

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

17.

O. A. No. 177 of 2011

Havildar Swaran Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. Archana Ramesh, Advocate.

For respondents: Ms. Sangeeta Tomar, Advocate.

CORAM:

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

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

ORDER
23.04.2012

1. Petitioner by this petition has prayed that the order of discharge passed by AOC Records dated 12th May 2009 so far as Petitioner is concerned may be quashed and he may be granted extension of service continuously for two years with effect from 31st May 2010, especially so based on the amendment of Army HQ policy letter dated 21st September 1998 when read in the light of Army HQ policy letter dated 10th October 19978 and letter dated 20th September 2010 in the larger interest of health of the organisation as also meeting the ends of equity and justice.

2. The Petitioner was enrolled in Army on 7th May 1986 and on 21st July 1987 he was punished for stealing one soap. Thereafter he was promoted to the rank of Naik in 1989 and as Havildar in 1994. He passed promotion cadre course for Naib Subedar in January 2010. He prayed for extension of service from 31st May 2010 till 31st May 2012 but this extension was denied to the

Petitioner and, therefore, he approached this Tribunal but he was directed to file a statutory petition. The statutory petition was filed by the Petitioner and was disposed of by the Respondents on 14th February 2011. Thereafter the Petitioner has filed this petition before this Tribunal.

3. The main grievance of the Petitioner is that for one small incident which happened about more than 25 years ago that cannot be held as a ground for denying extension to the Petitioner. She further contended that despite incident of theft he was granted promotion for the rank of Naik and Havildar and has been sent for promotion cadre for Nb.Sub. and, therefore, this old punishment which he has already undergone now cannot be held against the Petitioner for granting extension.

4. Respondents have filed their reply and they have taken the position that the policy dated 21st September 1998 clearly lays down the criteria for granting extension to a personnel below officer rank. As per this policy all PBOR are to be screened for extension for two years by screening board to be held on Unit/ Regiment/Corps/Records Office basis and retention of the PBOR during the extended tenure will be governed by the considerations as per Appendix 'B'. Appendix 'B' clearly lays down that an individual who has been convicted or awarded a red ink entry for offence mentioned in Annexure I to Appendix 'A' on the date of screening will not be eligible for extension and will be discharged in accordance with the existing rules on the subject. If a person is punished under Section 52 of the Army Act then he will not be granted an extension. Section 52 relates to case of a theft and the Petitioner was found committing a theft though it was very remote in period of time but

the authorities had to abide by the circular having bearing on the subject and, therefore, in these circumstances the incumbent who was found guilty though somewhere in 1987 has been now held out against him for grant of extension. We understand that now the policy has been already modified by the Respondents but the policy which was in vague at the time when the case of Petitioner was taken up for extension was the policy dated 21st September 1998 though subsequently it has been changed but the authorities were bound to act as per the policy dated 21st September 1998 which was in force and as per that policy if the incumbent is found guilty for theft then he will not be entitled for extension. Hence, in these circumstances we do not find any illegality in the impugned order. Consequently there is no merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 23, 2012
dn