

**IN THE ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI.**

OA No.343 of 2010

Naib Subedar Radhey Shyam

...Petitioner

Versus

Union of India & others

...Respondents

For the Petitioner : Mr.S.S.Pandey, Advocate

For the Respondents: Mr.Ajai Bhalla, Advocate

C O R A M:

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

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

JUDGMENT

06.09.2012

BY CHAIRPERSON:

1. Petitioner by this petition has prayed that the order dated 11.05.2012 through the Signal No.Q 5517 as well as letter dated 11.05.2012 issued by Respondent No.4 may be quashed by which he was discharged from service w.e.f.31.05.2010 and respondent be directed to allow the applicant to complete his extended tenure of service w.e.f. 31.05.2010. He has also prayed to quash the policy

instructions issued by the Respondents by its letter dated- 20.09.1998.

2. Petitioner was enrolled in the Army Service Corps of Indian Army on 20.03.1984 as Clerk (Staff Duties) trade. It is alleged that petitioner during his tenure from 1984 – 2009 served in Army on various positions and he was promoted from time to time upto the rank of Nb.Sub. After completion of 24 years of service he has been posted in the Integrated Hqrs of MoD (Army) in the Directorate General of Military Intelligence on 09.06.2009. The case of the petitioner was considered in 2009 for grant of extension of service for two years since he was found eligible in all respects for the extension and he was granted extension of two years which was to commence from April, 2010. The petitioner was medically examined on 21.05.2009 and during the examination, ENT specialist opined that due to some hearing defect, the applicant has to be downgraded temporarily to the medical category S1H2 (T-24) and also assured the applicant that his down gradation is only for a limited period and it is likely to be

removed in next 6 months after undergoing medication. Then the posting of the applicant was issued on 11.03.2010 to 250 Company ASC (Supply) by Respondent No.4 and the applicant was required to move on posting but applicant was not sent for posting by his present unit. Thereafter, all of a sudden a signal was received dated- 11.05.2010 directing discharge of applicant from service w.e.f.31.05.2010. Later, the petitioner received the detailed order on 21.05.2010 issued on 11.05.2010 directing the discharge of petitioner from service due to his becoming low medical category without subjecting the applicant to any invaliding medical board which was mandatory as the Applicant was to be discharged from service based on his medical condition. Petitioner made a representation against the order dated 21.05.2010, but he did not received any reply and consequently, he filed the present petition.

3. The reply was filed by the respondent and respondent in their reply has pointed out that petitioner has completed his term of engagement in the rank of Nb.Subdear on

19.3.2010 and all Personnel Below Officer Rank (PBOR) are entitled to extension of their service upto two years as IHQ of MoD (Army) letter No.B/33098/AG/PS-2(c) dated 21.9.1998, subject to their meeting all requisite criteria. As per the instructions contained in the policy, the eligibility for grant of extension of two years is ascertained by a duly constituted 'Screening Board of Officers.' The case of the petitioner was screened by the 'Screening Board' in November, 2008 and the petitioner was granted two years extension of service w.e.f. 20.3.2010 to 19.03.2012 based on his meeting all requisite criteria including Medical category. The same was published on 05.12.2008. Subsequently, the petitioner was downgraded to Low Medical Category (LMC) H2 (Temporary-24) w.e.f. 21.05.2009 i.e. before completing his initial term of engagement which was upto 19.03.2010 and which was subsequently converted into LMC H2 (Permanent) for two years w.e.f. 12.11.2009. Hence, the applicant became ineligible for his extension of service in term of Para 2(b) (i) of Appx 'A' to IHQ of MOD (Army)

letter dated 21.09.1998. The applicant would have been eligible for extension of two years of service w.e.f. 20.03.2010, had he remained in medical category SHAPE-1 or LMC (Temporary) on 12.3.2009, before his tenure of service was to expire on 19.3.2010. Therefore, his period of extension to commence on 20.3.2010 was denied and he was discharged from the service w.e.f. 31.05. 2010 by the order dated 11.5.2010, which was subsequently changed to 31.7.2010 in order to complete his Release Medical Board and pension documents.

4. Learned counsel for the petitioner has submitted that since he is not been granted an extension of service on account of the low medical category permanently, his case should have been considered by the invaliding Medical Board and same was not done, therefore, his discharge as bad.
5. In this connection, learned counsel has pointed out that as per decision given in the case of **UOI Vs. Naib Subedar Rajpal Singh (6587/2008)** by the Hon'ble Supreme Court, that the invaliding board and released board are

two different and released medical board cannot be substituted with the invaliding board, therefore, those persons who are released from service on the basis of the recommendation of released medical board is illegal. Therefore, it was submitted that since petitioner is discharged from the service on account of low medical category, his case should have been considered by the invaliding board then only he could have been released. In this connection, learned counsel has also relied on the decision in the case of ***Sub.Major Clk Kiran Pal Singh Vs. UOI & Ors [TA No.714/2009/AFT(PB)]***.

6. We have bestowed our best of the consideration in the matter and we are of the opinion that the petitioner is not entitled to benefit of Nb.Sub. Rajpal Singh's case (Supra). The extension of the service is governed by the notification issued by the GOI dated 21.9.1998. This notification governs the extension of two years of service, it requires that case shall be screened by the Screening Board after obtaining the willingness of the incumbent. After taking willingness, those will be given extension

subject to meeting the laid down criteria. As per the clause 2 (b) under Medical Classification are

- (i) *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.*
- (ii) *The screening boards would screen permanent low medical category PBOR with a view to assess their suitability for retention up to enhanced service or age limit provided there is ample opportunity for upgradation of their medical category by the subsequent re-categorisation medical board before commencement of the enhanced service limit. The screening board can declare the fit conditionally by adding a clause in their case "subject to his medical category being upgraded to the accepted level before expiry of his normal tenure". If they are not assessed fit by the screening board, they will be disposed off in the normal manner and will not be given the benefit of enhanced service limit.*
- (iii) *PNOR who are battle casualties, wounded in action and consequently placed in LMC (Permt) will be eligible for enhanced service.*

Further the physical fitness has been laid down in clause (c) that he should be physically fit according to the army standards.

7. Now coming to the present case, the first question is that whether the petitioner could be given an extension as he was found suitable by the screening board subject to medical category before his extended period of two years

to start i.e. 20.3.2010, he became a permanent low medical category on 31.5.2009. Therefore, as per the aforesaid notification, he was not fit to be given an extension of service. In the decision given by coordinating bench of this tribunal in the case of Sb.Maj. Clk Kiran Pal Singh Vs. UOI & Ors (Supra) on which learned counsel has relied on is distinguishable with the facts of applicant's case.

8. So far as present case is concerned, the incumbent already became ineligible on 31.5.2009 as he became permanent low medical category. Persons with permanent low medical category are not entitled to be given an extension in service though they can be allowed to work till temporary low medical category, but the moment they became permanent low medical category their services cannot be allowed to continue with the extended period of service. In the present case, the incumbent became low medical category on 31.05.2009 i.e. before the extended period could start. Therefore, as the petitioner was not entitled to the benefit of extended

period. Secondly, the question with regard to the invaliding medical board is concerned that does not arise in the present case. It is not the invaliding medical board which is required to meet. The Clause I and II very categorically says that it is required to be judged by the re-categorised medical board. The re-categorisation medical board is not same as the invaliding medical board. The re-categorisation medical board used to upgrade or low grade the incumbent after looking to their medical condition. The recategorisation medical board in clause I and II of clause 2 B is not invaliding medical board, the substitution of Re-categorisation medical board with invaliding board is totally misplaced. The Recategorisation and invaliding medical board are totally different. The recategorisation medical board only lays down the medical category. The recategorisation medical board only assess the medical category of the incumbent when the medical category of the incumbent improves from low medical category to normal medical category or from low medical category temporary to permanent.

Therefore, to substitute the recategorisation medical board for an invaliding medical board is totally misconceived. So far as Nb.Sb.Major Kiran PalSingh's case (Supra) is concerned, perhaps the attention of the Hon'ble Tribunal was not invited to the expression 'recategorisation medical board' and their lordships was given to understand that since in Rajpal Singh's case the Hon'ble Supreme Court held that 'invaliding medical board cannot be substituted by the released medical board', but that is not the case here. The recategorisation board is only concern with regard to medical category. The extension of service is governed by the executive order and it is not statutory. Whereas in Rajpal's case (Supra), Hon'ble Supreme Court was examining the statutory rules under the Army Rules, 1954, whereas in the present case granting of an extension is governed by the executive order. Therefore, the ratio laid down in Rajpal's Case (Supra) does not govern the case pertaining to extension of service. It is held by number of decisions that executive order passed for extension is not justifiable.

Therefore, on both the aspects we don't find any merit in the petition and same is dismissed.

22. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. M.L.Naidu]
Member (A)

New Delhi
6th September, 2012