IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A. No. 192 of 2012

Sub. Hans Raj .....**Petitioner**

Versus

Union of India & Ors. .....**Respondents**

For petitioner: Mr. P.D.P. Deo and Ms. Monica Nagi, Advocates.
For respondents: Mr. S.K. Sethi, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

JUDGMENT
06.08.2012

S.S. Dhillon, Member

1. By this petition the Petitioner seeks quashing of his discharge order of 6th January 2012 issued by Defence Security Corps (DSC) Records. He also seeks an extension of service till the age of 57 years.

2. The Petitioner was enrolled in the Indian Army on 31st December 1976 and was periodically promoted in his own turn and retired as a Havildar on 30th October 1995. Immediately thereafter he applied to join the DSC and on 5th July 1997 he joined the DSC as a Havildar and was granted an initial period of five years of service up to 4th July 2002. Thereafter he received his first extension of service from 5th July 2002 to 4th July 2007 during which period he was promoted as a Naib Subedar on 30th August 2004. Subsequently he received his second extension of five years of service from 5th July 2007 to 4th July 2012 during which period he received his promotion to the rank of Subedar on 1st August 2009. The Petitioner is aggrieved by the fact that he has not been given an extension beyond July 2012, and is being

retired at the age of 54 years and 1 month whereas according to rules he could have served till the age of 57 years. By retiring him prematurely the respondents are causing him great financial loss and injustice. Learned counsel for the Petitioner stated that on initial hearing of this case on 28th May 2012 the Principal Bench of the Armed Forces Tribunal had stayed his discharge which was due on 31st July 2012 and the stay continued to be operative by the subsequent order of 30th July 2012.

3. The foremost argument put across by the learned counsel for the Petitioner was that the discharge was contrary to the DSC Record Office Instruction (ROI) 14/92 issued by the DSC Centre and Records which permits routine extension of service for a Subedar till the age of 55 years whereas the Petitioner was being sent on discharge at the age of 54 years and 1 month. Learned counsel drew our attention to para 4 of ROI 14/92 which reads "the period of engagement of Subedar, Naib Subedar, NCOs and OR can be extended further by 5 years at a time till the age of superannuation viz. 55 years." Thereafter, for serving beyond 55 years of age, learned counsel drew our attention to ROI 2/99 which at para 1 clearly stipulates that all ranks excluding Subedar Major can serve upto the age of 57 years. Relevant portion of this ROI reads as "PBOR will be screened for extension of two years service/age limit beyond 55 years of age by a screening board at the time of such extension of service or 2 years before the age of superannuation, whichever is earlier, to assess their suitability for extension." Therefore, from a simple reading of ROI 14/92 and 2/99 it was clear that in normal course he could serve upto the age of 55 years, after which he was eligible for an extension of 2 years and could, therefore, serve till the age of 57 years. He

has been retired at the age of 54 years and 1 month which was an arbitrary decision taken by the Respondents, presumably because he was in an unacceptable medical category. Learned counsel argued that he did not fall in this unacceptable medical category and, therefore, to deny him an extension till the age of 57 has been grossly irregular.

4. Learned counsel for the Petitioner while arguing on the medical condition of the Petitioner placed reliance on ROI 2/2011 and Army HQ policy letter dated 20th September 2010 which was to come into effect; for the entire Army, including DSC; from 1st April 2011. Learned counsel for the Petitioner drew our attention to para 4 of ROI 2/2011which reads as under:

> "4. Since LMC SHAPE-2 (both temporary and permanent) personnel except those downgraded due to psychological causes, obesity, misconduct or self inflicted injuries, are eligible for extension of service in terms of para 2(b)(ii) of the SOP, OC Unit/PI will forward recommendation in this regard as per Appx 'C' to this ROI to DSC Records 26 months in advance prior to attaining 55 years age, so that his screening board can be conducted 24 months in advance and to endorse suitable recommendation by the Screening Board."

5. This policy clearly stipulates that unless an individual has been downgraded for psychological reasons, obesity, misconduct or self-inflicted injuries he would be eligible for an extension of 2 years and his permanent low medical category status would not hinder grant of such extension. Further, placing reliance on the Army HQ Policy of 20th September 2010, learned

counsel for the Petitioner drew our attention to paragraph 2(b)(ii) which reads as under:

> "2(b) (ii) Eligible upto Medical Category 'BEE'. Personnel placed in medical category 'BEE' will be eligible for extension in service. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable/non-attributable to or aggravated by service conditions. However, cases of medical category 'BEE' (both temporary and permanent) due to psychological causes, misconduct or self inflicted will not be eligible for extension in service."

6. A plain reading of these two regulations clearly stipulates that permanent low medical category status is not a debarring criteria for extension of service. Learned counsel admitted that the Petitioner while serving at Jabalpur in 2008 had been placed in low medical category P-3(T-24) from 13th September 2008 for hypertension and diabetes mellitus. When he was next reviewed on 27th February 2009, this temporary medical category status was changed to P-2 (Permt.). Learned counsel placed a copy of the original Medical Board proceedings of 7th March 2009 which was perused. Thereafter the Petitioner developed the disease of anaemia and was placed in medical category P-3(T-24) for this disease. The Petitioner was reviewed for all three diseases by a Medical Board of 1st October 2011 which placed him as P-2 (Permt.) with effect from 17th August 2011 for primary hypertension and diabetes mellitus and as P-3(T-24) for anaemia with effect from 1st October 2011. Therefore the latest medical category that had been accorded to him was P-2 (Permt.) which as stated in Army HQ policy letter of 20th September

2010 as well as ROI 2/2011 was not a disqualifying criteria for grant of extension.

7. The Officer Incharge DSC Records issued his discharge order on 6th January 2012 ordering his discharge from service with effect from 31st July 2012. The reason given by the DSC Records for discharge was that the applicant had completed his present term of engagement and would not be eligible for extension of service due to not meeting the medical criteria for extension of service since he was P-2 (Permt.). Since he had been downgraded to P-2 (Permt.) in February 2009 and had been permitted to continue in service, there was no logic in the Respondents giving him conditional extension of one year's service on 27th may 2011 from 5th July 2012 to 30th June 2013 because of his P-3(T-24) medical status, and thereafter on 15th December 2011 denying him extension because he had been declared a permanent medical category on 17th August 2011. The Petitioner represented against this discharge order on 24th February 2012 and was sent for release Medical Board on 21st March 2012 wherein his medical category for anaemia was upgraded with effect from 17th March 2012, however, he continued to be in P-2 (Permt.) for the other two disabilities of hypertension and diabetes mellitus. The DSC Records vide their letter of 2nd April 2012 did not give any suitable reply to his representation but merely enclosed a copy of ROI 2/2011 and 4/2011 which were the two instructions, besides Army HQ policy letter of 20th Sept. 2010, on which he had placed reliance for extension of service. These two policy letters were completely in his favour, because both these letters clearly stipulate that for enhanced service, permanent low medical category status will not be a debarring criteria.

8. Petitioner further argued that when he was screened for extension of service upto the age of 55 years of age, he was "permitted to continue in service for the period 05th July 2012 to 02nd June 2013 conditionally being LMCP-3 (T-24)". Learned counsel vehemently argued that there was absolutely no necessity for such condition being imposed on him as, at this point of time, he was not a temporary category, but a permanent P-2 category since 27 Feb. 2009 and, therefore, such conditional extension given to him was unjustified and unwarranted. In any case, as already argued by learned counsel for the petitioner, P-2 Permanent Medical Category is not a debarring criteria for extension of service. Learned counsel further argued that extension of tenure of DSC personnel was done two years at one time and not five years as has been done by DSC Records. Furthermore, there was no authority for extending service by one year at one time as has been done by DSC Records in the case of the Petitioner.

9. Learned counsel for Petitioner placed reliance on an earlier decision given by the Principal Bench of the Armed Forces Tribunal in the case of **Nb.Sub. Gulab Rao v. Union of India & Ors. (O.A. No. 513 of 2011 decided on 4th April 2012)** wherein the Army HQ policy letter of 20th September 2010 had been analysed and the Petitioner in that matter had been granted benefit of this policy letter and was given two years extension of service by the Court.

10. Respondents contested the arguments of the Petitioner and urged that the facts had been misrepresented by the Petitioner so as to mislead the Court. The primary argument forwarded by learned counsel for the Respondents was that the criteria for extension of service for all ranks of DSC

upto the age of superannuation i.e. 55 years, was governed by ROI 3/2003 whereas the criteria for extension of service from 55 to 57 years of age was governed by ROI 2/2011. Accordingly, for extension of service upto the age of superannuation i.e. 55 years, permanent low medical category status was a debarring criteria as given in ROI 3/2003. However, for extension of service from 55 years to 57 years of age, permanent or temporary low medical category status was not a debarring criteria in accordance with ROI 2/2011. Therefore, it is possible that the Petitioner has inadvertently relied on the policy letters applicable for extension of service from 55 to 57 years of service i.e. ROI 2/2011 and Army HQ Letter of 20th Sept. 2010, whereas the Petitioners case was dealt by rules and regulations governing extension of service upto 55 years of age i.e. ROI 3/2003.

11. Learned counsel touched upon the medical history of the Petitioner by stating that it was correct that the Petitioner had initially become a temporary low medical category for hypertension and diabetes mellitus on 13th September 2008. When the review was done in March 2009 his temporary medical category status was changed to permanent P-2 for these two diseases. Thereafter, the next Medical Board assembled on 27th February 2011 and again changed the status from P-2 (Permt.) to P-3(T-24). Since his current tenure was to expire on 4th July 2012, he was screened in 2010 for one years extension of service beyond this period, and since he was only a temporary medical category, a conditional extension of one year from 5th July 2012 to 2nd June 2013 was granted vide Part-II order of 27th May 2011. This endorsement of P-3(T-24) has been made by the Petitioner himself on the Medical Board Proceedings of 1st October 2011 wherein he has signed in

acknowledgment of this medical category status. It was during this Medical Board which was held in October 2011 that his medical category for the first two ailments i.e. hypertension and diabetes mellitus was again reverted to P-2 (Permt.) with effect from 17th August 2011. However, for the third disability of anaemia, which came up for the first time in this Medical Board, he was placed in P-3(T-24) status. Accordingly, under the provisions of para 4(b) of ROI 2/1999 he could not be granted any further extension of service since he had become a permanent low medical category. Accordingly, the Unit Part-II order of 27th May 2011 whereby he was "permitted to continue in service for the period 5th July 2012 to 2nd June 2013 conditionally being LMC P-3(T-24)" was cancelled on 15th December 2011 and in the same order a fresh order was published stating "extension of service not granted with effect from 5th July 2012 being LMC P-2 (Permt.)." This made it amply clear that it was on account of his permanent low medical category P-2 status with effect from 17th August 2011, that he was not granted any extension beyond 4th July 2012. This sequence/narration of various medical boards and the medical category given was not disputed by learned counsel for the Petitioner.

12. Placing the various ROIs in their correct perspective, learned counsel for the Respondents first drew our attention to ROI 14/1992 which formed the basic policy for terms and conditions of service of DSC, JCOs and other ranks. Para 3(b) of this ROI clearly stipulates that the period of engagement of PBOR should be extended by five years at a time till the age of superannuation i.e. 55 years of age. The ROI further clarifies that for those DSC personnel who were in service on 5th December 1981 and did not opt for the revised terms, their period of extension would be two years at a time, till

attainment of age of superannuation viz. 55 years. Additionally, since the Petitioner had been given an extension upto 4th July 2012 by which time he attained the age of 54 years, he was required to be screened for extension of service by one year so as to permit him to serve upto his age of superannuation viz. 55 years. This screening board was held in 2010 at which point of time his medical category status was P-3(T-24), which was an acceptable category and he was given a conditional extension of one year so as to enable him to reach the superannuation age of 55 years. However, when his medical category status changed from temporary to permanent, thereby disqualifying him for extension of service, suitable amendment to the Part-II order had been done. Learned counsel argued that periodic extension of 5 years service, and a screening for one year's extension of service when he had attained the age of 54 years, was in accordance with these instructions and no illegality had been committed.

13. The next ROI which governed this procedure for screening of PBOR of the DSC was 2/1999 wherein the medical qualification criteria is specified at sub para 4(b) (i) and (ii) which are extracted below:

> 4(b)(i) Must continue to remain in medical category AYE, JCOs/OR who are temporary low medical category at the time of screening will continue to be in service. If their temporary low medical category is made into permanent low medical category by subsequent re-categorisation Medical Board before commencement of the enhanced age/service limits, the individual will be disposed of in accordance with the existing rules on the subject.

(ii) PBOR in permanent low medical category will also be screened with a view to assess their suitability for retention with a view to assess their suitability for retention upto enhanced age or service limit, provided there is ample opportunity for upgradation of their medical category by the subsequent re-categorisation medical board before commencement of the enhanced age/service limit. They will be declared conditionally fit by adding a clause in their case "subject to his medical category being upgraded to the acceptable level before expiry of his normal tenure. If they are not assessed fit by the screening board, they will be disposed of in the normal manner and will not be given the benefit of enhanced age/service limit."

This paragraph clearly stipulates that an individual must continue to remain in medical category 'A', or if they were in temporary medical category they could continue to be in service. However if their temporary medical category is made into permanent low medical category by subsequent re-categorisation Medical Board, before commencement of the enhanced age/service limits then the individual will be disposed of in accordance with the existing rules. This ROI also stipulates that PBOR even in permanent low medical category status will also be screened to assess their suitability for retention, if it is felt that there is ample opportunity for upgradation of their medical category in subsequent re-categorisation Medical Boards. The essential criteria was that on the last day of their current period of service they had to be in acceptable medical category so as to get an extension. Unfortunately the Petitioner was downgraded to P-2 (Permt.) on 17th August 2011 and would have remained in this category till 4th July 2012 which was the

last day of his period of tenure since his next medical board was scheduled for 2013, the DSC Records had very correctly cancelled his provisional extension on 15th December 2011 and issued his retirement order on 6th January 2012, which gave the reason for discharge as "re-transferred to pension establishment on completion of present terms of engagement due to not meeting criteria for extension, i.e. LMC P-2 (Permt.)".

14. Learned counsel next referred to ROI 3/2003 which stipulates that "extension of service commencing with effect from 1st January 2004 will not be granted to LMC personnel placed in permanent categories irrespective of disease/disability excluding battle casualties." ROI 2/2011 deals with the procedure and criteria for screening of JCOs and OR in DSC. This letter at paragraph 1 clearly stipulates that these instructions contained in this ROI pertain to grant of 2 years enhanced service beyond 55 years of age. Therefore the Petitioner was not governed by the policy as framed in this ROI. Learned counsel for the Respondents strongly argued that the policy contained in ROI 2/2011 cannot come to the rescue of the Petitioner since it was only for extension of service from 55 years to 57 years of age. Learned counsel next argued about the instructions contained in Army HQ policy letter of 20th September 2010 and drew our attention to para 9 of this ROI which specifically states that the Records Office has taken the contents of this letter into consideration as an authority for publishing ROI 2/2011. ROI 4/2011 makes some minor changes to the basic ROI 2/2011 and since ROI 2/2011 is not relevant to the Petitioner, therefore, ROI 4/2011 is also not relevant to the Petitioner. We have heard learned counsel at great length and perused the record, including the various ROIs and policy letters.

15. Keeping in view the above facts learned counsel argued that it is amply clear that there is a medical criteria for extension of service upto the age of 55 years, wherein P-2 (Permt.) is a debarring criteria. Learned counsel for the Respondents further argued that the order of the Principal Bench of AFT in the case of **Nb. Sub. Gulab Rao (OA No.513 of 2011)**, referred to by the Petitioner, is not relevant in the instant case since that case pertains to a JCO of the Army who was granted an extension after the age of superannuation, which is not the case of the Petitioner since he had yet to reach the age of superannuation i.e. 55 years of age. Respondents placed reliance on the case of **Sepoy G. Murthy (TA No.421 of 2010)** passed by the Lucknow Regional Bench of the AFT on 06.10.2010, wherein it was held that extension of service is not a vested right.

16. Keeping in view the facts as given above, we are of the opinion that no injustice has been done to the Petitioner and the authorities have acted in accordance with laid down rules and regulations. Accordingly, we do not find any necessity to intervene in this matter. The interim orders passed by this Court on 28th May 2012 and 30th July 2012 stand vacated. The petition is dismissed. No orders as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
August 06, 2012
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