

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

**23.**

**O.A No. 605 of 2010**

**Sep Hawa Singh**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Sh. K. Ramesh, Advocate.

**For respondents:** Sh. Anil Gautam, Advocate

**CORAM:**

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

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

**ORDER**  
**19.10.2011**

1. The petitioner in this petition has prayed that the respondents be directed to quash and set aside DSC Records letter dated 30.9.2009 being contrary in principle to Army Rule 13 and to allow the petitioner to continue his service upto the age of superannuation or at least for five more years till he earns pensionable service.
2. The petitioner was enrolled in Indian Navy on 13.1.1982 and he was discharged on 31.1.1997 on completion of his tenure. Thereafter he was re-enrolled in Defence Security Corps on 23.11.2000 initially for a period of ten years and thereafter, after the completion of ten years, he was not given further extension. He was discharged from service on 30.11.2010 being a Low Medical Category. The petitioner was on Low Medical Category P2. Against his discharge and for not giving extension, the petitioner has filed this petition challenging the order of the respondents not extending his service.

3. A reply has been filed by the respondents and they contested the petition. Learned counsel for the respondents has submitted that since the Officer Commanding (OC) had not recommended for further extension of the petitioner as he was in LMC P2, therefore, his services were not extended.

4. Before we go into the contentions raised by learned counsel for the parties, it will be relevant to refer to the policy bearing on the subject. Learned counsel for the petitioner produced before us the instructions dated 17.3.1999 of DSC Record Office. The general guidelines, which appear in Para 141 and is relevant for our purpose, read as under:

141. It is to be borne in mind that extension of terms of engagement of DSC personnel is not a matter of right depending upon the willingness of the concerned individual. On the other hand, such extension is to be granted to the willing personnel based upon the efficiency and utility to the Corps and in the interest of the service and the State. It may be mentioned that in case of any person who is not enthusiastic in discharging of his duties or has become lethargic and wants to pass his time till superannuation, his retention in service will not be considered conducive to the efficiency of the Corps or in the interest of the State.

Para 143 deals with "Extension of Period of Engagement" and it states that the period of engagement of Sub, Nb Sub, NCOs and OR can be extended further by five years at a time till the age of superannuation viz. 55 years. Para 144 states that the extension of service upto 57 years of age will be subject to screening and found fit by the screening board. Para 145 deals with the eligibility conditions for grant of extension of period of engagement. The conditions are: (a) willingness; (b) red ink entry; (c) ACR criteria during last three years reports; (d) recommendation; and (e) medical category. Eligibility condition (d) is relevant for our purpose, which reads as follows:

(d) **Recommendation**. Should be recommended by OC Unit, Joint Director and Director DISCHARGED for grant of extension of service. It may be mentioned that it is the prerogative of the concerned OC to recommend or not to recommend an individual for grant of extension of terms of engagement. The OC Unit at his discretion may either thus recommend an individual who does not fulfil the eligibility conditions, or not recommend an individual who fulfil the eligibility conditions provided he records the reasons for his recommendation or otherwise in writing and also subject to the condition that decision reached by him has been taken in the interest of the Service and State. The Director/Joint Director DSC will also record the reasons in writing where an individual is not recommended for extension of terms of engagement. Such cases will be fwd to DDG DSC Army HQ by Records for obtaining his decision.

A perusal of the above would show that the recommendation of the Unit is necessary and it clearly states that the OC Unit has its discretion either to recommend an individual who does not fulfil the eligibility conditions or not to recommend someone who fulfils the eligibility conditions, provided he records the reason for his recommendation or otherwise in writing and also subject to the condition that decision reached by him has been taken in the interest of the Service and State. Condition (e) deals with "medical category", which is also relevant. It reads:

(e) Medical Category. Should be in medical category 'AYE' However, LMC personnel (both temporary and permanent) are eligible for grant of extension of service, provided they are willing and recommended by the OC unit.



It states that the individual should be in medical category 'AYE' and that however, LMC personnel are eligible for grant of extension of service if they are willing and recommended by the OC unit.

5. In this background we have to consider the submission of learned counsel for the parties. Learned counsel for the petitioner submitted that in view of the judgment of the apex Court in **Union of India and others v. Rajpal Singh** (2009(1) SCC (L&S) 92), wherein Their Lordships at paragraph 30 thus:

30. A plain reading of the Army Order shows that it comes into operation after an opinion has been formed as to whether a particular personnel is to be retained in service or not, if so for what period. If a person is to be retained in service despite his low medical category for a particular period as stipulated in Army Order 46 of 1980, the question of subjecting him to the Invalidating Board may not arise. However, if a person is to be discharged on the ground of medical unfitness, at that stage of his tenure of service or extended service within the meaning of the Army Order, he has to be discharged as per the procedure laid down in Clause I(ii) in Column 2 of the said Table.

According to learned counsel for the petitioner, even in the matter of extension of service, the ratio which had been laid down by the apex Court will be applicable. In **Rajpal Singh's case** (supra), Their Lordships had the occasion to deal with the discharge of persons who were already in service and were serving in the Army. There the question arose was whether the Release Medical Board can be substituted by an Invalidating Medical Board or not. Their Lordships said that once a procedure has been laid down, then that particular procedure has to be followed in that manner and it should be done in that manner only. The job of the Invalidating Medical Board is to invalidate a person if he is not worth retaining in the Army on

medical ground. The job of the Release Medical Board is to see whether he suffers from any disability or not. Therefore, Their Lordships had taken the view that once the Invalidating Medical Board has been made the basis for discharge of persons on medical grounds such decision cannot be taken by the Release Medical Board. The further observations referred by learned counsel for the petitioner are to be seen in that context. So far as the present case is concerned, the incumbent had already been discharge from service on completion of his tenure of 15 years service. Therefore, he is not in Naval service. Only persons who have already served in the Indian Armed Forces and are medically or otherwise fit are re-enrolled in DSC service. Therefore, the petitioner having been discharged from regular service of the Indian Navy, was given another service in DSC and he served for a period of ten years and thereafter it was found that he is LMC (P2). However, the OC did not recommend his name for further extension. This case and **Rajpal Singh's case** (supra) are distinguishable on the facts as well as on the principle of law. The retention of individuals is done according to the instructions given by the DSC Records Office dated 17.3.1999 and discretion had been given to the OC unit. In the present case, in exercise of such discretion, the OC did not recommend the name of the petitioner on the ground of LMC (P2). While exercising such discretion, the OC allowed the petitioner to be in service for 10 years and if the OC, giving the reason of LMC (P2), recommends that further extension is not given to the petitioner then we cannot say that the OC has acted illegally. The decision of the OC is not bad in law. We are satisfied that the OC has taken the decision on relevant consideration i.e. LMC of P2 and rightly he has not recommended extension of service of the petitioner. Therefore, the decision of the OC cannot be said to be vitiated on any ground.

6. We find no merit in this petition. In the result, it is dismissed. No order as to costs.

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

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

**New Delhi**  
**October 19, 2011**  
**alx**