

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No 72 of 2014**Thursday, this the 17th day of March 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex-Naik (Time Scale) Rajesh Kumar Tiwari (Army No. 13994372-X) of 150 General Hospital, C/o 56 APO, son of Shri Yogendra Tiwari, resident of Village and Post- Zirabasti, Tehsil and District-Ballia (U.P.)-277001.

...Applicant

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Army Medical Corps Records, Lucknow and Commandant AMC Centre and College, Lucknow.
4. Commanding Officer, 150 General Hospital, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Mrs Anju Singh,**
Respondents **Central Govt Counsel assisted by**
Lt Col Subodh Verma, OIC Legal
Cell.

ORDER (ORAL)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the impugned order of discharge on 01.11.2013 during extended period of service.

2. We have heard Ld. Counsel for the parties and perused the records.

3. The applicant was enrolled in Army Medical Corps on 26.02.1996 and was promoted to the rank of Naik on 26.02.2012. On completion of 17 years service he was screened for extension and was given the extension from 26.02.2013 to 26.02.2015. It appears that the applicant was placed in Medical Category P2 (permanent) due to the disease Primary Hypertension with effect from 22.05.2013. In consequence thereof the applicant was discharged from service by impugned order dated 22.06.2013 and the applicant was discharged from service on 01.11.2013. Ld. Counsel for the applicant relied upon Appendix 'B' to policy letter dated 20.09.2010 and submitted that applicant could not have been discharged even on being placed in low medical category P2 (permanent). For convenience sake the same is reproduced as under:-

“Appx ‘B’
 (Refers to Army HQ letter No
 B/33098/AG/PS-2(c) dated 20 Sep 2010)

RETENTION OF PBOR DURING EXTENDED TENURE

1. *Retention of PBOR during the extended tenure will be governed by the following considerations:-*

(a) Medical Standard. *The individual should remain in acceptable medical category as applicable during pre-extended tenure.*

(b) Discipline. *The individual should not earn any red ink entry (including recordable censure in case of JCOs only) during the extended tenure.*

2. *If, however, it is noticed that there is drop in the above criteria at any time during the extended tenure, the PBOR will be discharged under relevant Army Rules within a period of maximum six months after serving the JCO/NCO the ‘Show Cause Notice’. Period of six months is basically meant for discharge drill.*

3. Applicability. *The revised policy will be made applicable with effect from 01 April 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dtes”.*

4. A plain reading of the aforesaid appendix shows that the individual should remain in acceptable medical category as applicable during pre-extended tenure. It means his medical standard must be same as was before extension of service. In case medical standard is falling down then it appears that his

service may be terminated. The extension of two years of service seems to be not available in case medical standard has fallen down. Ld. Counsel for the applicant has relied upon the policy (supra) and submitted that the applicant is entitled to remain in service in spite of being placed in low medical category during extended period of service. However, he could not draw attention of the Tribunal whereby in pursuance of Clause (a) of appendix 'B' an individual whose medical category has fallen down during extended term of service, could be granted further extension in service.

5. Ld. Counsel for the applicant has vehemently argued that in pursuance with para 2 of appendix 'B' that persons falling in medical category BEE shall be entitled for continuance in service. There is no dispute with the proposition pressed by Ld. Counsel for the applicant. Benefit of para 2 has already been given to the applicant and in consequence thereof in spite of falling in medical category BEE he has been given two years extension. Further deterioration in the health of the applicant shall not make out a case and the respondents have discretionary power to discharge a person in view of clause 'a' of appendix 'B'.

6. It goes without saying that person who has been given sheltered appointment for extended period of service must maintain his health and ensure that it does not further

deteriorate since it may affect his/her potentiality in discharge of duties.

7. In view of the above we are not inclined to interfere with the impugned order.

8. O.A. lacks merit and is **rejected**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)