

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 245 of 2022

Wednesday, this the 18th day of October, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Naib Subedar Ram Kumar Singh (JC-542595-M) of 3 Naga Regiment, PIN-910373, C/o 56 APO,
S/o Shri Birendra Singh,
Resident of H. No. 2/64 Rajni Khand, Sharda Nagar,
Lucknow Cantt, Pin-226002

Learned counsel for the: **Wg Cdr SN Dwivedi (Retd)**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110001.
3. Addl Dte Gen Personnel Services, Adjutant General's Branch, Room No. 22, Brassey Avenue, IHQ of MoD (Army), Plot No. 108 (West) Church Road, New Delhi-110001.
4. Officer In Charge, Records the Kumaon Regiment, Ranikhet, PIN-900473, C/o 56 APO.

.....Respondents

Learned counsel for the : **Dr Shailendra Sharma Atal**,
Respondents. Central Govt. Standing Counsel

ORDER

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

“(i) 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 Retirement Order for Discharge of the applicant w.e.f. 31.08.2022 contained in Annexure No A-1 (i) and A-1 (ii) respectively, of this Original, directing further to grant two years entitled extension of service to the applicant up to 31.08.2024, in the interest of Justice.

(ii) Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the Addl Dte Gen Personnel Services, Adjutant General’s Branch, IHQ of MoD (Army) letter No B/33098/AG/PS-2 (C) dated 05.05.2020 being controversial and contradictory to all the earlier policies and its compliance being not practicable, in the interest of justice.

(iii) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case”.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 19.08.1996 and was discharged from service in low medical category A2 (P) due to disability “OSTEO ARTHRITIS BOTH KNEES” on 31.08.2022 (AN) after rendering more than 26 years of service for which he is in receipt of service pension for life. The applicant was placed in permanent low medical category A2 (P) w.e.f. 11.06.2007. The applicant was promoted to the rank of Naib Subedar on 01.03.2019. The applicant served in various peace/field/High Altitude and operational areas with unblemished record of service. The applicant’s willingness certificate for extension of service duly recommended by the Commanding Officer of the unit was sent to Records, The Kumaon Regiment on 18.08.2021 but the same was not

considered by the Record Office and his extension of two years service was denied and discharge order to be discharged from service w.e.f. 31.08.2022 was issued vide Records letter dated 05.07.2021. The applicant submitted an application dated 14.12.2021 for extension of his service but the same was turned down by the Records. The applicant being aggrieved with denial of extension of service has filed this Original Application to quash his discharge order and to allow him to continue in service upto 31.08.2024, till completion of his extended service in the present rank.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in the trade of Clerk on 19.08.1996. Due to his hard work and professionalism, applicant was promoted to the rank of Naik, Havildar and Naib Subedar on his own turn without any supersession. The applicant was promoted to the rank of Naib Subedar on 01.03.2019. The applicant while serving in High Altitude/highly cold areas in Northern & Eastern Sector under OP MEGHDOOT, OP RAKSHAK and OP RHINO, initially reported for light knees pain which gradually developed and on 22.12.2006 he was referred to Command Hospital, Western Command Chandimandir where after investigation, it was diagnosed with 'OSTEO ARTHRITIS BILATERAL KNEES' and was placed in low medical category A2 (Permanent) w.e.f. 11.06.2007 and the disease was considered attributable to and aggravated by military service by the medical board. Since then applicant has been continuously performing his

duties in addition to Battalion Head Clerk which was assigned to him by the Commanding Officer of the unit. The applicant also passed Counter Insurgency Training in 2006 with good grading.

4. Learned counsel for the applicant further submitted that applicant's application for two years extension of service was forwarded to the Records, The Kumaon Regiment vide unit letter dated 18.08.2021 but due to misinterpretation of the provisions laid down in the IHQ of MoD (Army) policy letter dated 05.05.2020 resulted denial of extension of service to the applicant. The policy dated 05.05.2020 is in contravention to the paras 144 and 163 of the Regulations for the Army, Part-1, 1987 (Revised Edition) and Army Order 03/2001 on "Health care system in the Army – Instructions for medical Examinations and Categorisation of Serving JCOs/OR". The provisions contained in the policy are highly confusing, being ambiguous and contradictory to earlier policy of Screening for Grant of Extension of Service by two years dated 20.09.2010 and Policy on Criteria for Promotion – JCOs/OR dated 10.10.1997. He further submitted that applicant has successfully passed Junior Leader Promotion Test and fully eligible to get promotion to the higher rank of Subedar in the low medical category A-2 (P) which was due on 01.11.2022. The applicant would have been benefitted of his Field/High Altitude/Operational Areas (OP VIJAY, OP MEGHDOOT, OP RHINO, OP PRAKRAM and OP RAKSHAK) if his services were extended upto November 2022 when he was due for promotion to the

rank of Subedar but unfortunately his services were illegally ceased on 31.08.2022 causing great financial loss to him, though, as per para 2 (a) (iv) of the policy letter dated 05.05.2020 and Para 4 (a) to (c) of policy letter dated 10.10.1997, applicant is eligible for extension of service by two years in low medical category 'BEE'.

5. Being aggrieved with denial of extension of two years service, the applicant submitted an application dated 14.12.2021 to the competent authority but the same was turned down and extension of two years service was denied vide Records, The Kumaon Regiment letter dated 06.01.2022 but some other JCOs/OR who are batch mate of the applicant e.g. Havildar Gajendra Singh was granted two years extension of service in same low medical category A2(P) which is discriminatory and illegal on the part of the respondents. This act of respondents is also violation of Articles 14, 16 and 21 of the Constitution of India. He pleaded that denial of extension of two years service vide letter dated 06.01.2022 and discharge order dated 05.07.2021 to be quashed and applicant be allowed to retain in service upto his entitled extended service period, i.e. upto 31.08.2024.

6. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 19.08.1996. The applicant was placed in low medical category A2 (P) due to disability "OSTEO ARTHRITIS BOTH KNEES". The applicant submitted willingness certificate for extension of two years service vide 3 NAGA letter dated 18.08.2021 which was considered but extension of service

was not approved by the Board of Officers as the applicant was not fulfilling the medical criteria for grant of extension as per IHQ of MoD (Army) letter dated 05.05.2020. During the service, applicant was also awarded punishment of Reprimand for 15 days AWL in December 2008. Thereafter, 3 NAGA Regiment again sent an application dated 10.01.2022 for extension of service to Col of the Kumaon & NAGA Regiment which was suitably replied by Records vide letter dated 28.03.2022.

7. Learned counsel for the respondents further submitted that as per Para 2 (b) of IHQ of MoD (Army) letter dated 05.05.2020, the medical criteria for grant of two years extension in age/service limit is as under :-

- (i) Must continue to remain in Medical category SHAPE-1.
- (ii) **Temp LMCs.**

(aa) Those person who are in temp low medical category at the time of screening board/prior to commencement of extension will continue to be in service. If downgraded to permanent low medical category during recat prior to commencement of extension to period. Individual would be discharged on completion of normal terms of engagement (without extension) those downgraded to permanent low medical category during extension period will be disposed of in accordance with procedure for drop in medical criteria.

(ab) individual in temp low medical category for psychological reasons misconduct self inflicted injury and obesity will not be eligible for grant of extension. However, in case such individuals are upgraded to SHAPE-1 prior to commencement of extension (those initially downgraded prior to extension) or prior to discharge dated (those downgraded during extended period of service) they would be eligible to be granted extension in service.

(iii) **Permt LMC.** The personnel in permanent LMC would be screened with a view to assess their suitability for grant of extension in service. If personnel are due for re-cat medical board prior to commencement of extension, the screening board can declare such personnel as provisionally fit for extension subject to medical category being upgraded to acceptable level before expiry of normal terms of engagement. If not assessed fit by screening board or not upgraded to acceptable medical category prior to commencement of extension, these personnel will be disposed of in normal manner and not be granted benefit of extension of service.”

8. Learned counsel for the respondents further submitted that an individual is being screened for grant of extension in service/age has to fulfill the medical criteria, i.e. medical category SHAPE-1 for grant of two years of extension in service/age whereas permanent low medical category personnel would be screened with a view to assess their

suitability for grant of extension in service/age. In addition, if an affected person is due for recategorisation medical board, the medical board should declare such person as provisionally fit for extension before commencement of extension of service/expiry of normal terms of engagement. The applicant has also not provided any documentary evidence that other JCOs/OR of his batch including Hav Gajendra Singh have been granted extension of two years service in the same medical category during the year 2021.

9. Learned counsel for the respondents further submitted that applicant became ineligible for extension of service due to low medical category as per policy letter dated 05.05.2020. Since the applicant was not fulfilling medical criteria as per policy, denial of two years extension in low medical category A2 (P) is according to rule/policy on the subject, hence, the present Original Application is liable to be dismissed being devoid and bereft of merit.

10. We have heard learned counsel for the parties and perused the material placed on record.

11. In the present case, applicant was enrolled in the Army on 19.08.1996 and after serving about 10 years in different stations of peace/field, applicant was downgraded to low medical category A2 (Permanent) w.e.f. 11.06.2007 due to disability 'OSTEO ARTHRITIS BILATERAL KNEES'. In spite of being in low medical category, the applicant was retained in the service and performed clerical duties from the year 2007 till he was discharged from service, i.e. 31.08.2022.

12. 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 in extension of service to those personnel who are in low medical category, i.e. below SHAPE-1. Continuation of a soldier in the service is always subject to remain physically/medically fit and disciplined. Whenever, a soldier fails to remain within the acceptable limits of such criteria, his continuation in the service is always curtailed under the prevailing rules/policy on the subject. The applicant cannot be given benefit of old policies dated 10.10.1997 and 20.09.2010 as relied by him on extension of service in respect of personnel placed in low medical category on issue of new/existing policy dated 05.05.2020.

13. We find that applicant was downgraded to low medical category from the year 2007 and since then applicant was allowed to serve in the low medical category till his discharge from service. Though a Part II Order for extension to two years service of the applicant granting sheltered appointment from 28.08.2021 to 28.08.2023 was published by the Records but later on this Part II Order was cancelled being inappropriate/wrongly published. Thereafter, application for extension of two years service alongwith willingness certificate was forwarded to Records duly recommended by the Commanding Officer of unit vide 3 NAGA letter dated 18.08.2021 but extension of service was not approved by the Board of Officers/competent authority as the

applicant was not fulfilling the medical criteria for grant of extension as per IHQ of MoD (Army) letter dated 05.05.2020. Thus, applicant has been discharged from service in low medical category w.e.f. 31.08.2022 in the rank of Naib Subedar on completion of 26 years of service as per terms of engagement/service.

14. In view of the above, we do not find any irregularity or illegality neither in new policy for extension of service nor in discharging the applicant from service in low medical category without granting two years extension in the present rank of Naib Subedar. The discharge of the applicant in low medical category on completion of 26 years of service in the rank of Naib Subedar is procedurally correct as per policy on the subject and there is no violation of Articles 14, 16 and 21 of the Constitution of India, as alleged by the applicant.

15. The Original Application deserves to be dismissed and is accordingly **dismissed**.

16. No order as to costs.

17. Pending Misc. Application (s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)

Member (A)

Dated: October, 2023

SB

(Justice Ravindra Nath Kakkar)

Member (J)