

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

O.A NO. 184 of 2010

IN THE MATTER OF:

HAVILDAR/CLERK BHIM SINGHAPPLICANT

Through: Mr. K. Ramesh, counsel for the applicant

Versus

UNION OF INDIA AND OTHERSRESPONDENTS

Through: Mr. Satya Saharawat proxy counsel for Mr. Ankur Chibber, counsel for the respondents

CORAM:

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

JUDGMENT

Date: 21.03.2012

1. This OA was filed in the Armed Forces Tribunal on 22.03.2010 and was registered as OA No.184/2010.
2. Vide this OA, the applicant has sought quashing and setting aside of AOC Records Letter dated 18.03.2009 (Impugned order), by which he was released and extension was denied, and Army HQ policy letter dated 21.09.1998 with regard to extension being contrary to Army HQ policy letter dated 10.10.1997 (Annexure A-3) especially in view of principles of natural justice which seeks reasonableness in the ambit of Article 14 and 21 of the Constitution of India. The applicant has further sought extension of service for two more years w.e.f. 31.03.2010 to 31.03.2012 with all consequential benefits.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 04.03.1986. It is alleged that in 1999, the applicant had a minor hearing problem for which he was medically examined and downgraded to Medical Category E-2(P) w.e.f. 26.04.2008. Despite this restriction he continued in service and performed all his duties.

4. In due course of time, the applicant was also promoted to the rank of Havildar. However, the applicant was not granted an extension of service and he was superannuated on completion of 24 years of colour service as on 31.03.2010. He was also detailed for promotion cadre from Havildar to Nb Subedar from 23.11.2009 to 23.01.2010 at Secunderabad, but he could not avail the benefits of promotion as he was superannuated. He further argued that the applicant applied for extension, but he was not held eligible for grant of extension by the Screening Board since he was a permanent low medical category as per the condition and terms of the policy of 21.09.1998, but at the same time he was entitled for promotion to higher rank despite MC E-2(P) as per policy dated 10.10.1997, thus, the policy relating to extension dated 21.09.1998 being irrational, unfair and against the principles of natural justice deserves to be quashed. Learned counsel for the applicant, during the course of arguments, further contended that thereafter Army H.Q. itself found the extension policy dated 21.09.1998 discriminatory, therefore, a revised policy dated 20.10.2010 is issued by which Army personnel in acceptable LMC

category i.e. LMC P-2) P are held entitled for extension, though this policy is made effective from 01.04.2011, but it should have been made applicable retrospectively, as it is a beneficial policy.

5. Learned counsel for the applicant further cited judgment in support of his contentions passed in **(1996) 5 SCC 167 in the matter of M. Venkateswarlu and Others Vs Govt. of A.P. and others**, it has been observed in that judgment that *“in beneficial legislation where the object of the provision would otherwise be frustrated, it must be held to apply retrospectively”*.

6. Considering the facts of the case we also heard the respondents. Learned counsel for the respondents contended that there is no nexus between the two policies, there is no arbitrariness in the prevailing policy dated 21.09.1998 for extension. He further contended that the applicant does not come within the purview of the said policy nor comes in the revised policy dated 20.10.2010, which is made effective from 01.04.2011. He further submitted that the applicant was suffering from “Hyper Metorpia with Ambloyopia (LT) Eye” and was in low medical category E-2(P) w.e.f. 26.04.2002. He remained in the same category till his retirement. He was discharged from service on 31.03.2010 on completion of terms of engagement of 24 years in the rank of Havildar under Army Rule 13(3)III(i). He submitted that the O.A. of the applicant is liable to be dismissed.

7. Having heard both the parties at length and having examined the documents produced before us, we are of this opinion that the policy of extension of service on completion of terms of service is governed by the Army HQ letter dated 21.09.1998. The policy clearly lays down that for screening of personnel for grant of extension will be as per policy of 21.09.1998. This policy lays down that personnel who is a permanent LMC is not entitled to extension and should he be granted extension and he becomes a low medical category permanent during the extended period, his extended period will be terminated.

8. We have noted that there is a dichotomy between the policy for extension dated 21.09.1998 and the policy for promotion dated 10.10.1997. The criteria laid down for discipline and medical vary in both the policies. Whatever be the case, in this particular case, the applicant was governed by the prevailing policy for extension and therefore, cannot claim for standards laid down for policy of promotion. We are conscious of the fact that this dichotomy has been resolved by the policy letter of 20.10.2010 which has now been issued to be made effective from 01.04.2011. However, since the new policy is effective from 01.04.2011 it cannot be invoked retrospectively. We also do not find an justifiable ground to make it effective retrospectively. We have considered the abovementioned judgment cited by learned counsel for the applicant, but do not find any exceptional and special circumstances under which the effect of this policy be made retrospectively. We considered that merely because some individuals

are financially benefited, policy cannot be made effective retrospectively. Thus, the contention raised in this respect by learned counsel for the applicant is not sustainable and the judgment cited by him does not help the case of the applicant.

9. On the similar facts this Tribunal in case of ***Sub Ram Kumar Vs. Union of India & Ors.*** in T.A. No.504 of 2009 decided on 13.03.2012 has dealt with the same issue and dismissed the case while giving detailed deliberations.

10. In view of the foregoing, we are not inclined to interfere in the matter. The O.A. is hereby dismissed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

**Announced in the open Court
on this 21st day of March, 2012**