

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

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O. A. No. 111 of 2011

Lt. Gen. J. K. Srivastava

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Anil Srivastava, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:

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

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

ORDER

31.5.2011

The petitioner, by this petition has prayed that the order dated 23.2.2011 retiring the petitioner from service may be quashed and the petitioner may be allowed to serve till 30.6.2011 as conveyed vide Annexure A-6 on attaining the age of 61 years and the petitioner may be reinstated with the rank status to continue till 30.6.2011.

2. The petitioner was born on 15.6.1950 and after attaining the degree of B. VSc. & AH from Bihar Veterinary College, Patna in 1972, he was commissioned in the Indian Army in the rank of Lieutenant in RVC on 30.7.1973 and was promoted to the rank of Lieutenant General on 24.2.2009. Prior to June, 2007, there was no post of Lieutenant General in RVC. However, vide Government of India Ministry of Defence letter dated 6.6.2007, the post of Lieutenant General as DG RVC was created and Lieutenant General N. Mohanty was appointed. On his retirement, on

attaining the age of 61 years, the petitioner was appointed as a Director General from 24.2.2009. Prior to that, the petitioner was approved for grant of substantive rank of Lieutenant General. It is stated that by virtue of order dated 13.8.2010, the petitioner was scheduled to retire on 30.6.2011 issued by the Military Secretary. Therefore, the petitioner legitimately aspired to continue upto 30.6.2011 but suddenly the petitioner was informed on 22.2.2011 at 18.00 hours that he will be retired on 23.2.2011 on completion of two years of tenure while he was out of station on government duty. The petitioner was called in the morning and he was handed over the retirement order. Prior to this, the petitioner filed a petition before this Tribunal and when the matter came up before the Tribunal, he was given to understand that no order of retirement of the petitioner was passed. However, during the course of the day, when the matter was pending the petitioner was served with the order of retirement and he was made to retire on 23.2.2011. It is this order of 23.2.2011 which has been challenged by the petitioner by this petition.

3. Learned counsel for the petitioner submits that the petitioner by virtue of the order passed by Military Secretary dated 13.8.2010, he was supposed to continue upto 30.6.2011 on attaining the age of compulsory retirement of 61 years on 15.6.2011. Thus, he had a legitimate expectation to continue upto 30.6.2011 but suddenly he was directed to retire on 23.2.2011. Learned counsel for the petitioner submits that the order dated 13.8.2010 operates as estoppel against the respondents to retire the petitioner by revoking the order of 13.8.2010 and retire him by order dated 23.2.2011. Learned counsel further submitted that as per rule 164(1) of the Army Rules, 1954, the Military Secretary is competent to issue the orders of retirement. Therefore, once the competent authority has issued the order of

retirement then the same cannot be revoked. Therefore, he should be allowed to continue till 30.6.2011.

4. A reply has been filed by the respondents and the respondents have submitted that in fact the post of Lieutenant General was for the first time created in RVC on 6.6.2007 and it was clearly mentioned in para 5 of order of creation of the post dated 6.6.2007 that the age of retirement of a Lieutenant General will be 61 years as applicable in Army Medical Corps/Army Dental Corps vide Ministry of Defence letter dated 1.5.2000. The relevant para 5 of the order dated 6.6.2007 reads as under:

“5. The appointments of Lieutenant General will be substantive with revised age of retirement at 61 years as applicable in Army Medical Corps/Army Dental Corps, vide Ministry of Defence letter No. 14(3)/98-D(AG) dated 01 May 2000.”

Learned counsel has also invited our attention to the order dated 1st May, 2000, in which it is clearly mentioned that the age of retirement of a Lieutenant General will be two years tenure or on attaining the age of 61 years whichever is earlier. The relevant extract of the order dated 1.5.2000 reads as under:-

Quote

Rank	Age of Retirement
Lt. General & equivalents (except DGAFMS)	2 years tenure or on attaining 61 years of age whichever is earlier.
DGAFMS	3 years tenure or on attaining 62 years of age, whichever is earlier.

Unquote

Learned counsel for the respondents has pointed out that in fact when the order of the petitioner's retirement dated 13 August 2010 was sent to PCDA(O), Pune, wherein the date of retirement was shown as 30 June 2011, PCDA(O), Pune immediately brought to the notice of the Army Headquarters that the order is not correct as there is a clearly prescribed two years tenure and as such, the petitioner cannot be allowed to continue upto 30.6.2011. The signal was sent by the PCDA (O), Pune to the Military Secretary Branch Integrated Headquarters Ministry of Defence on 28.9.2010 that officer completes his tenure on 24.2.2011 and he should be retired on 24.2.2011 afternoon. The extract of that message reads as under:

**“NO 525./REF YOUR LET NO 4/46001/410/MS(X) DT 13/8/10
AS PER THIS LETTER DATE OF RETIREMENT OF V000330 LT
GEN J K SRIVASTAVA AVSM RVC IS 30/6/2011 (A/N)
HOWEVER OFFICERS TENURE OF TWO YEARS WILL BE
COMPLETED ON 24/2/11 (AN) AND HENCE DATE OF
RETIREMENT SHOULD BE ON 24/2/2011 AN PLEASE CHECK
AND INTIMATE THE DATE OF RETIREMENT OF CHANGED TO
24/2/11 (AN)”**

But the Military Secretary was not very clear and they again reiterated their position that he in fact is going to retire on 30.6.2011 as he is going to attain the age of 61 years on 15.6.2011 and it appears that the matter was referred to Ministry of Defence and Ministry of Defence clarified the matter that as per the rules, it is clear that the incumbent has only two years of tenure or on attaining the age of 61 years, whichever, is earlier and on receiving this clarification, the Military Secretary Branch

called the petitioner and apprised him. Learned counsel for the petitioner pointed out that in Clause 5 of the order dated 6.6.2007, the age of retirement of a Lieutenant General has been mentioned as 61 years and no such tenure of two years has been mentioned. Therefore, in view of the same, the action of the respondents of retiring the petitioner on 23.2.2011 is wrong. Argument of learned counsel for the petitioner seems to be attractive but if we read the two orders mentioned above together, then it clearly appears that as per clause 5 of the order dated 6.6.2007, it is clearly mentioned that besides all other conditions available, the date of retirement of Lieutenant General will be 61 years as applicable in Army Medical Corps/Army Dental Corps, vide Ministry of Defence letter No. 14(3)/98-D(AG) dated 01 May 2000. Therefore, the letter of 1.5.2000 has to be super imposed on the letter dated 6.6.2007 because in para 5 of the letter dated 6.6.2007, it is clearly mentioned that the appointments of Lieutenant General will be substantive with revised age of retirement at 61 years as applicable in Army Medical Corps/Army Dental Corps, vide Ministry of Defence letter No. 14(3)/98-D(AG) dated 01 May 2000. If these two letters are read together then it clearly brings out that the age of retirement of a Lieutenant General is 61 years or two years tenure, whichever is earlier. It appears that the Military Secretary Branch has completely lost sight of the order dated 1.5.2000 and only proceeded on the basis of age of 61 years which means there was total misunderstanding on the part of Military Secretary Branch. In fact, had the Military Secretary Branch been vigilant enough and applied their mind to the signal sent by the PCDA(O) in September, 2010 only in which they clarified that there is a two years tenure appointment and age of retirement is 61 years whichever is earlier, they would not have committed this mistake. They could have easily avoided this embarrassment. In this whole episode,

the petitioner is at the receiving end. He felt humiliated when he was called on 22.2.2011 and was given marching order on the same very date. The Military Secretary Branch of the Army is responsible for this confusion and for causing humiliation to the petitioner. When they received the message from PCDA, they should have acted well in time. The petitioner is entitled to claim compensation for the treatment meted out to him. However, on merits, we are satisfied that the petitioner is not entitled to any relief. All through the confusion was created by the Military Secretary Branch and they are responsible for it. Their action is absolutely not warranted and this has caused a great setback to the petitioner who had a legitimate expectation to continue upto 30.6.2011. However, we do not find any merit to grant any relief to the petitioner but we grant a cost of Rs.1,00,000/- for giving this kind of humiliation to the petitioner. The petition is disposed of accordingly with costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 31, 2011