

**THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI  
(Court No.2)**

**O.A NO. 513 of 2011**

**IN THE MATTER OF:**

**Nb Sub Gulab Rao** .....**APPLICANT**  
Through : Mr. PDP Deo and Ms. Monica Nagi, counsel for the  
applicant

**Vs.**

**UNION OF INDIA AND OTHERS** ...**RESPONDENTS**  
Through: Mr. V.S. Tomar counsel for the respondents

**CORAM:**

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER  
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 04.04.2012**

1. This OA was filed in the Armed Forces Tribunal on 22.11.2011 and was registered as OA No.513/2011.
2. Vide this OA, the applicant has sought cancellation of his discharge order dated 09.07.2011 being arbitrary by which he was discharged with effect from 31.01.2012 and extension in service was denied. He has also sought extension of service for two years with all consequential relief.
3. Thereafter, he sought an amendment in the main OA as well as in the relief clause of the OA seeking quashing/setting aside the

classification of differentiating the date of eligibility for extension in the new policy letter dated 20.09.2010 issued by the respondents.

4. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.01.986. In the course of his service, he got promoted to various ranks. He was posted as Havildar at 1 FOD at Udhampur in May 2009. On 04.07.2009 he was admitted to the Command Hospital and his medical category was downgraded to P-3(T-24) w.e.f. 09.01.2010 for having been diagnosed as a case of HBV related cirrhosis of liver. The applicant was again reviewed by the Medical Board on the due date i.e. 25.06.2010 in which he was upgraded to P-2(T-24) w.e.f. 16.08.2010 and with his next review board on 30.01.2011.

5. It is submitted that the applicant was promoted to the rank of Nb Subedar on 01.01.2011 despite being LMC since he was within acceptable limits of P-2(T-24) as per the provisions of promotion policy letter dated 10.10.1997. He was again admitted in the Command Hospital on 22.01.2011 from where he was transferred to Army Hospital (R&R), New Delhi where he underwent deceased donor liver transplantation on 29.01.2011. It was also detected that the applicant has post transplant diabetes mellitus and was advised continuation of treatment by the Senior Advisor (Medicine and Gastroenterology) (Annexure P-2).

6. On 24.05.2011, a Medical Board was convened and his medical category was converted to P-2(P) w.e.f. 30.01.2011 with the next date of review being 30.01.2013 (Annexure P-13).

7. The applicant was posted to COD Delhi Cantt. on 05.05.2011 by AOC Records on medical grounds to facilitate treatment of the applicant as advised by the Army Hospital. He reported to the new unit on 18.07.2011. Here he was informed that the respondents have issued discharge order in respect of the applicant dated 09.07.2011 and directed his previous unit i.e. 1 FOD to add the name of the applicant at Serial No.34, after Serial No.33 in the Appendix to the discharge order already issued on 04.01.2011 (Annexure P-4) for discharge w.e.f. 31.01.2012 (Annexure P-1).

8. The applicant was informed by the unit in August 2011 that he was required to report to AOC Centre, Secunderabad on 04.01.2012 for discharge drill as he was to be discharged w.e.f. 31.01.2012 since he was LMC P-2(P) w.e.f. 30.01.2011 before commencement of the extension period and therefore, as per existing policy at that time he was not eligible for extension of service and hence the discharge order was to be enforced on 31.01.2012.

9. It is contended by the learned counsel for the applicant that meanwhile, the Army HQ issued a revised policy regarding screening for extension dated 20.09.2010. Vide this policy, the parameters for LMC personnel to be granted extension were made similar to that of

promotion policy dated 10.10.1997 that a LMC(P) army personnel is entitled to extension within acceptable medical category. Therefore, the applicant considered himself as being eligible for extension of service. It is contended that the applicant was told that the applicability of the policy is from 01.04.2011. Since the discharge order was issued on 09.07.2011, apparently it was not as per revised policy of 20.09.2010 (Annexure P-6). Thus, the discharge order is liable to be set aside.

10. It has also been contended that the applicant has left with just two years of service in the present rank and due to retire on 31.12.2013, it was only a matter of time that he was finally superannuate. But it is important that he was receiving treatment in the Army Hospital which has been recommended by the Doctor and for that he was posted to Delhi.

11. Learned counsel for the applicant argued that the discharge order dated 09.07.2011 was arbitrary and in violation of the revised policy issued by the Army HQ on 20.09.2010 which mentions that the policy will come into force w.e.f. 01.04.2011 which stated that LMC personnel who are in acceptable category of being promoted are entitled to get extension.

12. Learned counsel for the applicant further argued that the respondents erred themselves as at the time of screening the applicant for extension of service, his name was included in the list

(Annexure P-1). While his name was added in the Appendix to the discharge order already issued on 04.01.2011 for discharge much later i.e., after the issuance of policy dated 20.09.2010, therefore, it smacks arbitrariness.

13. Learned counsel for the applicant also argued that the applicant was declared P-2(P) in May 2011. This was after policy letter of 20.09.2010 was issued; therefore, he was very much eligible for extension of service.

14. In support of his contentions, learned counsel for the applicant cited the order of Hon'ble AFT Chandigarh Bench passed in the matter of **OA No.638/2011 decided on 25.05.2011 Balwinder Singh Vs Ministry of Defence** but this order relates to interim order.

15. Learned counsel for the respondents stated that the applicant was enrolled in the Indian Army on 30.01.986 and was to complete 26 years of service on 31.01.2012 and as such he was to superannuate in the rank of Nb Subedar with effect from the same date. The discharge order dated 09.07.2011 was issued in respect of the applicant so as to discharge him w.e.f. 31.01.2011 under the Army Rule 13(3)(i). The applicant was in permanent low medical category and was not entitled for extension of service in terms of IHQ policy letter dated 21.09.1998 (Annexure R-1) prevailing at that time. He was governed by old policy as the new policy of 20.09.2010 which permits grant of two years extension to JCOs/Ors under various conditions and will be applicable

only to those JCOs/Ors who are proceedings on retirement w.e.f. 01.04.2013 onwards. He further argued that there has been no violation of the revised policy of 20.09.2010 as it is only meant for screening of those personnel who are to be screened after 01.04.2011. He further argued that Appendix-B para 3 of the policy reads as under:-

***“3. Applicability. The revised policy will be made applicable with effect from 01 Apr 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dets.”***

16. Having heard both the parties at length and having examined the documents produced before us, we are of the opinion that the issue basically lies with the new policy and its date of effectiveness. The new policy was issued on 20.09.2010. It has been made effective from 01.04.2011. The policy letter in its applicability reads ***“procedure and criteria for screening of personnel below officers rank (PBOR) for grant of extension of service by two years”***. Appendix-A of the said policy lays down ***“Procedure & criteria for screening of PBOR in the Army”***. The detailed reading of this Appendix at Para-3 reads as under:-

***“3. Method of screening: Screening of the affected PBOR for the grant of extension should be carried out 24 months prior to their reaching the current laid down service limits. It should be***

*conducted by the same boards which are constituted and assembled for the purpose of deciding promotions for the same rank as per current practice in various Arms and Service. Accordingly unit/regiment/corps promotion boards which are constituted and assembled for the purpose of deciding promotions, should also undertake the following additional tasks, whichever required:-*

- (a) Screen affected PBOR for the grant of extension.*
- (b) Consider PBOR for continued retention during the extended tenure in case there is drop in any criteria as mentioned at Appx 'B' to this letter.*
- (c) Consider RIs Maj/Sub Maj who do not complete 34 yrs pensionable service or 4 yrs tenure by the time they reach 52 yrs of age, for screening for extn in service upto the age of 54 yrs or 34 yrs of pensionable service or 4 yrs of tenure whichever is earlier.*

**Note:** *In exception to the above, a PBOR who could not be screened for extn of service under the existing policy as per laid down screening schedule given at para 4 below due to LMC, court cases or any other circumstances beyond his control will be screened by the Screening Board before retirement.”*

17. At para 6 it reads:-

***“Applicability. The revised policy will be made applicable with effect from 01 Apr 2011.”***

18. Therefore, it is construed that the policy of 20.09.2010 deals with **“Procedure for screening”** which is required to be done 24 months in advance. Further, the old policy of 21.09.1998 had mandated the same screening procedure as provided in the new policy, the difference being the criteria for promotion and criteria for extension have been harmonised i.e. it implies that a person who is eligible for promotion is also eligible for extension.

19. The screening of the applicant in normal course would have been carried out in December 2009. Though the respondents have not been able to confirm this aspect, it is obvious from the turn of events that the extension was granted to the applicant as he was in medical category P-2(T) which was permissible under the old policy. However, the day he became LMC(P), he became ineligible for extension again under the old policy. Since his screening would have been done in 2009, therefore, the applicability of the new policy was not in question.

20. We have taken note of the averment made by the learned counsel for the applicant regarding his name being inserted later on in the discharge order issued on 04.01.2011. This discharge order is more of an advance notice given by the Record Office to units and individuals so that they can prepare for the impending retirement. The addition of applicant's name at Serial No.34 seems to be an attempt to



save of stationery and issuing an amendment instead of issuing fresh letter. No malafide can be read into it. However, we feel that this count of cutting corners by the Record Office is not justified and should be taken note for rectification in future.

21. We have also examined the contentions of the respondents which gives out a clarification dated 11.01.2011. Para 3 of the said clarification states that ***“It is amply clear from the policy letter quote above that the date for new policy to be effective is from 01 Apr 2011 to screen indls due for extn wef 01 Apr 2013. It is also amply clear that there is no provision for second screening.”***

22. We are of the opinion that the policy issued on 20.09.2010 is to harmonise the previous screening policy of 1998 and that of the promotion policy of 1997. This recognises that LMC personnel with certain parameters are eligible for extension. It also recognises that individuals who have been punished under certain sections of the Army Act are also eligible for extension.

23. We have examined the policy letter of 20.09.2010 in great detail. The heading of the policy states ***“Procedure and Criteria for screening of Personnel Below Officer Rank (PBOR) for grant of extension of service by two years”***. **At para 7** it further emphasized that the revised policy will be made applicable with effect from 01 Apr 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dtes. At **Appendix-**

**A** to this letter, the procedure and criteria for screening is laid down wherein at **para 6** it again states that the revised policy will be made applicable with effect from 01 Apr 2011. Analysing this letter, it is clear that the screening of an individual for extension will take place 24 months before his deemed date of retirement. The letter of 11.01.2011 lays down that there is no provision for second screening. It implies that all those personnel who have been screened 24 months prior to their date of retirement shall not be screened again and will be governed by the policy in existence. Since the new policy is applicable from 01.04.2011, all those personnel who are being screened after 01.04.2011 will be governed by the policy of 20.09.2010.

24. **Appendix-B** to the policy letter of 20.09.2010 says “**Retention of PBOR during extended tenure**”. This clause is applicable vide **para 3** of the Appendix w.e.f. 01.04.2011. Further, reading with note of para 3 of Appendix-A which states that “*In exception to the above, a PBOR who could not be screened for extension of service under the existing policy as per laid down screening schedule given at para 4 below due to LMC, court cases or any other circumstances beyond his control will be screened by the Screening Board before retirement.*”

25. Reading of the two provisions of Appendix-A and Appendix-B to the policy letter of 20.09.2010, it is quite clear that screening as per the new policy will be w.e.f. 01.04.2011. Thus, who were screened earlier will not be screened again i.e. there will be no second screening.

However, when it gives retention to personnel during the extended service, the provisions of new policy will come into effect from 01.04.2011.

26. Considering the provisions as stated above, in this case the applicant would have been screened in December 2010 since he was due to retire under normal circumstances in December/January 2012. Since his name did not figure in the letter of 04.01.2011 it implies that his screening was done and since at that point of time he was within acceptable category i.e. P-2(T), he was recommended for extension. The applicant was down-graded to P-2(P) on 30.01.2011. His screening board was conducted on 09.07.2011 (Annexure P-1) and that is how his name was added to the letter on 04.01.2011 (Annexure P-4) at serial No.33. Since the extension of the applicant was to commence only in January 2012 and the screening board was conducted on 09.07.2011, both these dates were beyond 01.04.2011, therefore, the applicant should be governed by the revised policy of 20.09.2010. As such, he being P-2(P) is eligible for extension of service by two years.

27. In view of the foregoing, we are of this opinion that the applicant is entitled to two years extension from 31.01.2012 to 31.01.2014. Since we had protected the interest of the applicant in response to his prayer for interim relief of staying his discharge order, we direct that the applicant be deemed to be reinstated in service w.e.f. 31.01.2012

and he is entitled to continue in service. Further, he is held entitled for all consequential financial benefits.

28. This exercise be completed within a period of 90 days from the date of this order. The OA is hereby allowed. No order as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**  
**Announced in the open Court**  
**on this 04th day of April, 2012.**

**(MANAK MOHTA)**  
**(Judicial Member)**