

**RESERVED****COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No.146 of 2017**Friday, this, this the 7<sup>th</sup> day of September, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

No. JC-834337W Sub Maj Prem Kumar Tiwari, son of Shri (Late) Arun Kumar Tiwari, resident of (permanent) Village Dayalpur, Post Dayalpurgarh, Tehsil Hajipur, district Vaishali (Bihar) – 844502.

.....Applicant

Ld. Counsel for the : **Shri Shailendra Kumar Singh, Advocate**  
Petitioner

Versus

1. Union of India through the Secretary to Government of India, Ministry of Defence, South Block, Raisina Hills, New Delhi – 110011.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block-III, New Delhi – 110011.
3. Quarter Master General, IHQ of MoD (Quarter Master General Branch), 3<sup>rd</sup> Floor, ‘A’ Wing, Sena Bhawan, New Delhi – 110011.
4. Additional Directorate General of Army Postal Service, PIN : 908700, C/O 56 APO.
5. OIC Records, Army Postal Service Records, PIN : 900746, C/O 56 APO.
6. Director General (Post), Government of India, Ministry of Communications [Department of Posts (Personnel Division)], Dak Bhawan, Sansad Marg, New Delhi – 110001.

----- Respondents

Ld. Counsel for the Respondents: **Dr Shailendra Sharma Atal,**  
**Addl. Central Government Counsel**

**ORDER****“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the relief of setting aside the impugned order dated 31.12.2016 with further relief to direct the respondents to allow the applicant to complete his tenure of service in Army Postal Service.

2. Shorn of details, the facts of the case are that the applicant was appointed in the Postal Department and joined as Reserve Trained Pool at Dhanbad Division, Dhanbad (now Jharkhand). Subsequently, on 14.05.1986, he was enrolled in the Army Postal Service (APS) as Recruit Warrant Officer on deputation from the Department of Posts in terms of Government of India, Ministry of Defence Letter No. 90004/APS/1A/1688/D(Mov) dated 19.03.1985 as per Postal Manual (War) 1937.

3. Since, the initial term of engagement in the APS was for 18 months, as such, in order to avoid further irregular retention of the applicant in the APS Corps, IHQ of MoD (Army, AG’s Branch vide letter dated 21.09.2016 prescribed criteria and conditions for retention of deputationists beyond initial appointment for 18 months.

4. The applicant continued in the APS and eventually he was promoted to the rank of Naib Subedar on 13.02.2000 and Subedar on 28.05.2014 and finally to the rank of Subedar Major on 13.04.2015. His

service was extended upto 12.04.2019 in terms of Govt of India letter dated 19.03.1985. The applicant was placed under Low Medical Category (Temporary) on 21.08.2015 for **DIABETIC MALLITUS** for a period of six months. Subsequently, on 03.03.2016, the applicant was placed in permanent low medical category. Since, the applicant was placed in Low Medical Category (Permanent), respondent no. 5 issued Repatriation Order No. 38/2016 dated 31.12.2016 repatriating him along with other APS Non Regular Personnel to his parent P&T Department at Dhanbad. The applicant was to assume his repatriated post at Dhanbad on 31.05.2017.

5. Learned counsel for the applicant admits that the applicant in pursuance of impugned order of repatriation has joined his parent P&T Department at Dhanbad. However, it is submitted that vide order dated 29.05.2017 passed by this Tribunal, repatriation of the applicant to his parent department has been made subject to the decision of this O.A.

6. The terms and conditions of the Army Postal Service personnel on deputation are governed by the Government of India letter dated 19.03.1985 and by Government of India vide letter dated 25.02.1999 only date of age limit has been enhanced. As per this letter, a Subedar would retire at the age of 56 years. It is submitted by learned counsel for the applicant that the applicant was repatriated to his parent department before completion of the term of 56 years of age in utter contravention of the provisions contained in policy letter dated 25.02.199. Learned counsel for the applicant further argued that no reasonable opportunity

has been given to the applicant before issuance of repatriation order, thus it is clear violation of Principles of natural justice.

7. Further submission of learned counsel for the applicant is that Additional Directorate General of Army Postal Service is the authority responsible for functioning of the Army Postal Service in the Indian Army. The Quarter Master General Branch has been conferred the responsibility of general supervision and administration of the Army Postal Service. The crux of submission of learned counsel for the applicant is that since the impugned order of repatriation order has not been approved by Additional Directorate General of Army Postal Service, thus the impugned order lacks authority and suffers from vice of arbitrariness.

8. It was next submitted by learned counsel for the applicant that the Army Postal Service Record Office Instruction dated 08.01.2001 relating to 'Discharge of personnel who have outlived their usefulness' no doubt clearly lays down that the personnel who have outlived their usefulness and their retention is considered not necessary in the interest of service shall be repatriated to their parent department irrespective of manpower position, but it has been envisaged in the said Office Instructions that Officer Commanding Units will be the competent authority to order such repatriation after receiving approval of Additional Directorate General of Army Postal Service (APS).

9. Learned counsel for the applicant vehemently submitted that it is well settled proposition of law that it is obligatory for the authorities to judiciously exercise the powers vested in them. Reliance was placed by

learned counsel for the applicant on the observations made by Hon'ble Supreme Court in case of *Angad Das Vs UOI (SC 2012(1)AFLJ221* wherein their Lordships have held that the people in power and authority should not easily loose equanimity, composure and appreciation for the problem of the lesser mortal. They are always expected to remember that power and authority must be judiciously exercised accordingly to the laws and with human compassion. Arrogance and vanity have no place in discharge of the official functions and duties.

10. He further submitted that Repatriation Order issued is first of its kind since the inception of Army Postal Service in Indian Army since 1972, i.e. after 45 years, wherein by one stroke of pen, about 320 APS personnel have been repatriated to their parent department on the sole ground of low medical category.

11. In reply, learned counsel for the respondents has drawn attention of the Tribunal towards the procedure and criteria for screening of personnel below officer rank (PBOR)/ deputationists of APS Corps for retention of service beyond 18 months as given in Appx 'A' to Integrated HQ of MoD (Army), AG's Branch, Addl Dte Gen MP/MP 8(I of R) dated 21.09.2016 which clearly mentions that deputationists must continue to remain in acceptable medical category i.e. medical category SHAPE-1 and any deputationist placed in lower medical category during retention period i.e. two years will be repatriated within three months from the date he is placed in low medical category for both temporary and permanent. Submission is that since the applicant was placed in low medical SHAPE-1 (P), Screening Board for further retention in service

along with other low medical category personnel was held on 26.09.2016 under the convening order of Quartermaster General's Branch Q1(E). Based on the recommendation of the Board of Officers, the approval of Officer-in-Charge Records and Army Postal Service was accorded for his discharge from Army Postal Service and repatriation on 19.12.2016. The repatriation to his parent department was done because he was not meeting eligibility criteria for further retention in Army Postal Service. The learned counsel for respondents at this point submitted that on being discharged, the applicant was being repatriated to his parent department, therefore, the order is for repatriation to parent department and is not an order of discharge from Army service. The initial period of engagement on deputation from P&T Department into the Army Postal Service is for 18 months, thus the applicant was on extended tenure till organizational requirement.

12. Admittedly, the applicant and certain other P&T Department employees have been given deputation in the Army Postal Service (APS) in terms of Government of India, Ministry of Defence Letter No. 90004/APS/1A/1688/D(Mov) dated 19.03.1985. Appendix 'A' to Government of India, Ministry of Defence letter dated 19.03.1985 (supra) lays down the terms and conditions for P&T Non Gazetted Personnel on deputation to Army Postal Service which provides, to quote:-

**“TERMS AND CONDITIONS OF SERVICE FOR P AND T  
NON-GAZETTED PERSONNEL ON DEPUTATION TO ARMY  
POSTAL SERVICE”**

*1. Volunteers for field service from P and T Department will be enrolled in the Army Postal Service Corps under Army Act on short term engagement.*

2. *The duration of engagement will be 18 months and so long thereafter as their Service may be required.*

3. *Age: The volunteers should not be over 40 years of age on the date of enrolment.*

4. *Medical/Physical Standards - They should be in medical category 'A' and meet physical standards as prescribed from time to time.*

5. *Discipline : They will be governed by the Army Act and other orders applicable to Army personnel during their service in the Army Postal Service.*

6. *Ranks: During their service in the Army Postal Service, they will be given on enrolment/appointment/promotion corresponding to substantive military ranks as specified below:-*

<i>Appointment</i>	<i>Pay</i>	<i>Corresponding Military rank</i>
<i>(a) Packers/Runners/Mail Peons/Messengers/Task Work Messengers</i>	<i>196/232</i>	<i>Sepoy</i>
<i>(b) Packers/Runners/Mail Peons/Messengers/Task Work Messengers Selection Grade</i>	<i>210/270</i>	<i>Lance Naik</i>
<i>(c) Postmen.Vill Postmen/Mail Guard/Jamadar/Head Postmen</i>	<i>210/270</i>	<i>Naik</i>
<i>(d) Postal Sorting Asstt/ Lower Division Clerk</i>	<i>260/480 425/640 (17Years and above)</i>	<i>Warrant Officer</i>

13. Further, clause 237(a) of the terms and conditions for APS personnel provides, to quote:-

*“237. Those who have completed their initial period of engagement will be transferred to their parent department in the following order:*

*(a) Personnel who have outlived their usefulness and whose retention is not considered necessary in the interest of service will be re-transferred irrespective of the manpower position. Officers Commanding units will be competent to order such retransfer after obtaining approval of concerned Superior Postal Officer through proper channel.”*

14. It was argued by learned counsel for the applicant during hearing that non-retention of the applicant due to being in low medical category is in contravention of Guide lines laid down for the Commanding Officers before recommending discharge of LMC persons in Army vide AHQ policy letter dated 30.09.2010, as such, the order of repatriation cannot be sustained and deserves to be set aside. Relevant extracts of paras 6, 7 and 8 of said Guide lines are as under:-

*“6. Guiding Principles. The guiding principles that should be considered by the Commanding Officers and OIC Records for retention/discharge of permanent LMC personnel are as under:*

*(a) Xxxxxx  
(i)xxxxxxx*

*(ii) Personnel in SHAPE 2/3. The minimum period of qualifying service actually rendered and required for earning service pension will be 15 years (Auth Para 5.12 of MOD, Department of Ex Servicemen Welfare Letter No.17(4)/2008(2)/D(Pen/Pol) dated 12 November 2008).*

*(b) xxxxx  
(c) xxxxx  
(d) xxxxx  
(e) xxxxx*

*(f) Discharge of such permanent LMC personnel should help maintain the operational efficiency of the unit as also man management. Every case should be decided on its merit after analysing effect on state of manpower holdings in the Regiment Corps and time required to recoup the void so created.*

#### **7. Sanctioning Authorities:**

*Under the provisions of Army Rule 13, as amended, based on the recommendations of the Release medical Board/Invalidating Medical Board as applicable, the Commanding Officer is the competent authority to sanction discharge of JCO/OR who are in SHAPE 2/3 or have been found to be unfit for further service i.e. in SHAPE-5. In the existing circumstances the sanctioning authority would rest with the Commanding Officer, who*



would obtain the approval of following authorities prior to sanction of actual discharge:-

- (a) *Battle Casualties (Willing to serve) - Head of Army/Service.*
- (b) *Battle Casualties (Unwilling to serve) OIC Records} not below the rank of Brig.*
- (c) *Non-Battle Casualties (Willing to serve)- OIC Records} not below the rank of Brig..*
- (d) *Non-Battle Casualties Unwilling to serve)-OIC Records} not below the rank of Brig..*
- (e) *In case of Regiment/Corps Centres being commanded by officers below the rank of Brigadier, cases will be forwarded to MP Directorate for obtaining sanction of the Deputy Director General (Manpower Planning).*

#### **8. *Disciplinary/Indifferent Cases.***

*No special provision is necessary for discharge of permanent LMCs who become disciplinary cases or adopt an indifferent or casual attitude to work. In such cases, necessary disciplinary or administrative action, and if required, discharge proceedings, may be initiated by the Commanding Officer in accordance with existing orders/procedures. These cases will, therefore, not be governed by the provisions of this letter.”€ •*

15. Undisputedly, the Guide lines (supra) for discharge of Army personnel are not relevant to the APS personnel. The case of the applicant is not of discharge out of service, but a case of repatriation to the parent department after deputation. Non-retention of the applicant does not affect him, inasmuch as he has been repatriated to join his parent department after observing and following the relevant provisions in this regard. It may be noticed, and as submitted by learned counsel for the applicant, the applicant has already joined his parent department.

16. From the pleadings on record as well as submissions made by learned counsel for either side, it is clear that the applicant was to be repatriated to his parent department on 30.06.2017 as per Repatriation Order dated 31.12.2016. Due to down gradation of his medical category (SHAPE-1), he was found lacking and ineligible for further retention in the service and accordingly, since he outlived his usefulness to Army services, he has been repatriated to his parent department after obtaining approval from the competent authority. Therefore, there was no necessity of extension of service in accordance with applicability of the relevant policy. The grounds taken by the applicant for his retention in Army Postal Service are untenable and he is not entitled for the reliefs claimed in the O.A.

17. Before parting with the case in hand, it may be observed that a coordinate Bench of the Principal Bench of Armed Forces Tribunal, New Delhi in O.A. No. 280 of 2011 ***Warrant Officer Jitendra Kumar vs. Union of India and ors*** decided on 03.02.2012 has considered identical issue and after considering the relevant provisions (supra) has dismissed the Original Application with the observation, to quote:-

*“16. Further, from the perusal of record it is revealed that the initial duration of engagement was of 18 months and thereafter they are retained so long as their services may be required as per Government of India order dated 19.3.1985 (Annexure R-2). It is evident that the Warrant Officer of Non-Regular Cadre (Deputationist) can serve upto the years of 54 as per the MoD letter dated 26.4.1999 (Annexure R-3). In these cases, Warrant Officers are appointed and are not enrolled as is clear from the AHQ Letter dated 13.7.1995 (Annexure R-1). Thus, the applicants services cannot be treated at par with Army services.*

*17. In view of the foregoing we are of the opinion that non-retention of the applicant due to being LMC and in the absence of suitable sheltered appointment does not affect the applicant in as much as he goes back and joins his parent department in the same cadre as he was serving in the Army. As such no injustice is being done.*

*18. We have also considered the citations relied upon by the learned counsel for the applicant. These citations pertain to personnel who are being discharged from service on attaining permanent LMC. In this case the applicant is not being discharged from service but his retention in the APS is being terminated and he being repatriated to his parent cadre i.e. P and T Department. Therefore, the citations do not help the applicant in this case.*

*19. In this case it is revealed from the impugned order that the services of the applicant had been repatriated back to his parent office during the normal service tenure. Therefore, there is no question of extension of service and applicability of the relevant policy and its applicability. Hence the contention raised in this respect and the judgments cited in this respect by the applicant do not help his contention.”*

18. In the light of above discussion, we are not inclined to interfere in the case. The OA is hereby **dismissed**.

No orders as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: 7<sup>th</sup> September, 2018  
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