

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 179 of 2010**

(Delhi High Court W.P (C) No. 12897 of 2005)

IN THE MATTER OF:

Hav. JagdishApplicant
Through Shri S. M Dalal counsel for the Applicant

Versus

Union of India and OthersRespondents
Through: Ms Barkha Babbar counsel for the Respondents

CORAM:

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

JUDGMENT

Date: 25-02-2011

1. The writ petition was first filed in Hon'ble Delhi High Court on 22/03/2007. Notices were issued and respondents filed their counter. Thereafter, it was transferred to this tribunal on its formation on 05/11/2009.
2. The petitioner/applicant by this petition has prayed to quash the rejection letter for change of option exercised by the applicant on 17/01/2003. He has further prayed for grant of two years

extension from 03/09/2004 and to reinstate him in service w.e.f. 30/09/2004 with all consequential benefits. He has also prayed for a special DPC to be held for promotion to the rank of Naib Subedar as per his original seniority. Further, he has prayed that Para 3 (a) (as amended) of Government of India Ministry of Defence circular No.14(3)/98/D(AG) dated 03/09/1998 (**Annexure P-3**) be set aside and direct the respondents to replace the condition of holding of screening board 02 years before date of superannuation with one year before date of superannuation.

3. The applicant was enrolled in the Army on 09/09/1980 and in due course he was promoted to the rank of Havildar. He was posted to 23 Bn RR on 19/09/2001. Before proceeding on posting to 23 Bn RR he exercised his option for extension of service as "*unwilling*" in May 2001. He avers that he was under the impression, since he was in the promotion zone and was fully qualified to be promoted as Naib Subedar and in that case his service period would have enhanced by two years. Thus, he opted for unwillingness.

4. On 17/01/2003 he, however, changed his mind and opted for extension of service as "willing" having residual service of 20 and half months' service in the rank of Havildar. This certificate (**Annexure P-1**) was duly forwarded by 23 Bn RR to Records, the Rajput Regiment on 20/01/2003. However, the Records the Rajput Regiment in turn forwarded it to 14 RAJPUT for doing the needful. 14 RAJPUT intimated the Records on 13/04/2003 to suggest that the NCO had crossed the 02 years barrier which was stated in their letter dated 11/02/2003. Thus, he was left with only one year and 06 months of service. As per Para 4 of AHQ letter dated 10/05/2002, option for enhancement of service can only be opted two years prior to completion of original service limits. Records, the Rajput Regiment on 13/04/2003 concurred with 14 RAJPUT and declared that the applicant is therefore not eligible for fresh screening board. His prayer was rejected. The applicant thus retired on 30/09/2004 without grant of extension.

5. The learned counsel for the applicant contended that the enhancement of terms of engagement was sanctioned for all Central Govt employees and any restriction placed on an individual in terms of option to be exercised against a time stipulation impinged on his vested right for the extension. He

cited the decision in *Union of India & Anr Vs T Parthasarathy* AIR 2001 SC 158, in which their Lordships had observed as under:-

"Para 8. So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the Headquarters, the appropriate authority was said to have been made only on 20-2-86, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this case was to be effective from a future date namely 31-8-86. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31-8-86. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke the request earlier made before it ever really and effectively became effective.

"Para 9. The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made fore pre-mature retirement before cannot, in our view, be destructive of the right of the respondent, in law, to withdraw his request for pre-mature retirement before it ever became operative and effective and effected termination of his status and relation with the Department.

When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the department or a mere certificate of the respondent being aware of a particular position which has no sancity or basis in law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot be countenanced in our hands. Even that part, the reasoning of the High Court that the case of respondent will not be covered by the type or nature of the mischief sought to be curbed by the so-called policy decision also cannot be said to suffer any conformity in law, to warrant our interference”.

6. He further argued that the policy letter purported issued by the AHQ on 10/05/2002 which reduced the timing of holding the screening board from 03 years to 02 years before date of retirement in case of personnel below officers rank (PBOR) was not communicated to all concerned and the applicant was not aware of the same. Had he been aware of this clause, perhaps he would have revoked his unwillingness much earlier. It is possible that since the individual was posted with 23 Bn RR such communication was not forwarded directly to the units.

7. He further contended that one Havildar Raghubir Singh who had less than 02 years of residual service was given consideration and screened by the screening board when he was having just 01 year and 02 months of residual service, before his original date of superannuation. He contended that applicant was discriminated in this way.

8. The learned counsel for the respondents stated that in case of Havildar Raghubir Singh was always willing for extension of service right from the beginning and there was no change in his willingness/ unwillingness certificate. Therefore, the case of Havildar Raghubir Singh cannot be compared with the case of applicant.

9. In case of the applicant he had rendered his unwillingness for extension in May 2001 accordingly his screening board was held on 29/08/2001. Since he was unwilling, his name was not considered for extension of service (**Annexure R-1**). He however gave his willingness and therefore change his option on 17/01/2003 beyond the prescribed time limit (**Annexure R-2**) while the Army HQ letter clearly stated as under:-

"4. Screening Boards Held Prior to 29 Apr 2002. The proceedings of such

screening board need not be cancelled. The following actions may be taken in respect of personnel who have two years or more of residual service (without extension) on 29 Apr 2002.

(a) Any individual who has more than two years residual service, based on his original terms of engagement, will be free to have his name deleted from the board proceeding. He will be screened afresh, as per existing procedure, two years prior to completion of original terms of engagement.

(b) The option given above may be exercised any time prior to the individual being left with less than two years of such residual service."

10. As regards the publicity accorded to the AHQ letter of 10/05/2002 has been rendered as under :-

"5. Publicity. The above mentioned amendment may be given wide publicity through regimental news-letters, Sainik Sammelans, information room notices and muster parades.

6. It is clarified that since Govt orders have been issued on 29 Apr 2002, retrospective applicability of these orders will not be in order".

11. In view of the above learned counsel for the respondents stated that the applicant was in full knowledge that the option being exercised by him on a later date i.e. less than 02 years

normal date of retirement may disqualify him from consideration for extension. Therefore, the contention that he was not aware of the provisions of the AHQ letter dated 10/05/2002 and consequences thereof are incorrect.

12. Learned counsel for the respondents further submitted that the requirement of holding the screening board 02 years prior to the date of the retirement is to assist the organization in management of induction in to service of fresh intake. This emerges more from administrative requirement and policy planning.

13. Having heard both the counsels at length and having examined all the documents, we are of the opinion that since the individual was not posted with his parent unit i.e 14 RAJPUT and was posted to 23 Bn RR at the critical time from 19/09/2001 to 19/10/2003, it is quite possible that the individual was not aware of the letter issued by the AHQ letter dated 10/05/2002. It is also stated that the individual fully qualified to become a JCO in terms of his qualification i.e passing of promotion cadre, ACRs and discipline criteria. Therefore, there is a case for giving the individual relief as regards the policy of holding the screening board two years before expiry of original terms of engagement.

14. The contention of the Respondents qua the case of Hav. Raghubir Singh is not logical. The Respondents have averred that Hav. Raghubir Singh was always 'willing' for extension, so there was no change in his option. If that be so, why fresh option was sought from Hav. Raghubir Singh and his case considered just one year and two months prior to the date of completion of his normal terms of engagement. The screening board which was held three years in advance of completion of his normal terms of engagement should have sufficed. In any case, obtaining fresh option within the two years period of completion of normal terms of engagement does not stand to any rationale. On the other hand, similar privilege was not granted to the applicant.

15. As regards the policy holding the screening board two years in advance and not accepting any change of option once exercised by the individual, contrary to the law as laid down by the Hon'ble Supreme Court judgement given in case of **Union of India & Anr Vs T Parthasarathy**, AIR 2001 SC 158:-

"When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the department or a mere certificate of the respondent being aware of a particular position which has no sancity or basis in law to destroy such rights which otherwise

inherited in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation".

16. In view of the foregoing we are of the opinion that the change of option certificate in which the applicant was willing for extension of two years should have been considered. Had the applicant not passed the screening test then he could have been discharged on completion of his original terms of engagement. We, therefore, direct that his case for extension be reconsidered and the applicant be given financial benefits, if he qualifies for the extension as assessed by the screening board. Rejection order is hereby quashed. We do not subscribe to the option of the individual being granted the rank of Junior Commissioned Officer even though he was qualified in all other aspects because he has now already superannuated and granting him rank at this belated stage will cause organisational problems. Application is partially allowed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on this 25th day of February 2011**