

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 538 of 2021

Sub Rajesh Vats

By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.04.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Wg Cdr SN Dwivedi (Retd), learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p>2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-</p> <p style="padding-left: 40px;"><i>(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the order of denial of extension of service and warning order for discharge w.e.f. 30.04.2022 contained in (Annexure No A-1 and A-2) of this Original Application, directing further to grant two years entitled extension of service to the applicant leading to discharge of the applicant on 30.04.2024 on completion of 30 years service in the rank of Subedar which he is holding, in the interest of justice.</i></p> <p style="padding-left: 40px;"><i>(b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.</i></p> <p style="padding-left: 40px;"><i>(c) Allow this application with costs.</i></p> <p style="padding-left: 40px;"><i>An interim prayer has also been made to stay warning order of discharge dated 01.03.2021 by which the applicant is due to retire from service w.e.f. 30.04.2022.</i></p> <p>3. Brief facts of the case are that the applicant was enrolled in the Army on 14.04.1994. During the course of his service he was promoted to the rank of Subedar. The applicant was downgraded to low medical category P2 (P) for disabilities (i) PIVDL5-S1 from</p>

10.06.2006, (ii) Gouty Arthritis from 05.05.2007, (iii) Ineffective Granuloma with seizure from 21.08.2007, (iv) Primary Hypertension from 11/2008 and (v) PIVD C5-C6 from 6/2009 (AFMSF-15, CA-I). As per IHQ of MoD (Army) policy dated 20.09.2010 the applicant was required to submit his willingness certificate two years prior to his date of retirement i.e. in 2020 which he failed to submit. Meanwhile new policy letter dated 05.05.2020 regarding policy for extension of age/service limit was promulgated. After issue of said policy, the applicant became ineligible for extension of service due to being placed in low medical category. The applicant preferred an application for extension of tenure addressed to OIC Records which was replied on 25.02.2021. Thereafter, vide letter dated 01.03.2021 orders were issued to discharge applicant w.e.f. 30.04.2022 on completion of 28 years service and extension was denied. It is in this perspective that this O.A. has been filed.

4. Learned counsel for the applicant submitted that the applicant has been denied service extension of two years in illegal manner which is contrary to the policy letter dated 20.09.2010 which was in force at that time. He submitted that although the new policy was issued on 05.05.2020, yet the applicant is governed by old policy which allows applicant for extension of tenure even though he is placed in low medical category. The learned counsel further submitted that as per policy dated 20.09.2010 applicant's case for extension of two years tenure was processed and willingness certificate was forwarded on 22.03.2020 (Annexure A-5). It was again forwarded on 13.04.2021 through AWAN but the Records did

not receive the same. His other version is that after receipt of new policy dated 05.05.2020, it was intimated vide letter dated 20.03.2021 that applicant's tenure could not be extended due to not meeting medical criteria. He further submitted that the screening board of the applicant was carried out in the month of March 2020 i.e. 24 months prior to commencement of extension period as per policy dated 20.09.2010 i.e. well before the commencement of the new policy dated 05.05.2020 which was to take effect from 01.06.2020 and when policy letter dated 20.09.2010 was still in force and fully applicable to the applicant. His other version is that even after change of policy the applicant is entitled to get extension of tenure for two years as a matter of right being placed in medical category P2 (P). In support of his contention learned counsel for the applicant has relied upon order dated 04.04.2012 passed by Hon'ble AFT (PB), New Delhi in O.A. No. 513 of 2011, ***Naib Subedar Gulab Rao vs Union of India & Ors.*** He pleaded for grant of service extension of two years to the applicant.

5. On the other hand, learned counsel for the respondents submitted that as per policy dated 20.09.2010 the applicant is eligible for grant of extension of two years service. However, on receipt of new policy dated 05.05.2020 the applicant became ineligible for extension of service due to his being placed in low medical category. He further submitted that applicant was required to submit his willingness certificate two years before his retirement date i.e. April 2020, which he failed to do so. His further submission is that willingness certificate of the applicant was instead received

by the Record Office on 16.09.2020 which was incorporated in the screening board for grant of extension of service by two years and the applicant became ineligible for service extension due to new policy constraints. He pleaded for dismissal of O.A.

6. Heard learned counsel for the parties and perused policy letter dated 20.09.2010 and 05.05.2020.

7. AFMSF-15 (version 2006) placed on record indicates that the applicant was suffering from 05 (five) medical disabilities and is serving in low medical category P2 (P). He is due to retire w.e.f. 30.04.2022. For service extension of two years a willingness certificate was required to be submitted to Records two years prior to the due date of discharge. Applicant claims that he submitted the willingness certificate on 22.03.2020 which the Record Office claims it did not receive. As per Record Office it was received by them on 16.09.2020. Thus the application not being received on due date made him ineligible for service extension due to coming into force of new policy, which debars service extension to those who are not in SHAPE-I.

8. Learned counsel for the applicant has submitted that Sub Ravi Kumar of his batch being placed in P2 (P) has been granted two years extension therefore, the applicant also deserves to be granted service extension. Learned counsel for the applicant could not provide full details in respect of Sub Ravi Kumar so that we could compare his case with the applicant. Thus, the case cited by the applicant could not be of any help.

9. As per policy dated 20.09.2010 permanent low medical

category of an incumbent is not a disqualification for extension of service by two years. Admittedly, a new policy dated 05.05.2020 has been promulgated, which is effective w.e.f. 01.06.2020 onwards and which is a hurdle for service extension for those personnel who are not in SHAPE-I.

10. Continuation in service of a soldier is always subject to his remaining fit and disciplined. Whenever he fails to remain within the acceptable limits of such criteria, his continuance in service is always curtailed under provision of rules. In the case at hand, when the screening board was carried out on receipt of willingness certificate, the applicant was in permanent low medical category, which is not acceptable for service extension in view of new policy dated 05.05.2020.

11. In our considered opinion the applicant cannot claim service extension as a matter of right, as pleaded in para 5.5 of O.A. Any service extension can be granted subject to required standard of medical fitness.

12. In view of the foregoing, we hold the discharge of the applicant to be valid.

13. The O.A. is, accordingly, **dismissed**.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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