

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
AT NEW DELHI**

O.A. No. 47/2010

Hav. Suresh Kumar .....Applicant

Versus

Union of India & Others .....Respondents

For applicant : Sh. Keshav Kaushik with Ms.Kanika,  
Advocates.

For respondents : Sh. Mohan Kumar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**JUDGMENT**

1. The Original Application (O.A.) No. 47/2010 was filed on 27<sup>th</sup> January, 2010. The applicant has prayed for quashing of the impugned order dated 18<sup>th</sup> August, 2009 and retain the service of the applicant till 05<sup>th</sup> January, 2012. He has also sought disability pension in case his disability is attributable or aggravated by service. And, again for grant of medical fitness certificate qua the medical category after constituting a proper Medical Board.

2. In the interim, he prayed that he may not be sent on discharge till the final adjudication of the O.A. Interim relief as prayed by the applicant was granted on 28<sup>th</sup> January, 2010, for the applicant to continue in service till the O.A. is finally adjudicated.

3. Brief facts of the case are as follows. The applicant was enrolled as a Sepoy (Washerman) on 06<sup>th</sup> January, 1986. Due to his diligent work, he was promoted to the rank of Havildar. He was due to superannuate in the present rank on 31<sup>st</sup> January, 2010. However, he was granted extension of service for two years upto 5<sup>th</sup> January, 2012 vide order dated 09<sup>th</sup> August, 2009.

4. The applicant had to undergo 'Cataract' operation for the right eye on 27<sup>th</sup> February, 2008. He was thus placed under Low Medical Category at E3 (Temporary for 24 weeks). On 20<sup>th</sup> December, 1998, he was operated for Cataract in the left eye and was again placed in Low Medical Category E-3 (T-24).

5. On 21<sup>st</sup> May, 2009, the applicant was brought before a Medical Board where his medical category was fixed as E-2

(Permanent). In the same Medical Board, hearing impairment was detected and he was also placed in Low Medical Category H-3 (T-24).

6. On 18<sup>th</sup> August, 2009, Order No. 14/2009 was issued directing the applicant to proceed to Pension Establishment with effect from 31st January, 2010.

7. Learned counsel for the applicant argued that the applicant was granted two years of extension of service on 09<sup>th</sup> August, 2009 and without any cause the same was cancelled on 18<sup>th</sup> August, 2009. He further argued that vide Instructions issued by the Office of the DGAFMS in February, 2005, for "Revision of Visual Standards for Initial entry in the Army and Disposal of personnel who undergo "RK/IOL IMPLANTATION while in service". Para 6 (d) of the said Instructions is reproduced as under :-

"(d) Disposal of personnel who have undergone cataract surgery with IOL implantation (pseudophakia), during service :

All individuals who have undergone surgery with IOL implantation in the Army following cataract, will be disposed as under.

(i) After cataract surgery with IOL implantation the personnel are to be observed in E-3 for six months. In case there is some complication that is likely to improve the same person can be observed in E-3 for another six months.

- (ii) All pseudophakics (unilateral and bilateral) will thereafter be placed in medical classification as under:

	Better Eye	Worse Eye	Patient should fulfil all the following Criteria.
E-1	6/9	6/9	(i) Glasses correction not to exceed +/- 3.00 Dioptres in any meridian. (ii) No complication. (iii) Full fields of vision. (iv) Normal fundus. (v) Normal Binocular vision. (vi) Normal IOP.
E-2	6/9	6/36	(i) Glasses correction not to exceed +/- 3.5 OD to +/- 5.50 D in any Meridian in the better eye. (ii) Normal Fundus (iii) Normal IOP
E-3	6/12 6/24	No vision 6/24	(i) Glasses over +/- 5.50 D in any meridian in better eye.
E-5	6/36 Or below	6/36 Or below	

Note :

1. Criteria for aircrew will be the same as applicable to IAF as per 1AP 4303 (111 Ed) No. pseudophakie will be accepted at the time of initial entry.
2. However, SSC Officers who have undergone cataract surgery with IOL implantation and are in E-I with the above criteria may be considered for grant of Permanent Commission."

8. In this case the applicant's eye-sight was assessed by the Doctors during the Medical Board as 6/9 and 6/6 with glasses on 21<sup>st</sup> may, 2009 and on 26<sup>th</sup> September, 2009 as 6/6 and 6/6 with glasses. Inspite of the assessment the applicant was placed as Medical Category E2 (P).

9. Learned counsel further argued that the applicant was a Washerman by trade. He has been performing his duties to the

utmost satisfaction of his superiors. The Low Medical Category consequent to the Cataract Operation has not come in the way of his performance and professionalism. He further argued that the disability has been assessed between 5-14% which is a travesty of justice, because, he is being denied an extension due to these very disabilities. Besides, the disability has been termed as non-attributable for eyesight disability but for hearing disability as aggravated by service.

10. Learned counsel for the respondents argued that as per the policy, quoting the same letter of February, 2005, that the applicant was a case of Unilateral/Bilateral Aphakia. As such para 6 (e) will be applicable, which reads as under :-

“ 6 (e) Disposal of patients with aphakia (cataract extraction without IOL implantation) corrected with conventional spectacles of contact lenses while in service.

The disposal of cataract cases operated without IOL implantation but corrected either with contact lenses or conventional glasses will be as under :-

(i) **Unilateral Aphakia**

	Normal Eye	Aphakia
E-2	6/9	6/36
E-3	6/12	No vision
	6/60	6/12

(ii) **Bilateral Aphakics**

All bilateral aphakics to be placed in E-3 irrespective of good vision.

All bilateral aphakics to be placed in E-5 if corrected vision is less than 6/24 in each eye."

11. Learned counsel further argued that the applicant suffered from another malady i.e. "Mixed Hearing Loss B/L" and was placed as temporary Low Medical Category H 3 (T-24) on 17<sup>th</sup> January, 2009. He was finally placed as Low Medical Category H-3 (P) on 24<sup>th</sup> June, 2009.

12. The Record Office which had sanctioned the extension for 2 years on 09<sup>th</sup> August, 2009, received the Part II Order No. 0013/2009 notifying the applicant's medical category as S1 H3 (P) A1 P1 E2 (P). On the basis of this input, the extension of service was cancelled on 18<sup>th</sup> August, 2009. This action is in consonance with the Army Headquarters policy letter dated 21<sup>st</sup> September, 1998. Appendix A to the policy at para 2 (b) reads as under :-

"2. Criteria

(b) Medical Classification:

(i) *Must continue to remain in medical category AYE. Those who are temporary low medical category at the time of screening board will continue to be in service. If this temporary low medical category is made into*

*permanent low medical category by subsequent re-categorisation Medical Board before commencement of the enhanced service limit, the individual will be disposed off in accordance with the existing rules on the subject.*

*(ii) The screening boards would screen permanent low medical category PBOR with a view to assess their suitability for retention up to enhanced service or age limit, provided there is ample opportunity for up gradation of their medical category by the subsequent re-categorisation medical board before commencement of the enhanced service limit. The screening board can declare them fit conditionally by adding a clause in their case "subject to his medical category being upgraded to the acceptable level before expiry of his normal tenure." If they are not assessed fit by the screening board, they will be disposed off in the normal manner and will not be given the benefit of enhanced service limit."*

13. Having heard both the parties at length, and having perused the records, we are of the opinion that the applicant was operated for Pseudophakia Right Eye on 27<sup>th</sup> February, 2008 and for the Left Eye on 20<sup>th</sup> December, 2008. After the operation, he was placed in temporary Low Medical Category till 21<sup>st</sup> May, 2009. In the Medical Board held on 21<sup>st</sup> May, 2009, the applicant was having an eyesight 6/9 and 6/6 and was incorrectly placed in E-2 (P). Para 6 (d) of DGAFMS letter of February, 2005 is amply clear. Therefore, we are of the opinion that the applicant has been incorrectly placed in Low Medical Category of E-2 (P).

14. During the Medical Board on 17<sup>th</sup> January, 2009, another malady of Mixed Hearing Loss Bilateral was discovered.

For this ailment he was finally placed in Low Medical Category of H 3 (P) on 24<sup>th</sup> June, 2009.

15. Any permanent Low Medical Category makes an individual ineligible for extension of service. The order of two years of extension was revoked well before the extension period could commence. In any case as per the policy letter of 21<sup>st</sup> September, 1998, an individual even when on extended period of service becomes a permanent Low Medical Category, he will be discharged on medical grounds. So, the cancellation of the extension for two years is in consonance with the policy.

16. The Medical Board has defined the disability of eyesight between 5 to 9% and has made it not attributable to service. However, the disability of Hearing Loss has been designated as aggravated by service conditions, though the Disability percentage is 11-14%. As such, we are not inclined to interfere in this aspect.



17. The applicant was to superannuate on 01<sup>st</sup> January, 2010. In view of the interim order, the applicant may be paid financial dues till his date of discharge. The interim stay granted on 28<sup>th</sup> January, 2010 stands vacated. The petition is dismissed. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**August 05, 2010.**