

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
09.

T.A. No. 357 of 2010
Writ Petition (Civil) No. 4481 of 2005

Ex JWO Sudama Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With:

T.A. No. 446 of 2010
Writ Petition (Civil) No. 5477 of 2004

For petitioner: Mr. Narender Kaushik, Advocate.

For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:

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

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

ORDER
09.10.2012

1. Both these petitions were initially filed before the Hon'ble Delhi High Court and were transferred to this Tribunal after its formation.
2. Both these cases involve common question of law and, therefore, are being disposed of by a common order. For convenient disposal of both these cases, the facts given in the case of Ex JWO Sudama Singh are taken into consideration.
3. The Petitioner Sudama Singh was enrolled in the Indian Air Force on 13th November 1975 as a Radio Technician and thereafter graduated to Radio Fitter and was promoted as JWO. On 30th May 1998, the age for retirement was enhanced for Air Force personnel from 55 to 57 years. The initial period

of engagement was 15 years after which he was granted a service extension for a period of six years from 13th November 1990 till 12th November 1996 and subsequently for five years from 13th November 1996 till 12th November 2001 and thereafter for three years from 13th November 2001 till 12th November 2004 on his having met the eligibility criteria for grant of extension as given in Air Force Order 11/99. However, after 2004 he was not granted extension and, therefore, he filed this writ petition before the Hon'ble Delhi High Court which was transferred to this Tribunal, after its formation.

4. A reply was filed by the Respondents and the Respondents in their reply pointed out that he was granted extension upto 2004 but subsequently same was not granted on the basis of the ACR criteria. It was pointed out that the Petitioner's extension from 13th November 2001 to 12th November 2004 was governed by Air Force Order 11/99. The prior extensions of Petitioner were governed by earlier Air Force Order which were in force at that relevant point of time. Air Force Order 11/99 came to be issued in 1999 and, therefore, his subsequent extension was governed by this order. His extension from 13th November 2001 till 12th November 2004 was governed by this criteria and subsequent extension was also governed by this criteria but since he could not secure the minimum marks required for extension i.e. 72.5, whereas he secured 71.1, therefore, he could not make it.

5. Learned counsel for the Petitioner submitted that although the Air Force Order 11/99 came into force in 1999, it operates prospectively but his ACR period 1999 have been taken into consideration and as such this Air Force Order operate retrospectively and that cannot be done. Secondly, he

has also submitted that Petitioner should have been given a show cause notice if he could not get the minimum 72.5 marks, since it adversely affects him. In this connection he has invited our attention to two orders passed by learned Single Judge of the Hon'ble Delhi High Court in Writ Petition (Civil) Nos. 4694 of 1997 and 3168 of 1998. As against these orders, learned counsel for the Respondents has submitted that all these issues were agitated by the Petitioners before the Hon'ble Delhi High Court and same Judge by a detailed order considered all the submissions and dismissed the petition in the case of **Sgt. Inder Bahadur Singh v. Union of India & Ors.** in a batch matter decided on 21st August 1998 in which all the arguments which have been raised by the Petitioner were considered and the petition was rejected. Aggrieved by this order of learned Single Judge, an appeal was preferred before the Division Bench and the Division Bench headed by Justice Lahoti as he then was considered the submissions made by the Petitioner and rejected the same in the Letters Patent Appeal No. 416 of 1998 decided on 24th September 1998 in the case of **Ex. JWO Shankar v. Union of India & Ors.** Learned counsel for the Petitioner insisted that when similar relief was given to two other Petitioners why the Petitioner has been deprived of the same relief. Respondents argued that the two cases in which the learned Single Judge granted relief were distinguishable as mentioned in their reply. But that apart, the fact remains that identical question has already been considered by the Division Bench of the Hon'ble Delhi High Court and all the contentions of the Petitioners have been considered and rejected therefore nothing turns on the order of learned Single Judge as order of Division Bench is binding. However, learned counsel for the Petitioners repeated the same contentions before us and submitted that Air Force Order 11/99 was operating

retrospectively in case past five years ACRs are to be considered. Submissions of learned counsel appear to be without any basis. The grant of extension is not a matter of right, it is only given as a privilege looking into the exigencies of service. Also, the criteria can be subjected to review from time to time in accordance with service requirement. If the criteria stipulates that we have to consider five years ACRs then it cannot imply that five years ACRs after date of notification should be looked in and they cannot look into the previous five years ACRs. Once the principle has been laid down that five years ACRs will have to be seen then five years ACRs will have to be seen of the previous years, otherwise the principle will not be operative. In the present case when the criteria was laid down by Air Force Order 11/99 in 1999 then last five years ACRs has to be taken into consideration, obviously the ACRS which are available for last five years are required to be reviewed by the authority. Therefore to say that the criteria is being implemented retrospectively, is without any basis. Candidature of the candidate has to be considered on the touchstone of the criteria which is laid down and it comes into effect when it is notified. Then from that day this principle is uniformly applicable to everyone and no exception can be made.

6. The second question is since the Petitioner secured 71.11 marks and could not get the required 72.5 marks therefore it has adversely affected the Petitioner and he should have been given a show cause notice, is not correct. There was no adverse remark which has been taken into consideration by the Respondents while considering the case of the Petitioner. His ACRs have been taken into consideration as they stood. If he could not make it that does not mean that a show cause notice should have been given to him or that any

adverse ACR has to be communicated. More so, it is not the case of the Petitioner that any adverse ACR which was not communicated to him was taken into consideration. Therefore, nothing turns on this question also. Learned counsel also referred to Sections 189 and 190 of the Air Force Act and Regulation 915 challenging the issue of the notification. These contentions have already been examined by the Division Bench of the Hon'ble Delhi High Court and it was answered in negative. Hence, no purpose will be served by repeating the same again. Consequently, there is no merit in this petition and same is dismissed.

7. Now coming to the case of the other Petitioner, WO Mahesh Prasad Singh. He could not make it because the minimum ACR criteria enabling him to get an extension was 75 marks whereas, the Petitioner got 71.16. Therefore, there is no merit in this petition also and same is dismissed.

8. Consequently, both these petitions are dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
October 09, 2012
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