

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

O.A NO. 280 of 2011

IN THE MATTER OF:

Warrant Officer Jitendra Kumar**APPLICANT**
Through : Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS**...RESPONDENTS**
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: 03.02.2012

1. The present OA No.280/2011 was filed in the Armed Forces Tribunal on 21.7.2011.
2. Vide this OA, the applicant has prayed for quashing and setting aside of 21 Corps Postal Unit Order of discharge dated 15.07.2011 being contrary to the amended Army HQ Policy letter dated 20.09.2010 (Annexure A-1) which is operative from 01.04.2011.
3. Brief facts of the case are that the applicant born on 05.08.1960. He joined the P&T Department on 05.05.1983. Thereafter, on 06.05.1985 he volunteered in the Army Postal Service as a Warrant Officer. Having completed 26 years of service he was given orders for

discharge from service since he was a permanent LMC which he acquired in 2009.

4. Learned counsel for the applicant argued that the terms and conditions of the Army Postal Service personnel on deputation are governed by the Government of India letter dated 19.03.1985. As per that letter, a Warrant Officer is required to retire at the age of 54. At the time of submitting this OA, the age of the applicant is stated to be about 51 years.

5. Learned counsel for the applicant argued that the Army HQ issued fresh policy letter dated 20.09.2010 for all PBOR which in effect from 01.04.2011. In this policy, extension of service is granted to personnel with LMC provided the LMC category comes under the promotable category. However, this policy has not been adhered to in the case of the applicant as he has been given notice for discharge. He further argued that the medical board which was held on 25.02.2010 gave out 30% disability for hypertension and with no restrictions for employment. Therefore, to say that the applicant is unfit to serve further in the armed forces is incorrect. Besides, the applicant belongs to Army Postal Service Cadre and in any case, as a clerk is doing a sedentary jobs and he is very much capable of meeting the job requirements.

6. Learned counsel for the applicant further argued that in the matter of **Union of India Vs Rajpal Singh, Civil Appeal No.6587 of**

2008, decided on 07.11.2008 the Hon'ble Apex Court has ruled that recommendation of Invalidating Medical Board is a condition precedent to discharge of a junior commissioned officer on account of LMC. He additionally argued that since the policy of 20.09.2010 is a beneficial policy and has been issued with ifs and buts, it should be made applicable w.e.f. 01.04.2011 as stated therein and quashed the stand taken by the respondents that it has been made applicable from 01.04.2013.

7. Learned counsel for the applicant further argued that in **AIR 1977 SC 451; AIR 1991 SC 76 and (1996) 5 SCC 167 in the matter of M. Venkateswarlu and Others Vs Govt. of A.P. and others**, it has been held that "*in beneficial legislation where the object of the provision would otherwise be frustrated, it must be held to apply retrospectively*". He further submitted that the judgments given in all the above-stated cases should apply mutatis mutandis to the present case.

8. Learned counsel for the respondents stated that the applicant has joined the Army (Army Service Postal Corps) as a Warrant Officer on deputation. He is governed by the terms and conditions laid down for such personnel on deputation for P&T Department. Further, even their promotion is linked to their parent department and has nothing to do with the conditions and rank structure within the Army. On being discharged, the applicant will be sent back to the parent department.

Therefore, it is not discharge but reversion to his parent department. He further stated that the initial period of engagement for people on deputation from P&T Department into the Army Postal Service is for 18 months. Thereafter, they are remain on extended tenure till requirement.

9. Learned counsel for the respondents further stated that Clause 237(a) of the terms and conditions for APS personnel reads as under:-

“237. Those who have completed their initial period of engagement will be transferred to their parent department in the following order:-

(a) Personnel who have outlived their usefulness and whose retention is not considered necessary in the interest of service will be re-transferred irrespective of the manpower position. Officers Commanding units will be competent to order such retransfer after obtaining approval of concerned Superior Postal Officer through proper channel.”

10. He further stated that the Government of India's letter dated 19.3.1985 laid down the following terms and conditions of service for P&T non-gazetted personnel on deputation to Army Postal Services:-

“1. Xxxx

2. The duration of engagement will be 18 months and so long thereafter as their services may be required.

3. *Age: The volunteers should not be over 40 years of age on the date of enrolment.*
4. *Medical/Physical Standards:- They should be in medical category 'A' and meet physical standards as prescribed from time to time.*
5. *Discipline:- They will be governed by the Army Act and other orders applicable to Army personnel, during their service in the Army Postal Service.*
6. *Ranks:- During their service in the Army Postal Service, they will be given on enrolment/appointment/promotion corresponding substantive military ranks as specified below:-*

Appointment	Pay	Corresponding Military rank
(a) Packers/Runners/Mail Peons/ Messengers/ Task Work Messengers	196/232	Sepoy
(b) Packers/Runners/Mail Peons/ Messengers/ Task Work Messengers Selection Grade	210/270	Lance Naik
(c) Postmen. Vill Postmen/ Mail Guard/Jamadar/ Head Postment	210/270	Naik
(d) Postal Sorting Asstt/ Lower Division Clerk	260/480 425/640 (17 years and above)	Warrant Officer

11. Learned counsel for the respondents further argued that after the applicant became a permanent LMC, his CO gave out the following

reasons for recommending the applicant's release from armed services and back to the P&T :-

- “(a) The WO keeps himself aloof and isolated.*
- (b) He is hard of hearing and unable to maintain composure.*
- (c) He is unable to satisfy customer queries because of hard of hearing.*
- (d) Though the WO wants to work, his ailments do not permit him to do so.*
- (e) He is volatile and tends to flare up even with trivial verbal remarks on his performance. To cover up his shortcomings he indulges in pointing out mistakes of administration which he is not supposed to do. His inability drives him to do so.*
- (f) He has outlived his utility in APS. He is liability and recommended for discharge from APS. His performance may not be satisfactory even at sheltered appointment.*
- (g) Present outlived Postal Unit (21 Corps Postal Unit) is ready bear the deficient of one WO/Clk till June 2012 (till completion of tenure).”*

12. He submitted that certain guiding principles have been laid down for the COs before recommending discharge of a LMC personnel vide AHQ policy letter dated 30.09.2010. Relevant extracts of para 6,7 and 8 are as under:-

“6. Guiding Principles. *The guiding principles that should be considered by the Commanding Officers and OIC Records for retention/discharge of permanent LMC personnel are as under:-*

- (a) Xxxxxx*
- (i) xxxxxxxx*

(ii) *Personnel in SHAPE 2/3. The minimum period of qualifying service actually rendered and required for earning service pension will be 15 years (Auth Para 5.12 of MOD, Department of Ex Servicemen Welfare Letter No.17(4)/2008(2)/D(Pen/Pol) dated 12 November 2008).*

(b) *Xxxxxxx*

(c) *Xxxxxxx*

(d) *Xxxxxxx*

(e) *Xxxxxxx*

(f) *Discharge of such permanent LMC personnel should help maintain the operational efficiency of the unit as also man management. Every case should be decided on its merit after analysing effect on state of manpower holdings in the Regiment Corps and time required to recoup the void so created.*

7. Sanctioning Authorities

Under the provisions of Army Rule 13, as amended, based on the recommendations of the Release medical Board/Invalidating Medical Board as applicable, the Commanding Officer is the competent authority to sanction discharge of JCO/OR who are in SHAPE 2/3 or have been found to be unfit for further service i.e. in SHAPE-5. In the existing circumstances the sanctioning authority would rest with the Commanding Officer, who would obtain the approval of following authorities prior to sanction of actual discharge:-

(a) *Battle Casualties (Willing to serve) - Head of Army/Service*

(b) *Battle Casualties(Unwilling to serve) – OIC Records} not below*

(c) *Non-Battle Casualties (Willing to serve)- OIC Records} the rank*

(d) *Non-Battle Casualties (Unwilling to serve)- OIC Records} of Brig.*

(e) *In case of Regiment/Corps Centres being commanded by officers below the rank of Brigadier, cases will be forwarded to MP Directorate for obtaining sanction of the Deputy Director General (Manpower Planning).*

8. Disciplinary/Indifferent Cases. *No special provision is necessary for discharge of permanent LMCs who become disciplinary cases or adopt an indifferent or casual attitude to work. In such cases, necessary disciplinary or administrative action, and if required, discharge proceedings, may be initiated by the Commanding Officer in accordance with existing orders/procedures. These cases will, therefore, not be governed by the provisions of this letter.”*

13. Learned counsel for the respondents also argued that the release of the applicant from deputation and repatriated back to P&T Department has been approved by the Competent Authority and he drew our attention to Annexure R-8. He also drew our attention to Annexure R-9 which states “*discharge from APS and repatriation to parent civil department due to withdrawal of sheltered appointment/unwillingness to serve in the APS being LMC(P)*”.

14. Having heard both the parties at length and having examined the documents on record, we are of the opinion that the applicant has been discharged from the Army Postal Service and is repatriated back to his parent department i.e P&T Department because of his being LMC as he has outlived his usefulness to Army services and thus his retention was not considered necessary in the interest of service.

15. We have also considered the averment made by the respondents which contended that his medical category is P-2 (P) for disability “PRIMARY HYPERTENSION” and H2 (Temporary) for disability “SENSORY NEURAL HEARING LOSS (RT)” are capable of performing his task as a clerk. But this contention is not sustainable as

he was on deputation and his performance was not found upto mark and his retention was not found in the interest of service.

16. Further, from the perusal of record it is revealed that the initial duration of engagement was of 18 months and thereafter they are retained so long as their services may be required as per Government of India order dated 19.3.1985 (Annexure R-2). It is evident that the Warrant Officer of Non-Regular Cadre (Deputationist) can serve upto the years of 54 as per the MOD letter dated 26.4.1999 (Annexure R-3). In these cases, Warrant Officers are appointed and are not enrolled as is clear from the AHQ Letter dated 13.7.1995 (Annexure R-1). Thus, the applicant's services cannot be treated at par with Army services.

17. In view of the foregoing we are of the opinion that non-retention of the applicant due to being LMC and in the absence of suitable sheltered appointment does not affect the applicant in as much as he goes back and joins his parent department in the same cadre as he was serving in the Army. As such no injustice is being done.

18. We have also considered the citations relied upon by the Learned counsel for the applicant. These citations pertain to personnel who are being discharged from service on attaining permanent LMC. In this case the applicant is not being discharged from service but his retention in the APS is being terminated and he being repatriated to his parent cadre i.e. P&T Department. Therefore, the citations do not help the applicant in this case.

19. In this case it is revealed from the impugned order that the services of the applicant had been repatriated back to his parent office during the normal service tenure. Therefore, there is no question of extension of service and applicability of the relevant policy and its applicability. Hence the contention raised in this respect and the judgments cited in this respect by the applicant do not help his contention.

20. In the light of above discussion, we are not inclined to interfere in the case. The OA is hereby dismissed. No orders as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

**Announced in the open Court
on this 03rd day of February, 2012.**