

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

**T.A NO. 505 of 2009
WP(C) No.9778 of 2009 of Delhi High Court**

IN THE MATTER OF:

SUB NARESH PAL 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 02.07.2009 before the Hon'ble High Court of Delhi as WP(C) No.9778 of 2009. Thereafter, it was transferred to the Armed Forces Tribunal on 04.12.2009 and was registered as TA No.505/2009.

2. Vide this petition, the applicant has sought quashing and setting aside of Arty Records Letter dated 16.05.2009 (Annexure P-3) by which he was discharged w.e.f. 31.07.2009 and denied extension, in the light of screening board results placed at (Annexure P-1) read with Army HQ policy letter dated 21.09.1998 (Annexure P-4) and Army HQ Policy letter dated 10.10.1997 (Annexure P-5).

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 03.10.1980. In due course of time he became a Subedar but he was discharged on 31.07.2009. He had sought extension of service for two years i.e. upto 31.10.2010. During the extended period, he became a Low Medical Category (LMC) permanent and, thus, he was denied the benefit of full extended service as per the provisions of relevant policy dated 21.09.1998 (Annexure P-4). Learned counsel further contended that this policy dated 21.09.1998 is illogical and irrational with policy dated 10.10.1997, thus, policy dated 21.09.1998 deserves to be quashed.

4. Learned counsel for the applicant argued that the applicant was already in service and therefore, he should have been promoted to serve for the extended period because when he was screened and granted extension, he was in acceptable medical category. He drew our attention to the policy letter of 10.10.1997 in which the medical criteria for extended service and for promotion has been harmonised.

5. Learned counsel for the applicant further argued that the applicant was suffering from Degenerative Disc Disease C-5 and C-6 of Spinal Chord for which he was downgraded to P-2. He further argued that the revised policy letter dated 20.10.2010 having provision to retain acceptable LMC P-2 personal 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. Learned

counsel for the applicant submitted that the revised policy came to light during the pendency of this petition, thus, the applicant is also entitled to get the benefits of this policy dated 20.10.2010.

6. Learned counsel for the respondents stated that the applicant was enrolled in the Army on 03.10.1980. He was superannuated on 31.07.2008 on completion of service limit as laid down in para 163 of Regulations for the Army, 1987 under item 1(i)(a) of the table annexed to Rule 13(3) of the Army Rules 1964. He further stated that while in service, the applicant was promoted/appointed to various ranks on fulfilling the conditions of such promotion/appointments at his own turn. The applicant was promoted to Subedar w.e.f 01.11.2005. Therefore, the applicant was brought before the Screening Board on 11.04.2008 for grant of two years of extension of service which was approved in terms of the policy letter of 21.09.1998. Accordingly, his service was extended for two years i.e., from 03.10.2008 to 02.10.2010.

7. Learned counsel for the respondents further argued that during this extended period, the applicant was downgraded to medical category P-3(T-24) for the diagnoses "DEGENERATIVE DISC DISEASE 05, 06" w.e.f. 17.03.2008. On subsequent medical review he was further downgraded to P-2(P) w.e.f. 08.02.2009.

8. Learned counsel for the respondents further submitted that in terms of policy letter of 21.09.1998, an individual who is on extended period, if he becomes a permanent LMC, he becomes ineligible for

retention in extended service. Hence, consequent to the downgradation of the applicant to P2(P), the applicant was ordered to be discharged from service w.e.f. 31.07.2009. Before his discharge from service, the applicant was served with a show cause notice dated 25.06.2009 which was duly replied by the applicant vide letter dated 28.06.2009 and that was taken into consideration thereafter and order was passed. It was also contended that both the policies are for different purposes, the policy of 21.09.1998 is not suffering from any arbitrariness and the contention raised in this respect are not acceptable. Further the revised policy dated 20.10.2010 is made effective from 01.04.2011 and there is no justification to make it retrospectively.

9. 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 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. There is no justified reason to quash the policy dated 21.09.1998, while comparing

with policy dated 10.10.1997, as these two policies are for different purposes.

10. We have also considered the contention with regard to revised policy dated 20.10.2010 though it has not been pleaded, but this policy is made effective from 01.04.2011, thus, it is not applicable to applicant's case. Further, we do not find any special and exceptional circumstances where the said policy may be extended retrospectively. Thus, the contention placed in this respect are not sustainable.

11. On the similar facts, where the extension was refused being becoming LMC P-2(P) under the policy dated 21.09.1998 this Tribunal in case of ***Sub Ram Kumar Vs. Union of India & Ors.*** in T.A. No.504 of 2009 decided on 13.03.2012, rejected the petition and declined the extension.

12. In view of the foregoing, we are not inclined to interfere in the matter. The TA 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, 2012