

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.

O.A. No. 488/2011

Ex Sub Ram Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. A.K. Trivedi, Advocate.

For respondents: Ms. Shilpa Singh, Advocate

CORAM:

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

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

22.08.2012

1. Petitioner vide this petition has prayed that the order dated 21.10.2011 may be quashed and respondents may be directed to permit the petitioner to continue with the rank of Subedar. It is also prayed that the rank and pay of the petitioner be fixed accordingly and the petitioner be given all consequential benefits.

2. The petitioner was enrolled in the Indian Army on 27.12.1982 as a Sepoy and with the passage of time, he became L/NK, Naik, Havildar, Naib Subedar and finally the petitioner was promoted to the rank of Subedar and retired from service w.e.f. 31.12.2010 in the rank of Subedar. The petitioner remained physically fit throughout his service. The promotion orders were issued for promotion to the rank of Subedar w.e.f. 01.04.2010 on 31.01.2010. The name of the petitioner was placed at Sl. No.112, but unfortunately the petitioner met with a road accident and was hospitalised due to which he could not be granted promotion in time. The petitioner was placed on low medical category. The promotion order of the petitioner was cancelled

on 17.04.2010 as he was placed in low medical category (A-3) w.e.f. 08.04.2010. In the meantime, the Release Medical Board of the petitioner was held on 17.08.2010 and after his Release Medical Board, the respondents issued a show cause notice on 23.08.2010 asking the petitioner to give his willingness/unwillingness to continue in service. The petitioner vide his representation dated 23.08.2010 submitted that he is performing his trade work and Administration well and is willing to continue in service in low medical category. The respondents, thereafter, issued an order on 17.09.2010 for promotion of the petitioner to the rank of Subedar and his promotion was shown w.e.f. 01.10.2010.

3. The promotion to the petitioner was granted by the competent authority w.e.f. 01.10.2010 and the petitioner took the charge of Subedar and thereafter retired on 31.12.2010. Thereafter the respondents revoked the promotion order of the petitioner of the rank of Subedar vide order dated 21.10.2011 almost after 10 months of his retirement without issuing any show cause notice in gross violation of the principles of natural justice. Thereafter, the petitioner filed the present petition.

4. Reply to this petition was filed by the respondents. The respondents took a position that as per policy dated 31.09.1998 which clearly stipulates that the individual must continue to remain medical category 'AYE' and PBOR who are temporary low medical category at the time of Screening Board as well as during the currency of extension of service will continue to be in service and if this temporary low medical category is made permanent, then he will be discharged under the existing rules. The relevant policy reads as under:-

**“EXTRACT OF APPENDIX ‘B’ TO ARMY HQ LETTER
NO.B/33098/AG/PS-2 (C) DATED 21 SEPTEMBER 1998**

RETENTION OF PBOR DURING EXTENDING TENURE

1. Retention of PBOR during the extended tenure will be governed by the following considerations:-

- (i) **Medical Standard** The individual must continue to remain medical category ‘AYE’. PBOR who are temporary low medical category at the time of Screening Board as well as during the currency of extension of service will continue to be in service. If this temporary low medical category is made permanent low medical category except those who are battle casualties, wounded in action and consequently placed in LMC (P) during enhanced service, the individual will be discharged under the existing rules.
- (ii) **Discipline** The individual should not earn any red ink entry in case of PBOR and recordable Censure in case of JCOs only during the extended tenure.
- (iii) **ACRs** The individual should earn ACRs (wherever applicable) of not less than “Average” grading during the extended tenure.

2. If, however, it is noticed that there is drop in the above criteria at any time during the extended tenure, the PBOR will be discharged under relevant Army Rules within a period of maximum six months after serving the JCO/NCO the ‘Show Cause Notice’. Period of six months is basically meant for discharge drill.”

5. It was also pointed out that a question was raised earlier and opinion of the AG was asked and the AG clarified the issue that the grant of extension and its continuation during extension period is subject to the individual remaining in acceptable medical category. This clarification was issued on 18.06.2001. Therefore, it is submitted that in view of the clarification read with original policy order, the promotion and continuation of the petitioner was not warranted. Therefore, the respondents passed the order of revocation and the same is as per the rules on the subject.

6. We have heard learned counsel for both the parties and perused the record.

7. It is true that as per the policy reproduced above dated 21.09.1998, the incumbent has to be in Shape A-1 during the extended period and in case it becomes low medical category (permanent), then he cannot be retained in the extended period of service. This policy decision was known to the authorities at the time when the promotion order of the petitioner was issued. Despite that, the petitioner was allowed the promotion during the extended period. It is only in 2011 when the person has already superannuated and retired after availing the full extended period of the rank of Subedar, the authorities woke up after 10 months that mistake had been committed and they revoked the promotion order of the petitioner without giving any show cause notice to the petitioner.

8. We do not wish to say that the policy was in any way bad or wrong. However, it was not properly enforced by the respondents. It is the respondents who are responsible for committing this mistake and allowing the promotion to the petitioner during the extended period when he was low medical category (permanent). The petitioner has fully served the extended

period upto 31.12.2010. The order of revoking the promotion of the petitioner at this belated stage is harsh and breach of principles of natural justice and against the equity also. Once policy is in force and respondents who are in possession of the full records and conscious of their policy, still allowed the person to continue and the petitioner has continued the extended period upto 31.12.2010, revoking of promotion at this stage is against the equity.

9. Be that as it may, so far as policy is concerned, the respondents are right but the question is the breach of principles of natural justice that no notice was given to the petitioner before revoking his order of promotion and that too after a period of 10 months from his retirement. The order dated 21.10.2011 revoking the promotion of the petitioner cannot be sustained on principles of natural justice as well as equity. Consequently, we quash the same and direct the respondents that the petitioner be treated as retired as a Subedar and all his retiral benefits should be worked out and paid to him within a period of three months.

10. The petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 22, 2012
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