x x

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:

(i) the impugned policy of 2013 is held to be intra vires.

(ii) 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.

(i) a further direction is issued to the respondents to grant one time age relaxation in favour of the petitioner 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 ensuring Board for their permanent absorption in the Corps. No order as to costs".

22. It is, thus, seen that the claim of the applicant is squarely covered in her favour vide judgment Annexure P-14 aforesaid because when she was eligible for consideration for the grant of "Permanent Commission" in the year 2003 and 2005, how she could have been denied her right of consideration for "Permanent Commission" in the month of June 2009. As a matter of fact, similar benefit as given to those who failed to avail even a opportunity, should also have been granted to the applicant.

23. In view of the provisions in the advertisement and the Army Instructions that she will be entitled to avail three chances for the grant of "Permanent Commission", therefore, such legitimate expectation could have not been taken away from her on the ground that there were certain ambiguity in the advertisement which was in conflict with the criteria qua age and Army Instruction 74/76.



24. We, therefore, find the present a case where the applicant has been given arbitrary and discriminatory treatment and the procedure contrary to the criteria applicable in her case has been taken into consideration while rejecting her candidature to her detrimental. She also condemned unheard and on this score also the decision taken by the respondents is illegal and also violative of principle of natural justice. It is, therefore, held that the impugned criteria in Order-3 and Order-4 to the detriment of the applicant could have not been applied in her case.

25. It is worth mentioning that the applicant stands discharged from service as "Short Service Commissioned Officer" on and w.e.f. 06.06.2015 (fore-noon) and this application has been filed after her discharge on 29.06.2015. Since we have held her entitled to avail one more chance of being considered for her induction for the grant of permanent commission, therefore, the only relief to which she is entitled at this juncture would be a direction to the respondents to consider her for the grant of "Permanent Commission" in accordance with the criteria prevalent at the time of grant of "Short Service Commission" notionally provided she fulfils the requisite qualification. In the event she is found suitable and meeting out the criteria for the grant of "Permanent Commission" as was published in the advertisement whereby the applications for the grant of "Short Service Commission" were invited and such "Commission" granted to her, she will be granted the same consequent upon the advertisement inviting thereby the applications therefor on or before 01.11.2009 and her application for the purpose forwarded by the Unit Commander vide letter dated 27.02.2009 (Annexure A-7) with all consequential benefits. This application deserves to be disposed of in the above terms.

26. For all the reasons hereinabove, this application succeeds and the same is accordingly, allowed. Consequently, there shall be a direction to the respondents to consider the applicant for the grant of "Permanent Commission" in the light of the observation in para (supra) and in the event she is selected and granted "Permanent Commission", the same shall be from the due date in terms of the advertisement whereby the applications for the purpose were invited on or before 01.11.2009 with all consequential benefits. There shall, however, be n o order so as to costs.

27. The application is, accordingly, disposed of, so also the pending Misc. Application (s) if any.