

**Court No. 2**  
**Reserved Judgment**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
ORIGINAL APPLICATION NO. 23 of 2017**

Wednesday, this the 21<sup>st</sup> day of March, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

JC-481025-X Nb Sub Rajendra Pal Singh, son of Shri Omveer Singh, Resident of (Permanent): Village : Badagaon, Post : Badagaon, Tehsil : Khurja, District: Bullandshaher (UP) - 203131, and Presently posted at No. 30 Rajput, PIN 912130 C/O 56 APO.

**....Applicant**

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

Verses

1. Union of India, through Secretary, Ministry of Defence (Army) South Block, New Delhi.
2. Chief of the Army Staff Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. OIC Records, The Rajput Regiment, PIN: 900427, C/O 56 APO
4. CO, 28 Rajput, PIN 912128, C/o 56 APO
5. CO, 30 Rajput PIN- 912130, C/O 56 APO

**.....Respondents**

Ld. Counsel for the : **Shri Shyam Singh,**  
Respondents **Advocate, Addl. Central**  
**Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

*“(A) To quash the impugned order (Retirement Order) dated 03 Dec 2016 (Annexure A-1 of instant OA).*

*(B) To issue suitable orders or directions to the Respondents to allow applicant to serve upto 22.02.2019 as per the extension granted by the Screening Board held on 31 Oct 2015.*

*(C) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the Applicant.”*

2. The facts in nutshell are that the Applicant was enrolled in the Rajput Regiment on 23.02.1991. He was promoted to the rank of Naib Subedar on 13.01.2013. Since the Applicant was to retire on 22.02.2017, after completing 26 years of service therefore as per procedure a Screening Board for granting extension of service was held at 28 Rajput whereby he was granted two years extension of service from 23.02.2017 to 22.02.2019 vide order dated 31.10.2015 and a corresponding Part II Order was also taken on this matter. Thereafter the applicant was posted on the strength of 30 Rajput in Nov 2015. On behalf of the applicant 30 Rajput Regiment took up a query with the

Record Office on a vacancy occurred in the rank of Subedar for considering promotion of the applicant vide communication dated 22.09.2016. In the meanwhile, it transpired from the Record Office that the applicant was not eligible for extension of service as he was lacking ACR criteria (grade below average in the year 2014) in terms of IHQ of MoD (Army) Letter No B/33098/AG/PS-2 (c) dated 20 September 2010 and he was erroneously granted extension of service by 28 RAJPUT for two years and published the same in their Unit PART II Order no 0/0344/001/2015. When the error was pointed out, 28 Rajput Regiment immediately issued a letter to records regretting their error and cancelling the extension of 02 years service. According they recommended the counting of service of applicant only upto 22.02.2017 vide their order dated 03.12.2016 and cancelled the Part II Order of extension of service. Being aggrieved, the Applicant approached the Tribunal for the aforesaid reliefs.

3. It may be noted here that after the O.A came to be filed, this Tribunal passed order dated 31.01.2017 whereby it was observed that **"the discharge of the applicant shall be subject to further orders by this Court."** The aforesaid order was served upon the respondents by the Applicant vide letter dated 07.02.2017. Subsequent to receipt of the order, respondent no 3 issued a letter dated

28.02.2017 withholding the discharge of the applicant till further directions. Thereafter, the applicant was deployed on various temporary duties from time to time and he was also granted casual leave on various dates but he was not paid salary for the period he has served the Army since 01.03.2017.

4. The question that surfaces for consideration is whether order of extension of two years service was validly passed and whether the Applicant is entitled to any benefit vis-a-vis an order which is alleged to have been passed erroneously in the teeth of the IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010.

5. Before proceeding further, it would be appropriate to have a grasp of the IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010 which being relevant is quoted below.

*"Addl Dte Gen Pers Services  
Adjutant General's Branch  
Integrated HQs of MoD(Army)  
New Delhi - 110011  
20 September 2010*

B/33098/AG/PS-2(c)

**PROCEDURE AND CRITERIA FOR SCREENING OF  
PERSONNEL BELOW OFFICER RANK (PBOR) FOR  
GRANT OF EXTENSION OF SERVICE  
BY TWO YEARS**

1. Reference Govt of India, Min of Def letter No 14(3)/98/D(AG) dated 30 May 98, No F 14(3)/98/D(AG) dated 03 Sep 1998, even number dated 18 Sep 98 and No. 14 (3)/98/D(AG) dated 29 Apr 2002.

2. *The revised terms of enhanced service/tenure and age limits for retirement in respect of PBOR were issued vide Govt of India, Min of Def letters under reference. These limits are subject to screening board.*

3. *The procedure and criteria for screening of PBOR will be regulated vide the guidelines as explained in the succeeding paragraphs.*

4. *Screening. All PBOR will be screened for extension by two years by the Screening Board to be held on Unit/Regiment/Corps/Records Office basis, as applicable to assess their suitability for extension. The procedure and criteria for screening is laid down in Appx 'A' to this letter.*

5. *Retention of a PBOR during Extended Tenure. The retention of a PBOR during the extended tenure will be governed by the considerations as per Appx 'B' to this letter.*

6. *Format. Format for screening is given in Appendix 'C' to this letter.*

7. *Applicability. The revised policy will be made applicable with effect from 01 Apr 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dtes. This HQ letter No B/33098/AG/PS-2(c) dated 21 Sep 1998 on the subject as time will stand superseded by the instructions/provisions contained in this point.*

*Sd/- x x x  
(Ravin Khosla)  
Col  
Dir/AG PS-2  
For Adjutant(GS)Branch"*

6. The Gravamen in the instant petition is that the applicant was granted two years extension in service by a duly constituted Screening Board on 31.10.2015 at 28 Rajput Regiment on account of applicant having unblemished service records and also on account of the fact that the applicant was

shortlisted for Foreign Posting (Congo Mission) in July 2014 owing to his commendable service records. The further grievance of the applicant is that he was neither issued any show cause notice nor any reasoned order was passed before cancellation of his extension of service.

7. **Per contra**, it is contended that the order of extension of service was erroneously passed in the teeth of the policy decision contained in IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010. It is further contended that an erroneous order passed in ignorance of the policy decision is non-est and cannot be sustained in law.

8. According to Appendix A to IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010, an individual will be deemed to be willing for two years extension in age/service unless he submits his unwillingness certificate two years before his retirement date duly counter-signed by OC Unit. Clause (d) to Appendix A deals with ACRs Criteria. In respect of Naib Subedar, the policy decision as contained in Appendix A (d) postulates that **last five reports irrespective of rank should not be less than average.**

9. In para 5 of the counter affidavit, it is clearly averred that the applicant was not eligible for extension of service on account of lacking in ACR Criteria which was below

average in the year 2014. Para 5 of the counter affidavit being relevant is excerpted below.

*"5. That the applicant of 30 Rajput while serving to 28 Rajput was due for screening for extension of service/age by 2 years i.e. from 23 February 2017 to February 2019. The applicant was not eligible for extension of service by lacking of ACR criteria (grade Below Average in the year 2014) as laid down vide IHQ of MoD(Army) letter No. B/33098/AG/PS-2(c) dated 20 September 2010. However, 28 Rajput has erroneously extended his service for 2 years from 23 February 2017 to 23 February 2019 and published the same in their Unit part II order No. 0/0344/001/2015 by holding a screening board on 31 October 2015."*

10. In para 5 of the rejoinder affidavit, in reply to para 5, it was averred that if the individual was below average, how a duly constituted screening board with one Presiding officer of the rank of Colonel and three members of which two were commissioned officer and one being Subedar Major granted extension of service after being satisfied with respect to laid down criteria. The para 5 of the rejoinder affidavit being relevant is excerpted below.

*"5. That the contents of para 5 of CA is partially denied. In reply, it is submitted if the individual was below average as mentioned, then how duly constituted screening board with one Presiding Officer of the rank of Colonel and three members of which two were commissioned officer and one being Subedar Major granted EXTENSION of service after*

*being satisfied with respect to laid down criteria. (Page 20 of CA refers). Further, deponent was selected for deputation to CONGO mission in the year 2014 and he was assessed below average as mentioned in the ibid paragraph is contradictory. The same needs to be adjudicated by this Hon'ble Tribunal in the interest of justice. IT IS PRAYED THAT SAID RECORDS MAY BE SUMMONED FOR FINAL HEARING BY THIS HON'BLE TRIBUNAL."*

11. From the above discussion, it would transpire that the Applicant has nowhere denied that in the year 2014 his ACR was below average. He reasons that when his entry was below average, why and how he was considered by the duly constituted Screening Board for extension of service by two years. It is conceded in the counter affidavit that the Screening Board committed error as the extension by two years was granted in the teeth of the policy decision as contained in IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010. The learned counsel for the Applicant argues that the Applicant's service record was throughout commendable as he was also shortlisted and deployed for foreign duty (Congo Mission). To be shortlisted and to be deployed for Foreign mission has no bearing and this would not wash away the ACR entry of below average as awarded in the year 2014.

12. As regards the argument that the Applicant was to be considered for promotion to the rank of Subedar, it is clearly



stated in para 13 of the counter affidavit that no doubt the case of the applicant only came up for promotion to the rank of Subedar as per his seniority while serving in 30 Rajput against the vacancies occurred on 22 September 2016 but the proposal for promotion was not forwarded on account of the applicant lacking in ACR criteria as laid down in IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010.

13. In the instant case, in case, we feel called to interfere with the decision taken by the respondents in passing discharge order as the order of extension was passed in the teeth of the IHQ of MoD (Army) Letter No. B/33098/AG/PS-2 (c) dated 20 September 2010, it would amount to interfering with the policy decision as contained in the aforesaid IHQ letter.

14. The Supreme Court has cautioned the High Courts against interfering with the Executive's administrative action, as the scope of judicial review is limited in questioning such decisions. The correctness of the reasons which prompted the government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. While exercising the power of judicial review of administrative action, the court is not the appellate authority and the Constitution does not permit the court to direct or

advise the Executive in matters of policy or to sermonise on any matter, which under the Constitution lies within the sphere of the Legislature or the Executive, provided these authorities do not transgress their constitutional limits or statutory power. That apart the applicant has nowhere pleaded that the policy is wrong.

15. Yet another aspect to be considered is that the order of the Tribunal dated 31.01.2017 was construed otherwise than what it was meant to be by the respondents. The Tribunal had passed the order to the effect that "the discharge order shall be subject to final outcome of the decision." While interpreting the aforesaid innocuous order, the respondents allowed the applicant to continue in service. However, the applicant has not been paid any single penny since March 1, 2017.

16. Considering all issues involved in this case, it is clear that the respondents have been committing one error after the other. It defies logic that a Board of Officers headed by a full Colonel & two commissioned officers does the silly mistake of granting extension to a JCO by 02 years when he is not eligible for the same as per extant Army Orders on the matter. To further complicate the matter the Record Officer has grossly misinterpreted the order of this Tribunal & ordered the applicant to continue in service. This also raises serious doubts on the ability of the record office to interpret

simple legal matters. Last but not the least we find that while there has been an organisational mistake in granting extension to applicant however no meaningful correspondence has been done to inform the applicant as to why his extension of 02 years has been cancelled and why he is being asked to proceed on discharge within 03 months.

17. Extension of service is linked to lively hood & cannot be treated so casually by any Govt organisation. We cannot have a situation where the applicant is working in Army for about 01 year without any pay. We would like the Army Authorities to look-into these avoidable errors and take remedial action for future. Notwithstanding the above, considering the repeated acts of omission and commission by the respondents, ends of justice will be met if the applicant's services till date in Army in present rank are regularised and he is granted an honourable discharge with full salary and due pension.

18. As a result of foregoing, the O.A is partially allowed inasmuch as the applicant shall be discharged from service on the same lines as a normal discharge within five months from the date of receipt of a certified copy of this order. The Applicant shall also be paid full salary and all other due allowances since March 1, 2017 till he is duly discharged from the Army. He shall be paid pension as due to him from the date of retirement. The entire arrears of pay, along with the

increments and allowance as found to be admissible under law shall be paid to the applicant within four months from the date of this order.

19. There shall be no order as to costs.

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

**(Justice S.V.S. Rathore)  
Member (J)**

**Dated: March, 21 , 2018**

MH/-