

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

T.A NO.499 of 2009
WP(C) No.8790 of 2009 of Delhi High Court

IN THE MATTER OF:

NB SUB RAM AYODYA SINGHAPPLICANT

Through: Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERSRESPONDENTS

Through: Mr. Anil Gautam, counsel for the respondents

CORAM:

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

JUDGMENT

Date: 22.03.2012

1. This petition was originally filed on 06.05.2009 before the Hon'ble High Court of Delhi as WP(C) No.8790 of 2009. Thereafter, it was transferred to the Armed Forces Tribunal on 11.12.2009 and was registered as TA No.499/2009.

2. Vide this petition, the applicant has sought quashing and setting aside of EME Records Letter dated 25.03.2009 (Annexure P-3) by which extension was denied and Army HQ policy letter dated 21.09.1998 (Annexure P-6) for extension being irrational when read with Army HQ Policy letter dated 10.10.1997 (Annexure P-5) for promotion especially since it is against the principles of natural justice and reasonableness within the ambit of Article 14 and 21 of the

Constitution of India. He has further prayed that the applicant be reinstated immediately and granted two more years of extension of service with consequential benefits.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 12.03.1983. In due course he became a Nb Subedar but he was discharged on 31.03.2009. He had sought extension of service for two years from 31.03.2009 to 31.03.2011 which was denied to him being in Low Medical Category (LMC) (P).

4. The Army authorities have laid down a policy dated 21.09.1998 which lays down that the extension can be granted only if an individual is in medical category SHAPE-1.

5. Learned counsel for the applicant further submitted that promotion policy dated 10.10.1997 lays down various types of LMCs who can be given promotion. The applicant has a minor hearing loss for which he has been placed in H2(P) medical category.

6. Learned counsel for the applicant argued that as a LMC, H2(P), the applicant is entitled to promotion to the rank of Subedar and Subedar Major and thus he could have been promoted and would have had an extended tenure for another two years in the rank of Subedar and another four years as a Subedar Major. However, this low medical category made him ineligible for grant of extension for two years in the same rank i.e. rank of Naib Subedar. In this respect, the said policy for extension dated 21.09.1998 is irrational, which is liable

to be quashed and extension be viewed and considered in the light of policy dated 10.10.1997 made for promotion.

7. He further argued that the respondents have issued the revised policy on 20.10.2010 which removes this anomaly and makes the requirement for extension similar to that of promotion. However, this policy is made effective for screening w.e.f. 01.04.2011.

8. Learned counsel for the applicant further argued that policy dated 20.10.2010 being a welfare measure it is essential that the provisions of policy issued on 20.10.2010 may be made effective immediately or even with retrospective effect. He submitted that as this policy came into light during the pendency of this petition, therefore, the averments are not made in main petition, but the applicant is entitled to get the benefits of this policy.

9. Learned counsel for the respondents stated that the applicant became a Nb Subedar w.e.f. 01.06.2003. As per the terms of engagement of a Nb Subedar as laid down in Para 163(a) of Regulation for the Army 1987 (Annexure R-1), the term of a Nb Subedar is 26 years extendable by two years or 52 years of age, whichever is earlier. Accordingly, the service of the applicant was extended from 12.03.2009 to 11.03.2011 vide EME Records letter dated 29.01.2007 (Annexure R-3).

10. Learned counsel for the respondents further argued that the applicant was placed in low medical category on 02.07.2007 for the

disability “SENSORI NEURAL HEARING LOSS (LT)”. The disability of the applicant continued and he remained in temporary medical category H2(T-24) till 08.02.2008. On review by the Medical Board, the applicant was again downgraded to low medical category H2(T-24) w.e.f. 24.07.2008. Finally on review, the applicant was downgraded to permanent low medical category H-2(P) w.e.f. 08.01.2009.

11. Learned counsel for the respondents further submitted that in terms of Appendix ‘B’ of the Army HQ letter of 21.09.1998 (Annexure R-4), the two years extension of service is not applicable to the individuals who have been downgraded to permanent low medical category or awarded red ink entry during extension period. In the present case, the applicant was downgraded to permanent low medical category H-2(P) w.e.f. 08.01.2009, therefore, two years of extension of service already granted to the applicant is not applicable to him in terms of the policy letter dated 21.09.1998. Hence, consequent to the downgradation of the applicant to H2(P), the applicant was ordered to be discharged from service vide EME Records letter dated 17.02.2009. Accordingly, the applicant was discharged from service w.e.f. 31.03.2009. Learned counsel further contended that the policy dated 21.09.1998 for extension cannot be compared with the policy dated 10.10.1997 meant for promotion, as these are two different policies for different purposes. It was also further contended that the revised policy dated 20.10.2010 for extension is made effective from 01.04.2011, there is no justified

reason to make the said policy, dated 20.10.2010, applicable for applicant or from retrospective effect. The same view was taken by this Tribunal in the judgment passed in ***Sub Ram Kumar Vs. Union of India & Ors.*** in T.A. No.504 of 2009 decided on 13.03.2012.

12. Having heard both the parties at length and having examined the documents produced before us, we are of this opinion that the policy of extension of service on completion of terms of service is governed by the Army HQ letter dated 21.09.1998. The policy was issued consequent to the Government order dated 13.05.1998 as amended on 30.05.1998. The policy clearly lays down that for screening of personnel for grant of extension will be as per policy of 21.09.1998. This policy lays down that a personnel who is a permanent LMC is not entitled to extension and should he be granted extension and he becomes a low medical category permanent during the extended period, his extended period will be terminated. We do not find any justified ground to quash the same, as the other policy dated 10.10.1997 is meant for promotion, wherein the criteria are different. Likewise, in the revised policy dated 20.10.2010 the criteria is not applicable to applicant's case as this policy is made effective w.e.f. 01.04.2011. Again we do not find any exceptional and special grounds/reasons to make it effective retrospectively. On similar facts in ***Sub Ram Kumar*** (supra) this Tribunal has taken the view that neither the policy dated 21.09.1998 deserves to be quashed nor the

policy dated 20.10.2010 is required to be made effective from retrospective date.

13. Since this case squarely falls in the domain of the policy letter dated 21.09.1998, we are not inclined to interfere in the matter.

14. In view of the foregoing, the T.A. is hereby dismissed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 22nd day of March, 2011