

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

**O.A NO. 468 of 2011**

**IN THE MATTER OF:**

**Nb Sub Rajendra Pal Singh (SKT) .....APPLICANT**  
Through : Mr. Kapil Sharma, counsel for the applicant

**Vs.**

**UNION OF INDIA AND OTHERS ...RESPONDENTS**  
Through: Ms. Jagrati Singh counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 14.05.2012**

1. This OA was filed in the Armed Forces Tribunal on 31.10.2011 and was registered as OA No.468/2011.
2. Vide this OA, the applicant has sought quashing and setting aside of his discharge order served to the applicant through message ID 5 bearing No.A-8096 dated 19.10.2011 (Annexure P-1).
3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 09.01.1985. In the course of his service, he got promoted to the rank of Naib Subedar.
4. It is submitted that for the first time in January 2010 the applicant was temporarily downgraded to Low Medical Category for six months for the disabilities of CORONARY ARTERY disease and in the

month of June 2010, the applicant was again temporarily downgraded to Low Medical Category for six months for the same disease. In January 2011, the applicant was again downgraded to temporary Low Medical Category for six month and lastly on 17.09.2011, the applicant was downgraded to permanent Low Medical Category (SHAPE-2) for two years w.e.f. 21.06.2011 and his re-categorisation board was fixed for 21.06.2003.

5. It has been submitted by the learned counsel for the applicant that the applicant has been downgraded to medical category of SHAPE-2 and according to the functional capacity chart as provided in the Army Medical Regulations 1983, a person graded as SHAPE-2 is fit for all duties which involve severe physical and mental stress and require perfect acuity of vision and hearing. It is submitted that according to own regulation of Army, the applicant is fit for all duties and he has been performing all relevant duties so far without any complaints from his superiors.

6. It has further been contended that the applicant has served for 26 years and 08 months. Since the applicant was in Medical Category BEE(T), the applicant was granted extension for 02 years till 31.01.2013 and the applicant was to superannuate from the service on 31.01.2013. However, when the applicant was down graded to Medical Category BEE(P) w.e.f July 2011, the impugned order dated

19.10.2011 was issued by the respondents whereby the applicant was to be SOS w.e.f. 01.12.2011.

7. It is contended by the learned counsel for the applicant that the Army HQ issued a revised policy regarding screening for extension dated 20.09.2010 (Annexure P-2). Vide this policy, the parameters for LMC personnel to be granted extension were made similar to that of promotion policy dated 10.10.1997. In that, a LMC(P) army personnel is entitled to extension within acceptable medical category. Therefore, the applicant considered himself as being eligible for extension of service. It is contended that the applicant was told that the applicability of the policy is from 01.04.2011. Since the discharge order was issued on 19.10.2011, apparently it was not as per revised policy of 20.09.2010 (Annexure P-2). Thus, the discharge order is liable to be set aside.

8. It has also been contended that the applicant has left with just 14 months of service in the present rank and was due to retire on 31.01.2013. It was only a matter of time that he would have finally retired.

9. Learned counsel for the applicant argued that the discharge order dated 19.10.2011 was arbitrary and in violation of the revised policy issued by the Army HQ on 20.09.2010 which mentions that the policy will come into force w.e.f. 01.04.2011 which stated that LMC

personnel who are in acceptable category of being promoted are entitled to get extension.

10. Learned counsel for the applicant also argued that the applicant was declared P-2(P) in September 2011. This was after policy letter of 20.09.2010 was issued; therefore, he was very much eligible for extension of service.

11. Learned counsel for the respondents stated that the applicant was enrolled in the Indian Army on 09.01.1985 and was to complete 26 years of service on 01.02.2011 and as such he was to superannuate in the rank of Nb Subedar with effect from the same date. But the applicant was screened for grant of two years extension of service by the screening board on 30.06.2009 in terms of para 4 of AHQ letter dated 21.09.1998 and found fit for the same. Accordingly, the service limit of the applicant was extended from 26 years to 28 years with effect from 09.01.2011 to 08.01.2013 and casualty to this effect was published in Part-I order on 04.12.2009.

12. It has further been contended on behalf of the learned counsel for the respondents that while serving with Armed Forces Transfusion Centre, Delhi Cantt. the applicant was placed in low medical category P-3(T-24) for disability 'CORONARY ARTERY DISEASE DVD POST PC TO LAD/RCA' with effect from 01.02.2010 to 18.07.2010. Thereafter he was reviewed by a re-categorisation medical board on 05.08.2010 and placed in low medical category P-2(T-24) for the same

disability with effect from 18.07.2010 to 03.01.2011 vide letter dated 06.08.2010. Subsequently, the applicant was again reviewed by re-categorisation medical board on 18.02.2011 and again placed in low medical category P-2(T-24) w.e.f. 03.01.2011 to 21.06.2011. On review by the re-categorisation medical board on 17.09.2011, the applicant was downgraded to permanent low medical category P-2(P) from 21.06.2011 to 21.06.2013 during his extended two years service limit.

13. It has further been contended that the applicant's discharge order had been issued vide Army Medical Corps Record Office letter dated 17.10.2011 and he was to be discharged from service w.e.f. 01.12.2011 i.e. within six months from the date of being placed in low medical category as retention in extended service limit was not permissible in terms of para 5 of AHQ letter dated 21.09.1998. (Annexure R-2) prevailing at that time. He was governed by old policy as the new policy of 20.09.2010 which permits grant of two years extension to JCOs/ORs under various conditions and will be applicable only to those JCOs/ORs who are proceedings on retirement w.e.f. 01.04.2013 onwards. She further argued that there has been no violation of the revised policy of 20.09.2010 as it is only meant for screening of those personnel who are to be screened after 01.04.2011. She further argued that Appendix-B para 3 of the policy reads as under:-

***“3. Applicability. The revised policy will be made applicable with effect from 01 Apr 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dets.”***

14. Having heard both the parties at length and having examined the documents produced before us, we are of the opinion that the issue basically lies with the new policy and its date of effectiveness. The new policy was issued on 20.09.2010. It has been made effective from 01.04.2011. The policy letter in its applicability reads ***“procedure and criteria for screening of personnel below officers rank (PBOR) for grant of extension of service by two years”***. Appendix-A of the said policy lays down ***“Procedure & criteria for screening of PBOR in the Army”***. The detailed reading of this Appendix at Para-3 reads as under:-

***“3. Method of screening: Screening of the affected PBOR for the grant of extension should be carried out 24 months prior to their reaching the current laid down service limits. It should be conducted by the same boards which are constituted and assembled for the purpose of deciding promotions for the same rank as per current practice in various Arms and Service. Accordingly unit/regiment/corps promotion boards which are constituted and assembled for the purpose of deciding***

*promotions, should also undertake the following additional tasks, whichever required:-*

- (a) Screen affected PBOR for the grant of extension.*
- (b) Consider PBOR for continued retention during the extended tenure in case there is drop in any criteria as mentioned at Appx 'B' to this letter.*
- (c) Consider RIs Maj/Sub Maj who do not complete 34 yrs pensionable service or 4 yrs tenure by the time they reach 52 yrs of age, for screening for extn in service upto the age of 54 yrs or 34 yrs of pensionable service or 4 yrs of tenure whichever is earlier.*

**Note:** *In exception to the above, a PBOR who could not be screened for extn of service under the existing policy as per laid down screening schedule given at para 4 below due to LMC, court cases or any other circumstances beyond his control will be screened by the Screening Board before retirement.”*

15. At para 6 it reads:-

**“Applicability. The revised policy will be made applicable with effect from 01 Apr 2011.”**

16. Therefore, it is construed that the policy of 20.09.2010 deals with **“Procedure for screening”** which is required to be done 24 months in advance. Further, the old policy of 21.09.1998 had mandated the

same screening procedure as provided in the new policy, the difference being the criteria for promotion and criteria for extension have been harmonised i.e. it implies that a person who is eligible for promotion is also eligible for extension.

17. Furthermore, the issue involved in the present matter is similar to the issue involved in **OA No.513.2011 titled Nb Sub Gulab Rao Vs Union of India and others dated 04.04.2012**, decided by this Bench itself. The relevant portion of the said judgment is as under:-

*“22. We are of the opinion that the policy issued on 20.09.2010 is to harmonise the previous screening policy of 1998 and that of the promotion policy of 1997. This recognises that LMC personnel with certain parameters are eligible for extension. It also recognises that individuals who have been punished under certain sections of the Army Act are also eligible for extension.*

*23. We have examined the policy letter of 20.09.2010 in great detail. The heading of the policy states “**Procedure and Criteria for screening of Personnel Below Officer Rank (PBOR) for grant of extension of service by two years**”. At para 7 it further emphasizes that the revised policy will be made applicable with effect from 01 Apr 2011 to enable the dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dtes. At Appendix-A to this letter, the procedure and criteria for screening is laid down*



wherein at **para 6** it again states that the revised policy will be made applicable with effect from 01 Apr 2011. Analysing this letter, it is clear that the screening of an individual for extension will take place 24 months before his deemed date of retirement. The letter of 11.01.2011 lays down that there is no provision for second screening. It implies that all those personnel who have been screened 24 months prior to their date of retirement shall not be screened again and will be governed by the policy in existence. Since the new policy is applicable from 01.04.2011, all those personnel who are being screened after 01.04.2011 will be governed by the policy of 20.09.2010.

24. **Appendix-B** to the policy letter of 20.09.2010 says “**Retention of PBOR during extended tenure**”. This clause is applicable vide **para 3** of the Appendix w.e.f. 01.04.2011. Further, reading with note of para 3 of Appendix-A which states that “In exception to the above, a PBOR who could not be screened for extension of service under the existing policy as per laid down screening schedule given at para 4 below due to LMC, court cases or any other circumstances beyond his control will be screened by the Screening Board before retirement.”

25. Reading of the two provisions of Appendix-A and Appendix-B to the policy letter of 20.09.2010, it is quite clear that screening as per the new policy will be w.e.f. 01.04.2011. Thus,

*who were screened earlier will not be screened again i.e. there will be no second screening. However, when it gives retention to personnel during the extended service, the provisions of new policy will come into effect from 01.04.2011.*

26. *Considering the provisions as stated above, in this case the applicant would have been screened in December 2010 since he was due to retire under normal circumstances in December/January 2012. Since his name did not figure in the letter of 04.01.2011 it implies that his screening was done and since at that point of time he was within acceptable category i.e. P-2(T), he was recommended for extension. The applicant was down-graded to P-2(P) on 30.01.2011. His screening board was conducted on 09.07.2011 (Annexure P-1) and that is how his name was added to the letter on 04.01.2011 (Annexure P-4) at serial No.33. Since the extension of the applicant was to commence only in January 2012 and the screening board was conducted on 09.07.2011, both these dates were beyond 01.04.2011, therefore, the applicant should be governed by the revised policy of 20.09.2010. As such, he being P-2(P) is eligible for extension of service by two years.*

27. *In view of the foregoing, we are of this opinion that the applicant is entitled to two years extension from 31.01.2012 to 31.01.2014. Since we had protected the interest of the applicant*

*in response to his prayer for interim relief of staying his discharge order, we direct that the applicant be deemed to be reinstated in service w.e.f. 31.01.2012 and he is entitled to continue in service. Further, he is held entitled for all consequential financial benefits.*

18. In the light of the above discussion, the present OA is hereby allowed. The applicant is entitled to two years extension from 09.01.2011 to 08.01.2013. Since we had protected the interest of the applicant in response to his prayer for interim relief of staying his discharge order, we direct that the applicant be reinstated in service w.e.f. 01.12.2011 and he is entitled to continue in service. Further, he is held entitled for all consequential financial benefits.

19. This exercise be completed within a period of 60 days from the date of this order. The OA is hereby allowed. No order as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**  
**Announced in the open Court**  
**on this 14<sup>th</sup> day of May, 2012.**

**(MANAK MOHTA)**  
**(Judicial Member)**