

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 678 of 2020**

Monday, this the 12th day of September, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Bir Singh, son of Sri Sukhdev Singh, Lieutenant Colonel, Senior Record Officer of Army Medical Corps (AMC) Records, Lucknow Cantt.

..... Applicant

Ld. Counsel for the : **Shri Ajai Kumar Pandey**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Government of India, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence, New Delhi.
3. Director General Armed Forces Medical Services (DGAFMS), Ministry of Defence, ‘M’ Block, Church Road, New Delhi.
4. Director General of Medical Services (Army), Integrated Headquarters of Ministry of Defence, New Delhi.

.....Respondents

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

ORDER (Oral)

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

(i) The Hon'ble Tribunal may graciously be pleased to quash the impugned date of retirement dated 30.04.2021 as mentioned in Annexure No 1 and 2 to the original application.

(ii) The Hon'ble Tribunal may graciously be pleased to direct the opposite parties to implement the provision of DMW/34104/3/PPO dated 07.09.1998 and the applicant may be permitted to remain in service upto 30.04.2022 with all service benefits instead of 30.04.2021.

(iii) The Hon'ble Tribunal may graciously be pleased to pass any other appropriate order/direction which this Hon'ble Tribunal may deem fit proper and just in circumstances of the case.

(iv) The Hon'ble Tribunal may graciously be pleased to award the cost of the original application to the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 16.11.1984 as Sepoy/Nursing Assistant (Sep/NA). Subsequently after more than 19 years service he was granted commission as a non technical officer in AMC w.e.f. 02.04.2004. In due course of time he was promoted to the rank of Lt Col (TS) on 03.04.2017 as per extant policy on time bound promotion. The applicant was due to retire at the age of 56 years i.e. on 30.04.2021 as per policy letter dated 01.05.2000 and 10.11.2006. Accordingly, his retirement

order was issued vide letter dated 12.05.2020. Against his retirement order he preferred statutory complaint dated 23.04.2020 which was processed vide letter dated 02.05.2020 but the same has not been decided as yet. By this O.A. the applicant has requested to quash his retirement date i.e. 30.04.2021 in view of provisions contained in letter dated 07.09.1998 and allow him to serve till 57 years of age. The applicant superannuated on 30.04.2021.

3. Learned counsel for the applicant submitted that the applicant was commissioned in AMC as a non technical officer on 04.04.2004 and is presently posted as Senior Record Officer, Records AMC, Lucknow. He further submitted that as per Para 76 (d) to (j) of Regulations for the Army, 1987 (Revised Edition) his retirement age was 55 years and this was enhanced by 02 years vide Govt of India, Min of Def letter dated 07.09.1998, therefore, he should have been retired at the age of 57 years. He submitted that his retirement order dated 12.05.2020 intimating date of retirement as 30.04.2021 at the age of 56 years compelled him to prefer statutory complaint which has still not been decided.

4. Learned counsel for the applicant further submitted that while considering enhancement of retirement age for AMC (Non Technical) officers Govt of India, MoD erroneously took retirement age as 54 years whereas it was 55 years as per para 76 (j) of Regulations for the Army, 1987 (Revised Edition). This has led to anomaly of one year of age in retirement which was supposed to be 57 years instead of 56 years, whereas age limit of other officers was correctly revised to 57 years. It was further submitted that this anomaly was highlighted vide Govt of India, MoD letter dated 07.09.1998 and in fact they had asked to amend the said anomaly, which occurred due to oversight, but it was not amended even after lapse of more than 20 years. It was further submitted that the applicant will be completing 56 years of age on 30.04.2021 and thus will be superannuating on 30.04.2021. He submitted that in light of para 76 (d) to (j) of Regulations for the Army Vol-I (Revised Edition-1987) his retirement order is untenable being against the above Govt policy. He further submitted that due to disparity emanated out of typographical error, the applicant is at disadvantage position vis-a-vis with similarly placed officers of all arms and services which is

against the principles of natural justice. He pleaded for issue of directions to quash his retirement date and allow applicant to serve till completion of 57 years of age.

5. Per contra, learned counsel for the respondents submitted that the applicant was granted commission as a non technical officer at the age of approx 37 years in AMC w.e.f. 02.04.2004. It was further submitted that as per his retirement order the applicant was due to retire on 30.04.2021 after attaining the age of superannuation in terms of prevalent rules.

6. Learned counsel for the respondents further submitted that applicant's statutory complaint dated 23.04.2020 was forwarded for processing which has still not been decided. He further submitted that the applicant has tried to mislead the Tribunal by consciously not stating that his order of retirement was made strictly as per Govt of India, MoD letter dated 01.05.2000 in which it has been unambiguously denoted that retirement age of all AMC (Non Tech) officers would be 56 years. He pleaded for dismissal of O.A. on the ground that the applicant has retired from service as per prevailing rules on the subject after completion of 56 years of age as per policy dated

01.05.2000 and 10.11.2006 as per which retirement age of a Lt Col (Non Tech) is 56 years.

7. Heard Shri Ajai Kumar Pandey, learned counsel for the applicant and Shri Rajesh Shukla, learned counsel for the respondents and perused the record.

8. It is undisputed fact of the parties that the applicant was enrolled in the Army Medical Corps (AMC) on 16.11.1984 as Sepoy/Nursing Assistant (Sep/NA). Subsequently after approx 18 years service he was granted commission as a non technical officer in AMC w.e.f. 02.04.2004. In due course of time he was promoted to the rank of Lt Col (TS) as per extant policy on time bound promotion. The applicant was due to retire at the age of 56 years i.e. on 30.04.2021 as per policy letter dated 01.05.2000 and 10.11.2006. Accordingly, his retirement order was correctly issued vide letter dated 12.05.2020 to retire from service on 30.04.2021 (AN).

9. Statutory complaint submitted by the applicant is under consideration at the appropriate authorities. The main crux of this case revolves around an alleged discrimination and arbitrariness against the applicant in

terms of his age of superannuation as well as deprivation of Time Scale promotion to Col (TS).

10. Armed Forces Medical Services (AFMS) is constituted by cadres comprising of Medical Officers (qualified in MBBS/Specialist), Dental Officers, Military Nursing Service Officers (MNS) and Non Technical Officers. For the purpose of maintaining sanctity of rank structure, the age of superannuation of military personnel are rank based and amended from time to time by the competent authority as per required need for efficient functioning of the forces and policies on cadre management including superannuation are applied uniformly without any prejudice or discrimination.

11. The compulsory age of retirement of the AMC (Non Tech) officers was 55 years. It was increased by one year by policy letter dated 01.05.2000 as under:-

Rank	Existing age of Retirement	Revised age of Retirement	Remarks
AMC (NT)	55 years	56 years	One year increase
Lt Col and equivalent and below	55 years	56 years	One year increase
Col and equivalent	57 years	58 years	One year increase
Brig and equivalent	58 years	59 years	One year increase

12. Therefore, it is evident from the letter dated 01.05.2000 that the age of superannuation upto the rank of Lt Col was increased by one year only i.e. from 55 to 56 years across the board and no exceptional or disadvantageous policy was adopted against AMC (Non Tech) cadre. The applicant being born on 02.04.1965 superannuated on attaining the age of 56 years on 30.04.2021. In terms of the retirement age, the applicant has also attempted to compare his service with Special Commissioned Officers (SCOs). In this regard we find that the terms and conditions of SCOs are separate as their eligibility criteria are different with that of AMC (Non Tech) as per AI 05/97. The SCO officers are not part of AMC. Therefore, drawing parallel to these two cadres is imaginary, baseless and tantamounts to comparing two unequal cadres.

13. The competent authority after due deliberation taking into consideration of all relevant facts on the matter decided to give an increase of one year above the existing age of retirement of 55 years for Lt Col and below of AMC (Non Tech) making the age of retirement of Lt Col and below to 56 years vide para 5 of note dated 28.07.2000, which for convenience sake is reproduced as under:-

"5. Lt Colonels and below, whose existing age of retirement is 55 years, may be given an increase of one year with the officers of AMC (NT), who may also get an increase of one year from the present level of 55 years to 56 years. While the age of retirement of all other ranks in the officers cadre above Lt Colonel may remain un-changed so that at least one year differential in the age of retirement among the higher ranks is maintained as given below:-

<i>Rank</i>	<i>Existing Age of Retirement</i>	<i>Proposed age of Retirement</i>
<i>Lt Col and below</i>	<i>55 years</i>	<i>56 years</i>
<i>Colonel</i>	<i>57 years</i>	<i>57 years</i>
<i>Brigadier</i>	<i>58 years</i>	<i>58 years</i>
<i>Major General</i>	<i>59 years</i>	<i>59 years</i>
<i>Lt Gen</i>	<i>60 years</i>	<i>60 years</i>
AMC (NT)	55 years	56 years

14. It is apparent that retirement age of all officers of AFMS of the rank of Lt Col and below was increased by one year only in the year 2000 i.e. from the existing 55 years to 56 years and the same is still prevalent in the service. Therefore, in terms of aforesaid discussion no discrimination has been meted out to the applicant.

15. The applicant had filed this O.A. one year prior to his superannuation and during the pendency of the case he retired from service on 30.04.2021. Govt servants retire on due date as per their terms and conditions of service and they have no right to continue in service after attaining the age of superannuation as held by the Hon'ble Delhi High Court in the case of **Brig PK Sarkar vs Union of India & Ors**, vide order dated 29.08.2002. For

convenience sake the relevant portion of the judgment is reproduced as under:-

"The relationship between the Government and servant is not like ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than contractual relationship voluntarily entered into between the parties. The duties and status are fixed by law and in enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties. Fixing the age of retirement or superannuation is a matter for the government and the employees have no legal right to continue in service after attaining the age of superannuation."

16. The applicant has requested to quash his retirement date i.e. 30.04.2021 by which he was retired at the age of 56 years. In a symmetrical case, O.A. No. 593 of 2020, **Lt Col Balram Tiwari vs Union of India & Ors**, an interim prayer was made which was rejected vide order dated 29.01.2021. For convenience sake, para 8, 9 and 10 of aforesaid order is reproduced as under:-

"8. The Govt of India communication regarding age of retirement of AMC (NT) officers contained in Annexure R-4 stipulates the age of retirement of all officers in the rank of Lt Col, equivalent and below as 56 years, and not 57 years as applicant claims. This policy was in existence not only when the applicant was commissioned in AMC as Non Technical Officer

but is in force even today and has also reference of the communication contained in letter dated 07.09.1998, Annexure 10, on which applicant relies. In view of what has been said in communication dated 1 May 2000, applicant being in the rank of Lt Col will also retire on attaining the age of 56 years like others and not at the age of 57 years.

9. Applicant cannot link his case with officers mentioned in O.A. claiming benefit of communication dated 07.09.1998, Annexure 10, as they have not been given the benefit of this communication rather they were given the benefits pending consideration of matter relating to increment in age of retirement of army personnel and Col Mohan Das C was given the benefit of being in rank of Colonel and as such was entitled to retire at the age of 57 years as per communication dated 01 May 2000.

10. In view of aforesaid, we do not see any merit in applicant's submission. Accordingly, applicant's request of interim relief is not accepted."

17. In the instant case the applicant is a Lt Col (TS) and his date of retirement was accordingly like any other Lt Col (TS) in AFMS. He, therefore, cannot seek parity with other officers who are governed by different terms and conditions of service. The applicant was meted equal as well as equitable scope and opportunities of service as applicable to his category of officers in AFMS, without any bias or discrimination.

18. In the result we find that the applicant superannuated from Army service on 30.04.2021 as per policy letter dated 01.05.2000 which is still in force.

19. In view of the above, the O.A. being devoid of merit is hereby **dismissed**.

20. No order as to costs.

21. Pending misc applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 12.09.2022

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