

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

6.

O.A. No. 111 of 2010

Maj Mohanan EP & Ors.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

For petitioners: Sh. Rohit Pratap, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

04.11.2011

1. The petitioner in this petition has prayed to quash and set aside the impugned order of retirement of the petitioners being perverse, illegal and contrary to the policy in vogue and consequently reinstate the petitioners in service and also to extend the benefit of the order dated 24.12.2009 issued by the Ministry of Defence.
2. Originally the petition was filed by four petitioners. On the basis of the application filed by learned counsel for the petitioners, the name of the fourth petitioner was removed from the array of parties as he had filed a separate writ petition before the Delhi High Court, which was transferred to the Lucknow Bench, vide order dated 2.11.2011 of this Tribunal. Now there are only three petitioners in this petition i.e. (1) Maj Mohanan; (2) Maj Ajit Singh Shivrain; and (3) Maj Natabar Jena. They have sought the relief, as stated above.
3. All the three petitioners were enrolled in the Army on 30.6.1977 and over passage of time, got commissioned as Regimental Commissioned Officers (RCOs) on 13.12.1997. The main grievance of the petitioners is that RCOs are being retired

at the age of 52 years, whereas persons who were recruited later under the Policy of 2007 are allowed to continue till they attain the age of 55 years. In order to encourage the lower ranks serving in the Army to come to the cadre of officers, Army Instruction No. 85 of 1974 was introduced bringing forth Special List Officer (Quarter Master, Technical and Records). By virtue of this instruction, the Junior Commissioned Officers (JCOs) and Non Commissioned Officers (NCOs) were to be selected after giving them permanent commission (special list). The eligibility criteria for grant of permanent commission (special list) was provided in the Army Instruction. The method of selection, power of command, avenues of promotions and other service conditions, including the age of retirement, were prescribed in the said Army Instructions. The selection was to be made by screening by a Service Selection Board. Based on this, a Special List Officer was entitled to serve upto 57 years of age and upto the rank of Lt Col (Time Scale) and were to retire from service on attaining the age of 57 years or on completion of 25 years of reckonable commissioned service, whichever is earlier.

4. In 1984, another category of officers was introduced in the Army viz. RCO. AI No. 18/1984 provided for the eligibility criteria and other methods of recruitment for the RCOs. As per this AI, serving JCOs less clerical category, NCOs and other ranks, excluding the Religious Teacher, would be eligible for appointment as SCO. Candidates for grant of special commission should be between 30-35 years of age and selection was required to be made through SSB. Successful candidates were to undergo six months training at IMA/OTA. Subsequently a new cadre of Officers i.e. Special Commission Officers (SCO) was created under the authority of AI 5/1997. It was pointed out that as per AI No. 5/1997, a SCO is entitled to serve upto 55 years of age. The AI further made it clear that the cadre of SCO was created by merger of

the existing cadre of Special List (QM) and RCO cadre by introducing the SCO cadre. Other ranks have also been given a chance to compete for the SCO cadre. Para 24 of the said AI states that the AI superseded AI No. 32/1989 governing grant of regimental commission with effect from 1.7.1998 and the provisions of QM category of AI No.85/1974 governing grant of permanent commission (special list) with immediate effect. After the issuance of AI No.5/1997, both the commissions i.e. Special List and Regimental Commission were stopped. In the year 2002, a corrigendum was issued to AI No.32/1989 and Paragraphs 13 and 14 of AI No.32/1989 were substituted by fresh Paragraphs 13 and 14. Paragraph 13 provided that acting promotion upto the rank of Major will be admissible to RCOs under the same terms and conditions as applicable to regular officers. Further, Paragraph 14 stipulates that substantive promotion to the rank of Captain will be granted on completion of three years reckonable service and there will be no promotion examination for the same. The substantive promotion, however, to the rank of Major will be admissible on completion of ten years of service only after passing examination in (i) special to Corps as per the Arms/service concerned; and (ii) administration in peace and military law. Despite supersession of AI No. 32/1989 vide AI No. 5/1997; the RCOs continue to be governed by the provisions of AI No.32/1989. However, AI No.5/1987 specifically stated that the cadre of SCO was established by merger of the cadre of Special List (QM) and RCOs. Therefore, it was submitted that once the cadre has been merged and a new cadre viz. SCO is introduced, AI No.5/1997 should be made applicable to them as it was introduced by supersession of AI Nos. 32/1989 and 85/1974. Therefore, it is stated that after the merger, the effect would be that all are governed by AI No.5/1997 and they are entitled to continue in service upto the age of 55 years. But officers like the

petitioners, who were recruited as RCOs, are being allowed to continue in service only upto the age of 52 years or on completion of 12 years of reckonable service, whichever is earlier. Therefore, the grievance of the petitioners is that AI No.5/1997 should be made applicable to RCOs as well, and they should be allowed to continue upto the age of 55 years. It was also pointed out that when SCOs are entitled to continue upto the age of 55 years and can go upto the rank of Colonel, RCOs like the petitioners are allowed to continue only upto the age of 52 years or on completion of 12 years of reckonable service. This, according to learned counsel for the petitioners, is illegal.

5. A reply has been filed by the respondents and they contested the petition. They took the stand that the terms and conditions of service of various incumbents are different and no parallels can be drawn. It was pointed out that RCOs very well knew that they are governed by AI 32/1989, which stipulated their retirement age at 52 years or 12 years of service whichever is earlier and having accepted it on their own volition, they cannot allege discrimination and seek parity with other persons who were later recruited under AI 5/1997. It was also pointed out that the governing AI (AI 32/1989) has not been superseded by AI 5/1997. The factual position is that only the induction of new RCOs and SL (QM) officers have been discontinued after the introduction of SCO cadre under AI 5/1997. RCOs and SL (QM) ,already inducted, will continue to be governed under their respective AIs till all such officers are superannuated or wasted out. The terms 'merger' used by the petitioner does not hold good in view of AI 10/1998 vide which the expression 'merger' originally used in AI 5/1997 was deleted. Furthermore, the governing AI of the petitioners (AI 32/1989) has been extended. While initially it was for a period of five years it has been extended by a notification dated 9.2.1996 and Paragraph 21 of AI 32/1989 has been

changed and it has been extended upto 31.12.2000. The said notification reads as under:

"I am directed to refer to para 21 of AI 32/89 regarding introduction of Special Commission designated as 'Regimental Commissioned Officers and to say that the validity of the scheme in its existing form is being extended for a further period of five years with effect from 1.1.1996 to 31.12.2000 for those Regimental Commissioned officers inducted upto 31.12.2000 to meet the further requirement of the Army. This will count against the cadre of Permanent Commissioned Officers sanctioned by the Government from time to time subject to review by the Government on any increase/decrease in the laid down strength.

2. Administrative instructions which are necessary on the subject may be issued by you.

3. This letter issues with the concurrence of the Ministry of Defence (Finance/AG) vide their U.O No. 142-PA/96 dated 9.2.1996."

So far as the petitioners are concerned, since they were recruited under AI 32/1989, which had been extended by this notification, the service conditions of the petitioners would be governed by that circular only i.e. AI 32/1989 and they cannot claim any benefit under the new AI i.e. AI 5/1997, which had been introduced later. The terms and conditions of AI 5/1997 are distinct and different from that of AI 32/1989.

6. We have considered the rival submissions of the parties and we do not find any discrimination since the petitioners are governed by AI 32/1989 and they were aware of the terms and conditions when they entered service. Subsequently, two cadres have been merged and a new AI i.e. AI 5/1997 has been formed. The petitioners cannot invoke the subsequent notification so as to enable them to continue upto the age of 55 years. The recruitment made under AI 5/1997 is known as SCO which will be entitled to continue upto the age of 55 years. So far as the petitioners are concerned, since they were recruited under AI 32/1989, they can continue only upto the age of 52 years or 12 years of service whichever is earlier.

Therefore, the petitioners cannot claim the benefit of AI 5/1997 and seek parity with those recruited under AI 5/1997. The channel of recruitment of the petitioners is separate and they were recruited under AI 32/1989. Therefore, they cannot seek the benefit of continuing upto the age of 55 years. We are of the opinion that the petitioners have been rightly considered under AI 32/1989.

7. There is no merit in this petition. In the result, it is dismissed, with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
November 04, 2011

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