

COURT NO. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 135 of 2016****Wednesday, this the 30th day of August, 2017****"Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)"**

666847-S Sgt Ravinder Kumar (Retd), S/o Shri Sripal Singh R/o House No: 135, Village: Chakeri, PO: Shanigawa, Tehsil: Kanpur Nagar, Dist: Kanpur (UP)- 208021

----- Applicant**Ld. Counsel appeared - Shri Shailendra Kumar Singh
for the applicant Advocate,**

Versus

1. Union of India, through Secretary, Ministry of Defence, (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs (Vayu Bhawan), New Delhi-110010.
3. Air Officer Commanding, Air Force Records Office, Subroto Park, New Delhi-110010.
4. Director, Directorate of Air Veterans, Air Headquarter, Subroto Park, New Delhi -110010
5. Station Commander, 505 SU, AF, Air Force Station, Memaura, Post Office, Banthara, Lucknow.

----Respondents**Ld. Counsel appeared - Dr. Shailendra Sharma Atal,
for the Respondents Advocate, Sr. Central Govt.
Standing Counsel****Assisted by - Maj Salen Xaxa.**

ORDER (ORAL)

1. Present Application has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 claiming the principal relief of setting aside the order dated 12.10.1998 whereby the Applicant has been denied the extension of engagement.

2. The Applicant was enrolled in the Indian Air Force on 12.12.1979 and later-on he was re-mustered to the trade of Ach GD on medical grounds. The Application of the Applicant for extension of service was forwarded to the respondent no 3 on 22.04.1998. However, the extension was denied by the impugned order dated 12.10.1998 by the respondent on the ground that the Applicant was not eligible for extension of service vis a vis para 4 (d) of the AIR HQ Letter/instructions dated 06.11.1995.

3. Learned counsel for the Applicant invited our attention to the case of Sergeant Krishan Mohan Singh, who according to the Applicant was identical in status had been granted extension of service while denying the same to the Applicant.

4. Per contra, it is contended by learned counsel for the respondents that Sgt K.M.Singh has been granted extension by order dated 26.04.1999 for the reason that he

had cleared his promotional examination on 09.04.1999. Further he was governed by Air HQ Policy dated 06.11.1995 whereas the Applicant cleared the examination on 01.11.1999 and was governed by Air HQ Policy dated 13.08.1999.

5. Our attention has been invited to Air Force Instruction contained in AIR HQ Policy letter dated 06.11.1995 which deals with extension of service. Paras 2 and 3 of the instructions being relevant are quoted below.

“2. On completion of this initial term, Extension of Engagement for a further period of 6 yrs is considered on the merit of each case at the discretion of the CAS. Thereafter, extension (s) of regular engagement may be granted for a period of 3 yrs at a time or such shorter period as deemed fit, upto the age of superannuation. The discretion for grant of Extension of Engagement has been delegated to Air Officer i/e Air Force Record except in specific cases which are exercised by Air HQ.

3. This policy on Extension of Engagement will ensure that those who meet the minimum criteria are allowed to extend engagement. An airman who is consistent in his overall performance may be granted extension of engagement, which is governed by the following principles:-

- (a) Service requirement
- (b) Willingness for Extension of Engagement

- (c) Medical Fitness
- (d) Passing of Promotion Examinations
- (e) Conduct records
- (f) ACR/ Assessments for last five years
- (g) Suitability for Extension
- (h) Certificate of Undertaking (CoU)

Para IV (d) being also relevant is reproduced below:-

“Passing of Examinations- Extension of Engagement will be granted to only those Airmen who have passed all parts of their promotion Examinations which make them eligible for Promotion to their next higher rank. These examinations must be cleared by the Airmen before submission of their applications for grant of Extension of their Regular Engagement which expires on or after 01 Jul 98. Airmen who do not attain the rank of Cpl within 12 yrs will be discharged by AOIC AF Records **subject to AFI 12/S/48 being amended.**”

6. Our attention has also been invited to AIR HQ Policy letter dated 13.08.1999 which postulates that the Application for extension shall be entertained only of those persons who have passed the examination three months prior to the date of his superannuation. Para 4 (d) of the said Policy letter being relevant is quoted below.

“(d) Passing of Promotion Examination. Extension of engagement will be granted only to those airmen who have passed all parts of their promotion examinations which them eligible for

promotion to their next higher rank. However, those airmen who have already appeared at promotion examinations before submission of their applications for grant of extension or those who are likely to appear at such promotion examinations which will make them eligible for promotion to the next higher rank may be considered for grant of extension of engagement if they pass the promotion examinations three months prior to the expiry of their regular engagement. Airmen who do not attain the rank of Cpl within 15 years will be discharged by AOIC AF Records vide para 12(a) (i) of AFI 12/S/48 as amended by AFI 21/79.”

7. Keeping in reckoning the aforesaid provisions contained in Air Force Policy letter dated 13.08.1999, there appears to be no room for doubt that eligibility for extension of service required that he also should have passed the examination three months prior to the date of his superannuation. In the instant case, the Applicant had passed the requisite examination on 01.11.1999, while the date of his superannuation was 31.12.1999. If his case is tested on the anvil of the aforesaid policy letter, the Applicant does not seem to be eligible for extension of service.

8. It has been vehemently argued by the learned counsel for the Applicant that since the Applicant and K.M.singh both had passed the examination 45 days prior

to their respective superannuation; the case of the Applicant cannot be distinguished from the case of Sgt K.M.Singh. In response to the argument, it is contended by the learned counsel for the respondents that the case of the Applicant was considered at a time when the order dated 30.08.1999 had already come into force. Admittedly, a person could have been considered for extension of service in case he has passed the requisite examination three months prior to the date of his superannuation. The stipulation of 3 months did not exist in the policy dated 06.11.1995 as was applicable to Sgt K.M.Singh. Even in case, the policy order to be flouted with regard to someone and the Applicant's claim for parity with such person, it is not for the Court to grant parity on such ground where interference amounts to perpetuation of wrong done by the respondents. It is well settled proposition of law that Article 14 of the Constitution of India deals with positive equality and not negative equality.

9. Accordingly, we are of the view that interference with the relief claimed by the Applicant for extension of service seems to be not sustainable for the reason that it shall amount to perpetuation of illegality which may have been committed with regard to one person but we leave it open to the authority concerned who may look into the matter

and if permissible, may condone the period of three months for the purposes of extension of service.

10. At this stage, we have been informed that in pursuance of the interim order passed by the High Court, the Applicant has been continued in service. In case it is so, the service rendered by the Applicant shall be treated for the purposes of extension of service with all consequential benefits attended with direction that no recovery shall be made from the Applicant but so far as grant of further notional extension keeping in view the service rendered by the Applicant pursuant to the interim order of the High Court is concerned, it would be open for the Applicant to represent the case to the authority concerned. In case any such representation is preferred, the authority concerned shall look into the matter and pass appropriate reasoned and speaking order within two months from the date of receipt of such representation.

11. As a result of the foregoing discussions, the O.A is finally disposed of in terms of the above directions.

12. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : August, 30 ,2017

MH/-

