

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

09.

O.A. No. 345 of 2011
With M.A. No. 383 of 2011

Col. B.G. Cariappa

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.
For respondents: Mr. Dalip Mehra, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
13.12.2011

1. Petitioner by this petition has prayed that the order dated 4th May 2011 may be quashed and Respondents may be directed to allow the Petitioner to serve in re-employment up to age of 58 years. Petitioner's date of birth is 4th September 1954 and he was commissioned in Indian Army on 2nd September 1978 after successfully completing his training in the Brigades of Guards and with the passage of time he reached to the position of Colonel and he superannuated after completion of his tenure on 30th September 2008. After retirement he applied for the re-employment and he was re-employed in 2008 for a period of three years on the permissible medical category. Thereafter he applied for extension of service from 57 to 58 years. He is said to have moved an application in March/April but he was not given the extension of one years and he was discharged from service on 4th May 2011 with effect from 3rd September 2011. Petitioner made a representation that he should be allowed to continue up to 58 years of age which was rejected and thereafter the Petitioner approached by filing the present petition before this Tribunal.

Though this petition should have been sent to Kochi Bench of the Armed Forces Tribunal but because of the fact that Kochi Bench is not regularly functioning as the Judicial Member is not appointed therefore this petition is allowed to be heard at Principal Bench.

2. A reply was filed by the Respondents and in the reply they have pointed out that the Petitioner was required to submit all his medical documents before 1st July 2011 and they have pointed out that as per the conditions of Employment Management Index the persons with Medical Index F-1A and F-1B are entitled for further extension but those who are in F-2 and F-3 are not eligible for further extension. In case of Petitioner he sent his application along with the certificate on 8th February 2010 which contains a condition of non-employability and which reads as under:

"Medical Classification: A2 For Both Disability
Composite LMC: S1H1 A2(PMT) P1E1

Diagnosis:

- (1) ACT TEAR RT (OPTD)
- (2) BUCKET HANDLE TEAR MEDIAL MENISCUS RT (OPTD)

<u>Type of Employability Restrictions</u>	<u>Reasons in its support</u>
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To prevent further aggravation

- 1.(i) Unfit for posting to HAA (above 2700 mtrs 9000 ft)
- (ii) Places that have sub-zero temperature for more than three months in a year.
2. Have access to basic specialist facilities at MH/Civil hospitals."

Therefore he could not be given further extension.

3. Learned counsel for the Petitioner has submitted that when he applied in April 2011 on the basis of the medical certificate which is dated 18th February 2010 where these two conditions are clearly mentioned that it did not carry the expression F-2 or F-3 but the conditions which are mentioned in F-2 and F-3 were not mentioned. Conditions F-2 and F-3 read as under:

"F-2 Fit for military duties anywhere. However at the discretion of Medical Board, the following restrictions may be imposed:-

(i) Unfit for posting to High Altitude Area (above 2700 meters-9000 ft.) and/or

(ii) Places that have sub-zero temperature for more than three months in a year.

F-3 Fit for normal military duties with restrictions as advised by medical authorities."

4. Learned counsel for the Petitioner submitted that he made a representation to the Military Secretary and a reply was sent to him on 22nd June 2011 in which it was clearly mentioned that being in medical category A-2 when employable restriction is mentioned vide letter translated to F-2(i), F-2(ii) and F-3 therefore you are eligible to serve only up to 57 years of age. Learned counsel for the Petitioner tried to make out a mountain out of a mole hill that military service's reply is not very articulate. Thereafter he sent medical certificate though belatedly on 22nd July 2011 which gives him employability eligibility. We regret that it cannot be accepted. The Petitioner knows it too well when he applies for re-employment that there are certain conditions which he has to fulfil. The policy decision clearly stipulates that an incumbent should apply with the latest medical certificate before six months of

reaching the age of 57 years. Paras 4, 6 and 7 which are relevant are quoted below:

"4. **Medical Category for Extension beyond 57 years:** All re-employed officers who are in Low Medical Category (LMC) are required to undergo Review/Reclassification Medical Board after every two years, as is the case in regular service (DGMS 5 letter No 12642/DGMS-5(A) dated 22 Apr 92 refers). Hence, all LMC re-employed officers are expected to undergo at least one Reclassification Medical Board till the age of 57 years. Grant of extension beyond 57 years of age will be governed by the latest medical board which is valid at the time the officer attains 57 years of age.

6. **Submission of Documents for Consideration.** Officers who have either been upgraded to medical category with employment restrictions as permitted vide AGPS/PS-2 letter dated 20 Apr 07 or are seeking review of medical category for continuation of service up to 58 years of age, should submit their latest Reclassification Medical Board proceedings six months prior to attaining the age of 57 years. No extension beyond 57 years of age would be granted in cases where relevant documents are not submitted within the stipulated time.

7. All officers who meet the laid down QR for such extension as mentioned in the AGPS/PS-2 letter referred to at paragraph 1 (a) above will be allowed to serve till 58 years of age."

5. In the present case it is admitted that the Petitioner applied beyond the period prescribed in the condition (6) i.e. he should submit his latest re-classification medical board proceedings six months prior to the age of attaining 57 years. In fact he did apply but he applied belatedly and secondly he applied with the medical board proceedings of 18th February 2010 which

does not give him employability eligibility i.e. a further extension up to 58 years of age. According to the Petitioner in para 1 of their reply the Respondents have stated that Petitioner received the documents after 1st July 2011 but we have to read the reply as a whole and not one line here or there. The situation which emerges is that the application was filed by the Petitioner belatedly with the medical certificate which does not give him employability.

6. The Respondents had strictly adhered to the letter of law and we do not find any merit in this petition and the same is dismissed with no order as to costs.

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

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

**New Delhi
December 13, 2011
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