

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

9.

O.A. No.273 of 2012

Hav. (Chef Com) T.N. Thakur

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate

For respondents: Ms. Anjana Gosain, Advocate with Col. Rajiv Vohra.

CORAM:

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

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

ORDER

29.08.2012

1. The Petitioner by this petition has prayed that the discharge order dated 10th July 2012 issued by the Respondents may be quashed and the Petitioner may not be discharged and restored back to service. The Petitioner was enrolled in the Indian Army on 14th July 1988 and he served with dedication and sincerity and due to his hard work and good record he was promoted to rank of Havildar in 2009. The Petitioner was considered for grant of extension of service for two years in terms of existing policy dated 21st September 1998 by Screening Board held on 6th July 2010 and granted such extension from 14th July 2012 to 13th July 2014 as he fulfilled all eligibility criteria for grant of such extension. (It is alleged that this existing policy has been amended by letter dated 20th September 2010 as well as 16th November 2010.) In November 2011, while the Petitioner was posted with 75 Medium Regiment, Delhi Cantt, he developed 'Disseminated Tuberculosis' for which he was hospitalised and treated at Base Hospital, Delhi Cantt and was placed

in temporary low medical category P3(T-24) for six months by a duly constituted Medical Board held on 17th November 2011. Therefore the Petitioner was entitled to continue in service as per the policy dated 21st September 1998 as he was in a "temporary" low medical category and not a "permanent" low medical category. Thereafter he was examined by a Medical Board on 2nd May 2012 and his medical category was upgraded from P3 (T-24) to P2(T-24) for another six months which shows remarkable improvement in his health. However, the Respondents by the order dated 10th July 2012 issued a discharge order not only of the Petitioner but number of other persons also. He was given a show cause notice but Petitioner before replying to show cause notice rushed to this Court.

2. A reply was filed by the Respondents and the Respondents have pointed out that as per the policy dated 21st September 1998, discharge orders for the Petitioner were issued.

3. Learned counsel for the Petitioner has invited our attention to the policy of 21st September 1998 and pointed out that as per the paragraph 2(b)(i) it clearly says that in order to get extension of two years service, persons must continue to remain in medical category AYE. Those who are temporary low medical category at the time of screening board, will continue to be in service. If this temporary low medical category is made into permanent low medical category by subsequent re-categorisation medical board before commencement of the enhanced service limit, the individual will be disposed off in accordance with the existing rules on the subject.

4. The grievance of the Petitioner is that the Petitioner has not been made a permanent low medical category and still continues to be a temporary low medical category as per the Medical Board examination held on 2nd May 2012. Therefore, the contention of learned counsel for the petitioner is that as per the existing policy he cannot be discharged. Learned counsel for the Respondents has not disputed the provisions of the policy.

5. We have bestowed our best of the consideration and it transpires that a person who becomes temporary low medical category can be allowed to continue in service and be entitled to two years extension of service, but in case he becomes a permanent low medical category then naturally he becomes disentitled to continue in service as per this policy. Learned counsel for the Petitioner has submitted that now this policy has also undergone a change. Be that as it may, we are not concerned with new policy in the present case. Therefore, we do not make any observation to this effect. However, so far as the policy dated 21st September 1998 is concerned, till a man becomes permanent low medical category, he is entitled to continue in service and be eligible for extension of service by two years. In the present case as per the latest Medical Board dated 2nd May 2012, the Petitioner is a temporary low medical category. Therefore he can be allowed to continue in service as per the recommendations of the Medical Board dated 2nd May 2012. Hence, the order of discharge is quashed. However, in case Petitioner becomes low permanent medical category then it is open to Respondents to take proper action in accordance with law.

6. The petition is allowed. No costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
August 29, 2012
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