

RESERVED
Court No 2
 (Ser No 29)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 831 of 2021

Friday, this the 21st day of April, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Ex JWO Rishikesh Tiwary S/o Kailash Prasad Tiwary, A-6,
 Parsavnath City, Lucknow Faizabad Road, Opposite Sarswati Dental
 College, Lucknow-226028.

.....Applicant

Ld. Counsel for the: **Col RC Dixit (Retd)**, Advocate
 Applicant **Ms Supriya Tiwari**, Advocate

Versus

1. Union of India, through Secretary of Defence, Ministry of Defence, 227-B Wing, Sena Bhawan, New Delhi-110011.
2. Chief of Air Staff, Air Headquarters (VB), Rafi Marg, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Joint Controller of Defence Account (Air Force), Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the : **Shri Rajesh Shukla**, Advocate
 Respondents. Central Govt Counsel

ORDER

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby the applicant has sought following reliefs:-

(a) *Order(s)/Direction(s) to quash the impugned order forwarded vide signal No 2020/AFRO/RRD/169 AFRO (Air Force Record Office), Delhi (attached as Annexure A-1).*

(b) *Applicant may be reinstated with back date (i.e. from 01st June 2020 till full tenure) or may be compensated for the financial losses which he has suffered due to non extension of his tenure (of 3 years duration) in spite of being adjudged as physically fit in all respects.*

(c) *Pass any order, as the Hon'ble Tribunal deems fit and proper in this case.*

2. Brief facts of the case are that on 29.03.2012 applicant while serving in the Indian Air Force (IAF) submitted unwillingness certificate for extension of service, consequent to that his discharge order No. 38/13 was issued for his discharge from service w.e.f. 31.05.2014. Prior to discharge from service he on 18.11.2013 submitted his willingness certificate for extension of 03 years (first spell) service which was granted till 02.05.2017. Thereafter, on 24.03.2015 applicant submitted his willingness certificate for extension of service for another 03 years (second spell) which was granted till 02.05.2020. Again, on 17.07.2018 applicant submitted his willingness certificate for extension of service for another 03 years (third spell) which was denied by the respondents as applicant was placed in low medical category A4G4 (P) due to disability 'Obesity' in terms of Para 4 (e) (iii) of Air Force Order 21/2014.

3. Due to Covid-19, applicant on 27.05.2020 submitted an application for extension of service by one year but it was again not

accepted due to his being placed in low medical category. Consequently, a signal dated 29.05.2020 was issued with directions to discharge the applicant from service w.e.f. 31.05.2020 (AN). Applicant has filed this O.A. to grant him service extension of 03 years and re-instate him into service.

4. Learned counsel for the applicant submitted that applicant was placed in low medical category A4G4 for 'Obesity'. It was further submitted that in order to get an extension he started maintaining himself physically fit to keep himself within the required medical standards and keeping in view of the policies of Air Force, applicant may have been considered fit for further extension in case he was declared A4G1 (fit medical category). Therefore, on 21.11.2019 he reported for his medical category to Base Hospital, Delhi where Medical Specialist upgraded his medical category to A4G1 for Dyslipidemia and Obesity.

5. Learned counsel for the applicant further submitted that since opinion of the Medical Specialist is treated as authority on medical categories therefore, applicant should have been considered as upgraded to fit medical category A4G1 by Air Force authorities and extension of three years ought to have been granted. However, on 26.02.2020 applicant was directed to proceed to Base Hospital for medical opinion but they referred him to AFCME for ambulatory monitoring where on reporting on 28.02.2020 he was asked to get permission for early medical board which permission was denied. It was further submitted that the genesis of problem started when

applicant was upgraded by Medical Specialist of Base Hospital, Delhi but it was not accepted by the Air Force doctors.

6. Being aggrieved applicant preferred application on 14.07.2020 followed by reminder dated 17.10.2020 but it was turned down on the ground that since the applicant's release medical board has already been finalized in low medical category A4G4, there was no need to re-conduct further medical board. Concluding his arguments, learned counsel for the applicant submitted that applicant ought to be re-instated in service by granting extension of three years as his medical category was upgraded to A4G1 by Medical Specialist located at Base Hospital, Delhi.

7. On the other hand, learned counsel for the respondents submitted that on 17.07.2018 applicant submitted willingness application for 03 years (third spell) which was received by them on 09.10.2018 and his case was processed through Condonation Board as applicant was placed in low medical category A4G4 (P) due to disability 'Obesity'. It was further submitted that his case for further extension was not approved by the competent authority in terms of Para 4 (e) (iii) of Air Force Order 21/2014. It was further submitted that applicant submitted further willingness certificate for extension of tenure by 01 year due to Covid-19 but it was denied being placed in low medical category A4G4 (P) for disability 'Obesity' and his discharge was rightly issued. He pleaded for dismissal of O.A.

8. Heard Ms Supriya Tiwari and Col RC Dixit (Retd), learned counsel for the applicant and Shri Rajesh Shukla, learned counsel for the respondents and perused the record.

9. There is no dispute that applicant, who was serving in the IAF, was granted two spells of service extension (03 years each) up to 02.05.2020. For third spell of service extension applicant submitted application on 17.07.2018 which was received by the respondents on 09.10.2018. His application was placed before the Condonation Board as he was serving in low medical category A4G4 (P) on account of disabilities 'Obesity' and 'Dyslipidemia'. The Condonation Board refuted his extension in terms of Para 4 (e) (iii) of Air Force Order 21/2014 which for convenience sake is reproduced as under:-

"4 (e)(iii) Airmen placed in medical category A4G4 (T/P) may be considered for grant of extension of engagement, if they are fit to perform their trade duties provided they meet all other conditions. However, cases for grant of extension of engagement in respect of such airmen will be considered by a Condonation Board consisting of the following members on case to case basis:-

- (i) AOC, AFRO.*
- (ii) Rep of Dte of PA.*
- (iii) Medical Advisor, AFRO/Rep of DMS (MB)*
- (iv) OIC Recording Wing, AFRO.*
- (v) OIC Career Planning Wing, AFRO.*
- (vi) Rep from Specialist Dte."*

10. Thus, from the aforesaid Para it is crystal clear that an individual being placed in low medical category A4G4 (T/P) may be granted extension of service subject to approval by Condonation Board. In the instant case, since the applicant was serving in low medical category A4G4 (P), his case was placed before Condonation Board which being denied by the respondents, his extension was not granted.

11. Applicant's contention in regard to upgradation of his medical category is that his medical category was upgraded to A4G1 (P) for both the disabilities by Medical Specialist, Base Hospital, Delhi vide his opinion dated 21.11.2019, therefore, he should have been

granted service extension. We have perused the aforesaid medical opinion and we find that his medical category A4G4 was upgraded to A4G1 for both the disabilities by the Medical Specialist of Base Hospital but the Medical Board dated 21.11.2019, which being final, has placed him in A4G1 medical category for disability 'Dyslipidemia' but he was placed in medical category A4G4 for disability 'Obesity' and his medical category was not upgraded to A4G1, therefore, applicant's contention that his medical category was upgraded is incorrect. For convenience sake, extract of Para 22 of Medical Board dated 21.11.2019 is reproduced as under:-

"22. Instructions given to the individual by the president of board-You are recommended to be placed in LMC A4G4 (P) for dis-1 (simple obesity (old)) and to be upgraded to A4G1 for dis-2 (Dyslipidemia (old)) subject to approval by higher medical authorities."

12. The Air Force order 21/14 which lays down the detailed procedure for extension of engagement beyond the initial term whereby an Airman may be granted extension of two blocks of three years or a single block of six years initially and thereafter, for a period of three years subject to fulfilling the conditions laid down, the discretion of grant of extension of engagement is delegated to the Air Officer Commanding, AFRO except in specific cases.

13. Para 4 (a) of Air Force Order 21/14 also clearly stipulates that extension of service beyond the initial term of engagement cannot be claimed as a matter of right. It shall be at the discretion of Air HQ or such other competent authority, as may be specified. A perusal of the minimum criteria laid down in Para 3 of Air Force Order 21/14 brings out that an Airman who is consistent in his overall

performance may be granted an extension of engagement but governed by the principles of:-

- (i) Service Requirement.
- (ii) Willingness for Extension of Engagement.
- (iii) Passing of Promotion Examinations/Training Courses.
- (iv) Annual Confidential Reports or the last 07 years.
- (v) Medical Fitness.
- (v) Conduct Records.
- (vi) Suitability for Extension.
- (vii) Certificate of Undertaking (CoU).

14. As is evident from the statement of the respondents and agreed by the applicant that after his initial term of engagement of 20 years, the applicant has been given two extensions before his application came up for the third such extension. Thus, only during consideration of his third spell of extension, the applicant was found to be in a low medical category A4G4 (P) for disabilities 'Dyslipidemia' and 'Obesity'. The Board of Officers recommended his case to the Medical Condonation Board which gave him an opportunity to reduce his weight and improve his physical conditions. The Condonation Board found the applicant unfit for any further extension of service.

15. We have also gone through the earlier AFT (PB) order passed in O.A. No. 24 of 2009 in the case of **Ex. Sgt Om Prakash versus Union of India** wherein his application has been dismissed by the Tribunal on the ground that an extension of service is not a matter of right. The same was challenged in the Delhi High Court vide WP(C) No. 1918/2010 wherein the Hon'ble High Court vide their order dated 15.07.2011 highlighted that "Extension in service is not a matter of

right but is a matter of discretion of the department, which for convenience sake is appended below:-

“Even otherwise as seen from the detail of the case, i.e. Medical Board Proceedings and scrutiny of the Condonation Board Proceedings, we feel that the service HQs have given the applicant a fair degree of consideration by granting him extension when he had the requisite qualification and fulfilled the minimum criteria, but did not do so in his fourth extension due to reasons aforesaid, despite he being granted additional opportunity and time to come up to the requisite minimum criteria, and when he failed to do so, lost out on his eligibility for extension of service.”

16. Additionally, we also find that his low medical category A4G4 in respect of his disability 'Dislipidemia' was upgraded to A4G1 by the Medical Specialist of Base Hospital, Delhi but as per norms medical category in respect of an individual upgraded/downgraded by a single doctor is not acceptable. A Medical Board is constituted for this purpose and findings of Medical Board are taken into consideration as final. Therefore, contention of the applicant that his medical category was upgraded to A4G1 is not tenable.

17. In the result, the OA fails and is **dismissed** with no order as to costs.

18. Miscellaneous application(s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated :21.04.2023

rathore

(Justice Anil Kumar)
Member (J)