

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

O.A. No. 171 of 2010

IN THE MATTER OF:

Group Captain Sharan Choudhri **.....Applicant**

Through Maj (Retd) K Ramesh, counsel for the Applicant

Versus

Union of India and Others **.....Respondents**

Through: Mr Ankur Chibber , counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 07-01-2011

1. The applicant, a highly qualified cancer super specialist, had filed OA 171 of 2010 praying that he be granted premature retirement on grounds of supersession. The applicant has stated that before he got promoted to the rank of Group Captain he had been superseded twice. He contends that he had represented both times on supersession but his representations had been rejected. He was approved, on his third look, for promotion to Group Captain

on 14/03/2006. Despite this promotion he is now junior to his batch mates.

2. The applicant was subsequently considered for promotion to the rank of Air Commodore on 24/11/2009 and not empanelled. The applicant submitted an application for premature retirement on 22/02/2010 on grounds of supersession. This was rejected on the grounds that the applicant was not finally superseded i.e after three looks. The applicant was also posted to Air Force Hospital, Jorhat which did not have a cancer department. The applicant had challenged his posting order dated 23/11/2009 and this tribunal vide order dated 02/06/2010 had directed the respondents to consider posting of the applicant to a hospital where his expertise could be gainfully utilised. The applicant was thus allowed to continue serving in Delhi.

3. The applicant stated that the policy for premature retirement of AMC officers was laid down by Directorate of Medical Services (Army) vide their letter of 26/03/1998 (Annexure A-5). This policy ruled that requests for premature retirement on grounds of supersession “will invariably be considered favourably”.

4. The applicant states that he is 54 years old, has served 32 years in the Army and has only three years left for superannuation. He does not want to undergo the ignomy of serving under his juniors. The applicant stated that a large number of super specialists who had not been finally superseded had been allowed to proceed on premature retirement and produced a list of the same. The respondents were asked to examine the veracity of the same and offer their comments.

5. In their counter affidavit the respondents have stated that the Armed Forces have made a huge investment in training the applicant to become a super specialist. During the course of his service the applicant has, on numerous occasions, been given postings of his choice to metropolitan cities. The applicant was superseded for the first time in his previous rank in 2004. He represented against the same but subsequently withdrew his application when his request for a posting to Delhi was acceded to. The applicant was not empanelled for the second time in 2005 and did not submit any representation against the same. He chose to remain in service despite being superseded by his juniors because he was posted to Delhi, a city of his choice.

6. The respondents have stated that the applicant submitted an application for premature retirement on 31/07/2009 on grounds of supersession two years after getting promoted to the rank of Group Captain. The application was rejected.

7. Applications on grounds of supersession are governed by MoD UO No 8 (5)/78 (MS)/D (Pens/ Ser) dated 20/01/1979 which states that “***requests from officers not finally superseded, in whose cases it is indicated by service HQ concerned that they do not stand a reasonable chance of promotion in future, on the basis of their record of service, will also be considered favourably subject to exigencies of service***”. The respondents stressed that requirements of the service will however be given overriding consideration.

8. The applicant was not approved for promotion to the rank of Air Commodore on 24/11/2009. The applicant applied earlier for premature retirement and the same was rejected. The applicant applied again on 22/02/2010. The same was returned unactioned on 06/03/2010. The respondents maintain that requests for premature retirement from super specialists are considered only after three looks i.e after final supersession. Since the applicant still has two more chances for being promoted he cannot be considered

finally superseded. The respondents have recommended that the application be rejected.

9. In a rejoinder affidavit the applicant had reiterated the points given by him earlier. The applicant states that his request for posting is genuine and his posting to metropolitan cities were in the interest of the service also. The applicant has stated that MoD policy dated 06/01/2009 (Annexure R-5) states “***on grounds of supersession at the first consideration the request for premature retirement will be dealt with sympathetically***”. His application after his first supersession was however rejected. The applicant states that the concept of release only after final supersession is flawed. An officer who has been superseded once cannot recover lost ground and remains junior to his erstwhile colleagues even if he subsequently picks up rank. He should not therefore suffer the ignomy of serving under juniors. The applicant contends that many super specialists have been granted premature retirement after one supersession and some have been released even without being superseded. In support of his contention, the applicant has produced the list of 12 such officers who had been given such benefits.

10. In reply to the list submitted by the applicant the respondents have submitted that the list produced by the applicant is not on similar standing as the applicant. Only 02 officers were granted premature release before final supersession. This was on grounds of domestic problem. Cases for premature retirement were dealt on merit and no parallel can be drawn between two cases.

11. In a rejoinder statement the applicant states that the contention of the respondents that 11 out of 12 officers on the list are not on the similar standing as the applicant is false. The applicant has pointed out that 03 super specialists namely Lt Col H K Rangan, Lt Col PG Chitalkar and Surg Cdr Mohit Goyal, of the rank of Lt Col, were given premature release before being finally superseded.

12. We have heard the arguments and perused the records specially the list of 12 super specialists produced by the applicant. We note that the contention of the respondents that super specialists cannot be given premature retirement, before final supersession, i.e after three looks has not been uniformly applied. The glaring example being three super specialists in the rank of Lt Col have been given premature retirement before 3rd supersession.

13. During the course of arguments the respondents pointed out that the applicant had recently been considered by promotion board and not approved for promotion. In view of this observation we feel that there is justification in the applicant's request for premature retirement despite being not finally superseded. The respondents are thus directed to sympathetically reconsider the earlier requests of the applicant for premature retirement with the additional input of his supersession for the second time in his present rank. The previous rejections of his applications will not come in his way. This will be completed preferably within a period of three months. Application is partially allowed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 07th January, 2011