

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 632 of 2009
[W.P. (C) No. 3846 of 2000 of Delhi High Court]**

IN THE MATTER OF:

Sub. Jagannath Singh (Retd.)**Applicant**
Through Mr. Rajiv Sharma, counsel for the petitioner

Versus

Union of India and Others**Respondents**
Through: Ms. Jyoti Singh, counsel for the respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 23.07.2010

1. Petition No. 3846/2000 was filed in the Hon'ble Delhi High Court and was subsequently transferred to the Tribunal on its formation on 17.12.2009.

2. The applicant in this application seeks quashing of the order issued by AOC Records, Secundrabad dated 28.03.1999 which designated the applicant to proceed on retirement on 31.05.2000 and also to reinstate the applicant in service with consequential benefits.

3. The facts of the case are that the applicant was enrolled on 20.05.1972. He became Naib Subedar on 01.03.1991 and Subedar on 01.07.1996. On 30.05.1998 the Government of India issued a Notification to extend the retirement age by two years of all personnel in the Armed Forces. Accordingly, an option was sought from the applicant. The applicant gave a Non-Optee Certificate dated 20.06.1998. He went home on leave due to certain domestic problems and he rejoined and re-opted for extension of service on 31.07.1998. Despite his re-option to extend the services for two years, he received a letter dated 28.03.1999 that his extension has not been granted as he was unwilling. His representation and also by his Unit was turned down by the OIC Record Office, Secundrabad. It was intimated by the OIC Record Office vide letter dated 17.09.1999 that "*He has not been granted extension of service by the Screening Board held in this office as per individual unwillingness submitted on 20th June, 1998.*" Further it was stated that "*Change of willingness is not acceptable vide para 7 (b) of Army HQ letter No. 8/33127/AG/PS-2 (o) dated 14th October, 1998.*"

4. A letter was also written by Col. O.V. Kumar, Dy. Commandant, Central Vehicle Depot, Delhi Cantt. highlighting the sequence of events which is as under :-

"4. I would like to bring to your notice the following aspects of the case :-

- (a) The JCO had exercised his non-option in Jun 98 and option in Jul 98.*
- (b) The policy letter was enunciated in Oct 98.*
- (c) Para 7 (b) of the AHQ specifically deals with options ex upto 02 Sep 98 and screened.*
- (d) The JCO had exercised non-option and option well in advance.*
- (e) The screening parameters were published only on 21 Sep 98 vide AG Branch letter No. B/33098/AG/PS-2 (c) dated 21 Sep 98. Hence his case could not have been screened prior to 02 Sep 98."*

In response to the above letter Army Headquarters said that as per policy in vogue, option once exercised and screened will be considered final and irrevocable.

5. Learned counsel for the applicant argued that the Authority's letter which made clear that an option once exercised is irrevocable, was issued on 14th October, 1998 while the applicant reopted for extension of the service on 30th July, 1998 and in that he had revoked his earlier Non-Optee Certificate of

20th June, 1998 besides the Screening Board was held on 06th March, 1999. As such there was enough time for consideration of this Re-Option Certificate which was given by the applicant. The letter dated 14th October, 1998 could not be taken from retrospective effect.

6. Learned counsel for the petitioner has relied upon the judgments in the case of **Balram Gupta v. Union of India & Another – AIR 1987 Supreme Court 2354** *in that judgment their Lordships have held – Voluntary retirement – Notice can be withdrawn at any time before retirement becomes effective notwithstanding any rule providing for obtaining of specific approval of the concerned authority as condition precedent to withdrawal of notice – Authority not entitled to refuse to grant approval for the withdrawal in absence of any reason showing disturbance in administrative set up or arrangement as a result of such withdrawal – Notice of voluntary retirement stands on par with letter of resignation – Central Civil Services (Pension) Rules, 1972, rule 48-A (1), (2) and (4) – Administrative chaos - Resignation* Further in the case of **Major K.K. Sethi vs. Union**

of India & Others – 76 (1998) Delhi Law Times 925 Hon'ble Delhi High Court has held – *petitioner applied for retirement stating certain reasons – In between petitioner in changed circumstances and wrote on 22.03.93 withdrawing his letter seeking pre-mature retirement – Petitioner was to retire w.e.f. 2.5.93 – Contention that for all intent and purposes petitioner retired from service of respondent on 12.2.93, date of order retiring petitioner, untenable – When order retiring petitioner itself gives date of retirement of petitioner w.e.f. 2.5.93 – Respondent has not taken into consideration changed circumstances, which persuaded petitioner to change his mind and stay with respondent – Impugned order rejecting application of petitioner for withdrawing application for pre-mature retirement quashed – Petitioner entitled to all consequential reliefs as per rules as if he was in regular services of respondent.*

7. Learned counsel for the respondents argued that once the option have been exercised, is final and could not be revoked. The policy letter dated 14th October, 1998 is appropriately clear on the subject. Besides this the Army

Headquarters issued a policy of screening on 21.09.1998. Para 6 of the policy letter dated 14th October, 1998 is reproduced as under :-

"6. PBOR were given option for the enhancement in ages/services vide Government of India, Ministry of Defence letter No. 14 (3)/98/D (AG) dated 30 May 98. Provisions of this letter were applicable wef 13 May 98 till the issue of final Govt. Letter on age/service enhancement. The final letter has been issued vide Govt. Of India, Ministry of Defence letter No F 14 (3)/D (AG) dated 03 Sep 98. The option clause for PBOR was therefore applicable from 13 May 98 to 02 Sep 98."

Further para 7 (b) of the letter dated 14th October, 1998 states as under :-

"7 (b) Option exercised upto 02 Sep 98 by those PBOR who are retiring in next three years and have been screened will be final and irrevocable."

8. Learned counsel for the respondents further argued that once the option has been made, is irrevocable and it is not up to Authorities to take cognizance of the revoking option because this could continue till the very end and it will be very difficult to manage administratively.

9. Having heard both the counsels at length and have perused the record, we are of the opinion that in the instant case the individual tendered his option and subsequently revoked his option within a span of one month and the Screening Board for granting of extension was held in March, 1999. Therefore, there was more than six months of gap between his amended option and the Screening Board. The irrevocability of the option was stated only by the letters dated 21st September, 1998 and 14th October, 1998. It is natural that the policy cannot have retrospective effect.

10. Further Hon'ble Supreme Court in the case of **Union of India & Another vs. Wing Commander T. Parthasarthy – (2001) 1 Supreme Court Cases 158** *has held that a substantive legal right cannot be denied to a person merely on the basis of some policy decision of Government or any certificate issued by him acknowledging a particular position which has no legal sanctity.*

11. In view of the above, we are of the opinion that the applicant was well within his right to change the option. The re-

option i.e. for extension of service should have been considered by the Authorities as there was adequate time between the re-option exercised before the Screening Board. The policy letters dated 21st September, 1998 and 14th October, 1998, cannot have retrospective effect. The re-option for willingness for extension was rendered by the applicant on 31st July, 1998. He has been wrongly denied extension. We direct that if the applicant fulfils other criteria for extension of service, he should be granted the extension of service ignoring his earlier unwillingness option with all consequential financial benefits that may accrue. The petition is allowed. Impugned order dated 28.03.1995 rejecting his extension is quashed. The exercise should be completed within 120 days from the date of this order. No order as to costs.

MANAK MOHTA
(Judicial Member)

M.L. Naidu
(Administrative Member)

Announced in the open court

Dated: 23.07.2010