

RESERVED
Court No 2
(Ser No. 15)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 649 of 2022

Wednesday, this the 29th day of March, 2023

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

No: JC-581641M Sub Maj Clk (SF), Manoj Kumar Pandey, Son of Prem Kumar Pandey, Resident of Village-Bhithari, Post Office-Bawan, Tehsil and District-Hardoi, U.P.-241001.

..... Applicant

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate
Applicant

Versus

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. The Chief of Army the Staff, Integrated Headquarters, Ministry of Defence (Army), Post- DHQ, New Delhi - 110011.
3. Addl. Dte of Personnel Services, Adjutant General's Branch [AG/PS-4 (Imp-II)] IHQ of MoD (Army), DHQ PO, New Delhi-110011.
4. Officer-in-Charge, Jammu and Kashmir Rifle, C/o 56 APO, PIN-908774.
5. Principal Controller of Defence Accounts (PCDA) (Pension), Draupadi Ghat, Allahabad, Uttar Pradesh.

.....Respondents

Ld. Counsel for the : **Dr. Chet Narayan Singh**, Advocate
Respondents Central Govt Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(a) to issue/pass an order or directions to set aside /quash the discharge order of the applicant, which is being annexed as Annexure No. 1 to this Original Application.

(b) to issue/pass an order or direction to the respondents to grant two year service extension to the applicant from the date of screening of the applicant pursuant to policy letter number B/33098/AG/PS-2 (c) dated 20 September 2010.

(c) issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) to allow this Original application with cost.

2. Brief facts of the case are that the applicant was enrolled in the Army on 04.05.1990. During the course of his service he was promoted to the rank of Subedar w.e.f. 01.08.2016. Earlier, he suffered with 'Coronary Artery Disease-Inferior Wall Myocardial Infarction (ICD-121.0)' and his medical category was downgraded to P2 (T-24) w.e.f. 25.03.2014 to 09.09.2014 which became P2 (permanent) w.e.f. 09.09.2014. While he was posted with 119 MC/MF Detachment, Jorhat he was promoted to the rank of Subedar Major even after he was placed in low medical category as at that time promotion was being granted to personnel placed in P2 (Permanent) medical

category. Being placed in low medical category, as per policy letter dated 20.09.2010 applicant was required to submit willingness/unwillingness certificate to continue in service but it was not submitted. On 09.07.2020 he was posted to JAK RIF Records and he submitted his willingness certificate for extension of two years service on 29.07.2020. Meanwhile, Integrated Headquarters of Ministry of Defence issued certain amendments in the procedure and criteria for screening of personnel for grant of extension of service by two years vide letter dated 05.05.2020. Vide aforesaid policy letter the personnel placed in permanent low medical category have to be screened with a view to assess their suitability for grant of extension of service if they are due for re-categorization medical board prior to commencement of their extension, as such applicant being placed in low medical category was granted provisional extension of service subject to upgradation of medical category. On receipt of willingness certificate it was found that the applicant was still in P2 (Permanent) medical category, therefore his extension was not accepted in terms of revised policy letter dated 05.05.2020. Accordingly, since his extension was not granted, he was discharged from service w.e.f. 31.05.2022 (AN). Applicant has filed this O.A. for grant of extension of tenure i.e. upto 30.04.2023 i.e. till he completed 54 years age.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 04.05.1990 and he was posted with 119 MC/MF Detachment, Jorhat w.e.f. 12.08.2021. He further submitted that applicant was promoted to the rank of Subedar Major w.e.f. 01.04.2020 and occurrence to this effect was notified through Part II Order. It was further submitted that as per Govt of India, Min of Def letter dated 03.09.1998, service tenure of a Subedar Major is 04 years in the rank or 54 years of age whichever is earlier. It was further submitted that keeping in view aforesaid policy, in normal course, he was due to retire from service w.e.f. 30.04.2023 after completion of 54 years service but due to non grant of extension, applicant was discharged from service w.e.f. 31.05.2022 i.e. 11 months prior to completion of 54 years age. He pleaded for grant of extension of service upto 30.04.2023.

5. On the other hand, learned counsel for the respondents submitted that the applicant was promoted to the rank of Subedar Major w.e.f. 01.04.2020. It was further submitted that as per Integrated Headquarters, MoD (Army) letter dated 20.09.2010, terms of service/age/tenure for retirement for the rank of Subedar Major has been laid down for 04 years in the rank or 54 years of age whichever is earlier. It was further submitted that in accordance with aforesaid policy, the applicant was required to be discharged from service on

31.05.2022 after completion of 32 years of pensionable service if service of the applicant was not extended by screening board.

6. Learned counsel for the respondents further submitted that since applicant was placed in low medical category P2 (Permanent) his re-categorization medical was conducted at Military Hospital, Jabalpur on 08.02.2021 wherein he continued to remain in the same medical category i.e. P2 (Permanent) for another two years w.e.f. 05.02.2021 to 05.02.2023. It was further submitted that as the applicant was not upgraded to medical category SHAPE-I, before the date of his discharge from service i.e. 31.05.2022, he was not eligible for grant of extension in service.

7. Learned counsel for the respondents further submitted that despite the fact that he was placed in low medical category, his case was considered sympathetically by the competent authority and accordingly, a case was taken up to obtain the sanction of the competent authority to hold screening board in terms of old policy but the competent authority did not find any merit in the case and thus, returned the case file un-actioned with remarks 'sanction for conduct of screening bd for extn of service in r/o JC-581641M Sub Maj Clk (SD) Manoj Kumar Pandey of your unit cannot be accorded at this stage in accordance with new policy letter dated

05.05.2020'. He pleaded for dismissal of O.A. on the ground that applicant could not be granted extension in accordance with new policy dated 05.05.2020.

8. Heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Dr. Chet Narayan Singh, learned counsel for the respondents and perused the record.

9. It is not disputed that applicant was enrolled in the Army on 04.05.1990 and being placed in low medical category P2 (Permanent) he was promoted to the rank of Subedar Major w.e.f. 01.04.2020. In normal course of service a Subedar Major can serve up to four years in the rank or 54 years of age whichever is earlier.

10. Applicant was being governed by policy letter dated 20.09.2010 as per which personnel being placed in low medical category were being granted extension in service subject to submitting willingness certificate but the said policy was amended vide letter dated 05.05.2020 as per which the personnel placed in permanent low medical category would be screened with a view to assess their suitability for grant of extension of service if they are due for re-categorization medical board prior to commencement of their extension, and such personnel can be declared provisionally fit for extension subject to their medical category being upgraded to acceptable level before expiry of normal terms of engagement. If they are

not assessed fit by screening board or not upgraded to acceptable medical category prior to commencement of extension, these personnel shall be disposed off in normal manner and not be granted benefit of extension in service. For convenience sake, Para 2 (b) (iii) of aforesaid policy is extracted as under:-

"(iii) Permanent LMC. The pers in permt LMC would be screened with a view to assess their suitability for grant of extn in service. If pers are due for recat med bd prior to commencement of extn, the screening bd can declare such pers as provisionally fit for extn subject to med cat being upgraded to acceptable level before expiry of normal terms of engagement. If not assessed fit by the screening bd or not upgraded to acceptable med cat prior to commencement of extn, these pers will be disposed of in normal manner and not be granted benefit of extn in service."

11. The applicant was placed in low medical category, therefore, he was granted provisional extension in service subject to he being placed in acceptable medical category before start of extension period. His re-categorization medical board was held on 05.02.2021 as per which he was again placed in low medical category P2 (Permanent) for two years i.e. from 05.02.2021 to 05.02.2023. Consequently, his provisional extension was cancelled and he was discharged from service w.e.f. 31.05.2022.

12. In the instant case the applicant fell victim of new policy as per which extension of service is not available to persons who are placed in low medical category and the re-categorization medical board did not upgrad him in SHAPE-I.

13. Additionally, the applicant had submitted his willingness for extension on 29.07.2020 and the instant policy letter dated 05.05.2020 is effective w.e.f. 01.06.2020, hence his case for grant of extension could not be considered in accordance with old policy. Thus, from the aforesaid, an inference may be drawn that had the old policy would have been in force, applicant could have been benefitted for service extension of 11 months as by that time he would have attained the age limit of 54 years.

14. In view of the above, we find that the applicant could not be granted service extension due to extant policy which provides that service extension cannot be granted to personnel placed in low medical category, which medical category applicant was holding and it could not be upgraded in re-categorization medical board.

15. Apropos above, O.A. lacks merit and is hereby **dismissed**.

16. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated : 29.03.2023

rathore

(Justice Anil Kumar)
Member (J)