

**Court No.3**

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

**O.A. No. 303 of 2013**

Monday, this the 05<sup>th</sup> day of October, 2015

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Naib Subedar Girish Kumar (JC-729085W)  
Of Stores Section, 510 Army Base Workshop, PIN-900468,  
c/o 56 APO,  
Son of Shri. Lallu Lal, resident of Quarter No 23/1  
BMH Line, Meerut Cantt.

.....Applicant

By Legal Practitioner                      Shri P.N. Chaturvedi, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Commandant 510 Army Base Workshop, PIN-900468, c/o 56 APO.
4. Officer-in-Charge Army Records, PIN-900453, c/o 56 APO.
5. Officer Commanding, Ordnance Stores Section, 510, Army Base Workshop, PIN-900468, c/o 56 APO.

.....Respondent

By Legal Practitioner

Shri Prakhar Kankan,  
Advocate, Ld.  
Counsel for the  
Respondents.

## **ORDER (ORAL)**

1. Heard learned counsel for the parties and perused the record.
2. This Original Application has been filed by the applicant, a member of the Indian Army, under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with discharge order passed during extended period of service.
3. Accordingly to applicant's counsel, the applicant was enrolled in the Indian Army as Store Keeper Technician (SKT) on 26.07.1986 and thereafter promoted as Nb Subedar on 01.10.2010. His regular army service came to an end on 25.07.2012. Thereafter he has been given extended period of service of two years in accordance with Army Headquarter Policy from 26.07.2012 to 25.07.2014.
4. Short argument advanced by learned counsel for the applicant is that decision has not been taken in accordance with revised Policy Letter dated 20.09.2010, a copy of which has been filed as **Annexure A-1(i)** to the O.A.
5. On the other hand, learned counsel for the respondents has relied upon earlier policy dated 21.09.1988.
6. However, in view of the changed policy vide policy letter dated 20.09.2010, the applicant seems to be entitled to complete the extended period of service. Appendix-B of the Circular that the individual should remain in acceptable medical category as applicable during pre-extended tenure.

### **"RETENTION OF PBOR DURING EXTENDED TENURE"**

1. *Retention of PBOR during the extended tenure will be governed by the following considerations :-*
  - (a) Medical Standard. *The individual should remain in acceptable medical category as applicable during pre-extended tenure.*

(b) Discipline. *The individual should not earn any red ink entry (Including recordable censure in case of JCOs only) during the extended tenure.*

2. *If, however, it is noticed that there is drop in the above criteria at any time during the extended tenure, the PBOR will be discharged under relevant Army Rules within a period of maximum of six months after serving the JCO/NCO the 'Show Cause Notice'. Period of six months is basically meant for discharge drill.*

3. 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."*

According to learned counsel for the applicant, para-2 of the Appendix-B provides that show cause notice is to be served before passing order on medical ground. In the present case, no notice has been served upon the applicant while passing the impugned order of discharge, hence it suffers from violation of principles of natural justice and also decision issued by the Army Headquarter. It is also hit by the provisions of Article 14 of the Constitution of India. Non compliance of prescribed procedure vitiates issuance of impugned order of discharge. It is also well settled proposition of law that no person can be condemned unheard.

7. Needles to say that in case notice would have been served, the applicant would have brought to the notice of the respondents that he is entitled to continue in service in view of policy dated 20.09.2010 which provides that persons falling in 2 and 3 of Appendix-B may continue in service. In such a situation, the impugned order suffers from substantial illegality being in violation of Army Headquarter Letter dated 20.09.2010. However, applicants two years' extended service came to an end on 25.07.2014, hence no order can be passed for

continuance of service. However, for the purpose of pensionary benefits, the applicant is granted relief.

8. Accordingly, the impugned order dated 27.08.2013 (Annexure A-1 (v) to the O.A.) is set aside. The applicant is entitled to 50% of salary payable to him upto extended period of service, i.e. 25.07.2014 with all consequential pensionary benefits within three months from the date of production of a certified copy of this order.

9. O.A. is allowed accordingly.

No order as to costs.

**(Air Marshal Anil Chopra) (Justice D.P. Singh)**  
**Member (A) Member (J)**

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