

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O.A. No. 152 of 2011

Nk. D.S. Dhayal

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Mr. J.S. Yadav, Advocate.

CORAM:

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

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

ORDER

13.03.2012

1. Petitioner vide this petition has prayed to declare Army HQ letter No. B/33098/AG/PS 2 (c) dated 21 Sep 1998 as ultra vires Articles 14 and 16 of the Constitution of India and the notification dated 30.05.1998. It is also prayed that impugned order dated 05.08.2008 issued by AMC Records denying the petitioner two years extension of service be set aside and respondents may be directed to grant two years extension to the petitioner and reinstate him in service with all consequential benefits.

2. Petitioner was enrolled in Army Medical Corps (AMC) on 16.06.1988 and with the passage of time, he rose to the rank of Naik. He was discharged from service on 30.06.2010. He applied for grant of two years extension but same was declined vide AMC Record letter dated 05.08.2008. During his tenure of service, he was awarded a red ink entry way back on 21.04.1992 under Section 41 (1) of the Army Act. As per the policy letter dated 21.09.1998, it is laid down that if any person is awarded red ink entry

under Section 41(1) of the Army Act, he will not be allowed two years extension. Learned counsel for the petitioner submitted that this policy dated 21.09.1998 is an arbitrary policy and violative of Articles 14 and 16 of the Constitution of India and such policy should be struck down.

3. A reply has been filed by the respondents and they have taken the stand that this is a policy decision which was in force and the case of the petitioner was considered in the light of the said policy dated 21.09.1998. Petitioner could not be granted two years extension because of red ink entry awarded to him on 21.04.1992.

4. Learned counsel for the petitioner submitted that this condition of one red ink entry should not have come in the way of the petitioner whose case was to be considered for extension at the time of completing tenure of service. In this connection, he drew our attention to a decision of Hon'ble Supreme Court given in the case of **J.D. Shrivastava Versus State of M.P. & Others (1984) Vol. II SCR 466.**

5. We have heard both the parties and perused the record. The policy under challenge has been in force since 1998 and now a new policy has also been brought into force on 20.09.2010 which has made effective w.e.f 01.04.2011. As per new policy, delinquency under Section 41 (1) of the Army Act has been deleted, therefore, any offence committed by a person under Section 41 (1) of the Army Act will not disqualify him for extension of service. But this policy came into force in 2010 whereas the policy under which petitioner's case was considered for extension was of 1998 and according to that policy, petitioner could not be given two years' extension of service because of a red ink entry awarded to him Section 41 (1) of the Army Act.

6. It is true that a single red ink entry cannot be decisive of entire career of an incumbent. In this connection, Hon'ble Supreme Court in the case of **J.D. Shrivastava Versus State of M.P. & Others (Supra)** has also observed that;

“It would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer. Dependence on entries about 20 years before the date on which the decision of compulsory retirement was taken cannot be placed for retiring a person compulsorily particularly when such person concerned has been promoted subsequent to such entries.”

7. We also feel that such kind of distant entry cannot be invoked or pressed into service of a person for extension of service. But the consideration which prevails in the civil administration cannot necessarily be invoked in the military discipline. As per policy of 1998, it was considered to be a matter of great indiscipline if a soldier behaves in an insubordinate way then such person should not be given extension of service. But it seems that much water has flown under the bridge and now such indiscipline has been watered down and this offence has been taken out from the list of offences. But the case relied by learned counsel for the petitioner of Hon'ble Supreme Court was of compulsory retirement and person has completed his full tenure of service and he has to be retired because he is found to be a deadwood. Their Lordships have also observed that a sole entry cannot be dig out to deny continuance of service to an officer, therefore, they have struck down such compulsory retirement. Therefore, that case stand on different footing.

8. The case is hand is of military discipline. Petitioner was awarded a red ink entry under Section 41 (1) of the Army Act which was considered to be an act of indiscipline and an indiscipline soldier cannot be allowed extension of service. We cannot hold the policy of 1998 as violative of Articles 14 and 16 of the Constitution of India. It is a matter of discipline. This policy of 1998 remained in force till 2010. Consequently, the arguments of learned counsel for the petitioner for declaring this policy of 1998 as violative of Articles 14 and 16 of the Constitution of India are not sustainable. New policy of 2010 has already been brought into force and now such indiscipline has been watered down, therefore, no useful purpose will be served in declaring the policy of 1998 as invalid at this distant of time.

9. Consequently, we do not find any merit in the petition. Same is accordingly dismissed. No order as to costs.

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

**S.S. DHILLON
(Member)**

**New Delhi
March 13, 2012
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