

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

15.

OA 1387/2017 with MA 1031/2017

Ex Sep Ram Mani Patel

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. VS Kadian, Advocate

For Respondents : Mr. K K Tyagi for R1-3 & Ms Anjali Vohra  
for R 4, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
03.11.2023

The applicant vide the present OA makes the following  
prayers:-

*“(i) Quash and set aside the impugned letter  
No.NER/14233376/LC- 3 dated 03.10.2015. And/or*

*(ii) Direct respondents to grant AGIF benefits for both  
the diseases and make payment of due arrears as  
applicable with interest @ 12% per annum till final  
payment is made.*

*(iii) Pass any other order as this Hon'ble Tribunal may  
deem fit and proper in the facts and circumstances of  
the case mentioned above.”*



2. Submissions have been addressed on behalf of the applicant and on behalf of the respondents no. 4 by learned counsel present, on behalf of the respondents no. 1 to 3 it is submitted that there is no counter affidavit that has been filed in as much as there is no relief whatsoever claimed against the respondents no. 1 to 3. The said aspect is also born out clearly from the record through Annexure A4 filed with the OA that is the copy of the order dated 07.07.2015 in OA 470/2014 filed by the very same applicant herein, vide which the applicant therein in that case was held entitled to the balance of the disability pension and disability pension in relation to the disabilities of knee injury assessed at 20% and Hypertension assessed at 30%, compositely assessed at 50% with effect from the date of discharge which were directed to be broadbanded to @75% in terms of the Govt. of India letter dated 31.01.2001. Vide Para 4 of the said order dated 07.07.2015 in OA 470/2014, it was expressly observed to the effect:-

“...

*The Petitioner also raised grievance for not releasing the AGIF amount for which the petitioner will be free to raise his grievance for his Army Group Insurance Fund separately. The petitioner, if has been paid the*

*service gratuity, the same may be adjusted against the arrears.....”,*

thus, observing categorically to the effect that in relation to the non release of the AGIF amount, it was open to the applicant to raise his grievances before the Army Group Insurance Fund separately. The applicant is indicated to have issued a legal notice dated 21.09.2015 qua which the impugned order dated 03.10.2015 no. NER/14233376/LC-3 has been placed on record through which it has been stated to the effect that the disability benefits covered under the Army Group Insurance Scheme are applicable to those personnel invalided out of service under Rule 13(3) Item III (iii) of Army Rules 1954 on medical grounds and that the applicant herein has been discharged from the DSC service on completion of terms of engagement under Rule 13(3) Item III(i) of the Army Rules 1954 and was thus not entitled for the grant of the disability benefit cover under the Army Group Insurance Scheme.

3. The facts of the instant case in relation to the length of the service put in by the applicant are put forth categorically in the order dated 07.07.2015 in OA 470/2014 which are to the effect as specified Para 2 thereof:-

*"2. The petitioner entered into military service on 31.01.1980 and after serving for 18 years and 6 months was discharged from military service on 01.08.1998 therefore, the petitioner completed pensionable service in military service. The petitioner then joined DSC w.e.f 19.05.2003. As per the terms of engagement, the petitioner was to serve for 10 years and could have got the extension of service for further 05 years or till the age of 57 years whichever is earlier. The petitioner was discharged from DSC service upon completion of 10 years of service because of the petitioner's above disability. Consequentially the petitioner could not get the benefit of extension of service which according to the learned counsel for the petitioner resulted into cutting short of his service which otherwise he would have served if he would not have been affected by above two disabilities. Therefore, the petitioner was invalidated from the service obviously, on medical ground alone."*

4. It is thus made clear therefrom that the applicant having entered into military service on 31.01.1980 served therein for 18 years and 6 months and was discharged from military service on 01.08.1998 and had completed the pensionable service in the military. The applicant thereafter joined the DSC with effect from 19.05.2003 and as per the terms of his

engagement he served for 10 years which he completed. The applicant could have got the extension of service for further five years or till the age of 57 years whichever was earlier but the applicant could not get the benefit of that extension of service in view of his disabilities.

5. On behalf of the applicant it has been sought to be submitted that non grant of the benefit of extension of service was because of the disabilities of the applicant and on medical grounds and thus the applicant is entitled to the grant of the AGIF benefits. Reliance in relation thereto was placed on behalf of the applicant on the order dated 25.09.2013 in OA 100/2012 of the AFT, Regional Bench, Kolkata and also on the order dated 29.08.2011 in WP(C) 3850/2010 of the Hon'ble High Court of Delhi in *Ex Maj Sagarika Singh vs. UoI & Ors.* in which case the facts are succinctly put forth in Paragraphs 5 and 8 thereof which read to the effect:-

*"5. On 19.02.1999 the petitioner was appointed as a Short Service Commissioned Officer in the Indian Army and was attached with Army Medical Corps.*

*8. Being initially appointed for 5 years, petitioner was granted extension by another 5 years. She became*

*eligible to be considered for further extension in service by another 4 years, but prior to expiry of said period of 5 years, it was detected that one kidney of the petitioner was malfunctioning. In the year 2009 upon examination by a Medical Board it was opined that the petitioner had a malfunctioning kidney and thus the petitioner was placed in permanent low medical category with disability assessed at 100%. Since one condition of grant of extension in service was that the person ought not to be in low medical category; petitioner was denied further extension in service by another 4 years, and was consequently released from service."*

which bring forth that the petitioner therein had been appointed as a Short Service Commissioned Officer in the Indian Army and was attached with the Army Medical Corps and having been initially appointed for five years was granted extension by another five years and thus became eligible to be considered for further extension in service by another four years but prior to expiry of the said five years it was detected that one kidney of that petitioner was malfunctioning. In the year 2009 upon examination by a Medical Board it had been opined that she had a malfunctioning kidney and thus was placed in Permanent Low Medical Category with disability

assessed at 100% and since one condition of grant of extension in service was that he person ought not to be in Low Medical Category that petitioner was denied further extension in service by another four years, and was consequently released from service.

6. The prayer that she had made to the Army Group Insurance Fund, for the grant of the disability benefit therein was declined with that petitioner having been informed that she was not entitled to any disability benefit for the reason that the disability benefit is available for officer whose service is cut short due to invalidment or release on medical grounds and she was also informed that she had completed the extended tenure of service and denial of extension by another four years did not amount of curtailment of tenure of service.

7. Vide observations in Para 35, 36 and 37 of the verdict of the Hon'ble High Court of Delhi dated 29.08.2011 in WP (C) 3850/2010 in *Sagarika Singh*(Supra) it was directed as under:-

*“35. The scheme being for the benefit of Army Personnel, a beneficial interpretation ought to be placed and since the scheme is an insurance scheme, the 'Contra Proferentem Rule' derived from the latin maxim 'Verba Chartarum Fortius Accipiuntur Contra*



*Proferentem', which has been liberally used in matters of interpretation of insurance policies (see the decision of the Supreme Court reported as 2004 (3) SCC 694 United India Insurance Co.Ltd. vs. Pushplaya Ltd.), requires the policy to be construed liberally in favour of the assured. The law declared by the Supreme Court in the decision reported as 2009 (9) SCC 61 Bombay Anand Bhawan Restaurant vs. Deputy Director ESIC & Anr. requires this Court, to employ, while dealing with measures crafted to provide social security to intended beneficiaries, liberal constructive interpretation tools which promote the object of the welfare measure and not negate the same.*

*36. We would highlight that a beneficial interpretation requires to be placed upon the rules, office orders and the various paragraphs of the Army Group Insurance Scheme since the object of the fund is the welfare of Army Personnel and amongst others, one object is to provide financial benefits to individuals whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement.*

*37. Accordingly, Rule is made absolute. Mandamus is issued to respondent No.4 to pay the sum assured to the petitioner as per interpretation placed by us upon para 59 of the Army Group Insurance Scheme and needless to state the petitioner would be entitled to simple interest on the said sum at the rate of 8% per annum reckoned from a date three months after the petitioner*



*raised a demand upon respondent No.4 till the date the payment is released.”,*

observing thus therein to the effect that one object of the Army Group Insurance Scheme was to provide financial benefits to individuals whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement.

8. Learned Counsel for the respondent No. 4 has brought to our attention, the order of the Full Bench of the Hon'ble High Court of Delhi in WP(C) 432/2013 in the case of *Ex Sub Rajender Singh vs. UoI & Ors.* wherein a reference was made by the Division Bench of the Hon'ble High Court of Delhi vide order dated 25.04.2013 with the questions of law put forth for adjudication to the effect:-

*“1) Can the right to extended service, of an Army personnel, on completion of the term of office, and attainment of the prescribed age of superannuation be equated with the right to continue in service during the term of office prescribed under the relevant rules, in the context of Para 59 of the Army Group Insurance Scheme?*

*2) Can it be said that the denial of extended service or extended tenure of service, upon attainment of the*

*prescribed superannuation age, without the concerned individual having served in such extended tenure at all amounts to cutting short of such service, or terms of engagement, under Para 59 of the Scheme, in the present case?"*

9. Vide the judgment dated 12.02.2015 in WP(C) 432/2013 in Ex Sub Rajender Singh(Supra), the relevant portion of Para 59 of the Army Group Insurance Scheme was referred to in Para 10 of the said verdict which reads to the effect :-

*"10. The learned counsel further refers to the terms of the Army Group Insurance Scheme, in particular para 59 thereof, which deals with disability benefits. The relevant portion of paragraph 59 reads as under:*

*59. The objective of AGIF disability Scheme is to provide financial benefit to individual whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement of service applicable to that rank the disability benefit is paid as a lump sum benefit based on initial assessment by Invaliding Medical Board or release Medical Board before completing the contractual period of service for the rank and meeting the eligible conditions. The disability benefit admissible is 50 percent or as specified of the prevalent insurance cover for 100 percent disability on the date of invalidment and proportionately reduced for lower percentage of disability upto 20*

*percent or as specified. However, the following categories of personnel are NOT eligible for disability cover-*

*(d) Personnel granted extension, who were LMC (temporary) or permanent or were in Hospital on the crucial date of commencement of extension and subsequently released in LMC Permanent or invalided out in category EEE during the currency of the extended tenure."*

10. Vide observations in Para 17, 18, 19, 20, 21 and 22 of the said verdict dated 12.02.2015 it was observed to the effect :-

*"17. A public servant's right to continue in a post is a matter of status and will ordinarily be subject to the applicable rules and regulations. Although the rules may prescribe a possibility of extended tenure subject to fulfillment of certain specified conditions, such extension cannot be regarded as a matter of entitlement. A public servant can demand a right to continue in service for the prescribed tenure but, cannot demand an extension of the tenure in service without meeting the conditions specified for being considered for the grant of the extended tenure. Support for this proposition could be found in All India Judges' Association and Ors. v. Union of India and Ors.. AIR 1993 SC 2493; Ramesh Chandra Acharya v. Registrar, High Court of Orissa & Anr., (2000) 6 SCC 332.*

18. The petitioner's terms of engagement are governed by the Army Regulations and Regulation 163 thereof provides for the retirement age of JCOS. It's noteworthy that the same was not considered in Sagarika Singh. Regulation 163 reads as under:

(a) Retirement of JCOS of all Arms of the Services, who opted for revised terms operative from 01 Dec 76, is compulsory on completion of the following service, tenure or age limits:-

(i) Nb Ris/Nb Sub... 26 years pensionable service or 50 years of age, whichever is earlier.

(ii) Ris/Sub, 28 years pensionable service or 50 years of age, whichever is earlier."

19. The extended tenure comes with the rider of requisite medical fitness (and fulfilment of such other conditions as may be) of the employee as of the date of commencement of the extended tenure. For the extended tenure to be deemed part of tenure of service, the extended tenure ought to first commence. If after the commencement of such extended tenure the service is cut short due to invalidment or release on medical grounds before the completion of the period, the employee would be entitled to the benefit of the AGI Scheme, under paragraph 59 thereof. Therefore, the commencement of the extended tenure is sine qua non for it to be regarded as "terms of engagement of service" and without the commencement of the extended tenure all rights vested in that tenure would remain inchoate. To use

*an analogy in sports, a person will be considered to be a competitive race only when he/she assembles on the race starting line and take the first step. i.e. crosses the starting line after the Starter Pistol is fired. All preparations prior to the competitive race would merely be preparatory exercises. Similarly, the grant of the extension in tenure of service to the petitioner in 2008 and the subsequent medical tests were mere preparatory ground for the commencement of additional tenure. The status of employment in extended tenure of service is a matter of fact. Unless the fact occurs, upon fulfilment of the eligibility criteria, the status of employment or being in service would not exist. If the eligibility is not met the employee would not be able to relay into the extended tenure. The medical fitness/qualifying standards is the relay-baton with which the employee moves into the successive extended tenure.*

*20. For the petitioner to be granted the benefit under para 59 the AGI Scheme, he ought to have entered into the extended tenure of service, an event which did not come about in his case since his extended tenure had already been cancelled and he superannuated from service as per Regulation 163 of the Army Regulations. Since the petitioner had superannuated from service upon the attainment of the age so prescribed for JCOS and consequently categorised in Low Medical Category for his post-retirement benefits, it cannot be termed as cutting*

*short of his service or terms of engagement or that of his extended tenure. The extended tenure would be a bonus or bankable tenure which could be enjoyed only if the petitioner was medically fit to enter upon that tenure. This Court agrees with the view of the Division Bench which passed the reference order, that the provision for extension in tenure of service is nothing more than an expectation and a right to be considered. It is at best an entitlement of a weaker kind, dependent upon fulfilment of eligibility condition as compared to the right to continue in service till the completion of the entire term prescribed under the rules.*

*21. According to Army Regulation 163(a)(ii) the petitioner, a Subedar, was to compulsorily retire on the completion of 28 years of pensionable service. His normal tenure under the said Regulation ended in March, 2010. when he completed his 28 years of service. The extended period of service was to commence from 17.3.2010. Till he entered that day in service he could not be regarded as having entered the extended tenure. The cancellation of the extended tenure was while he was serving his normal prescribed tenure of service and not while he was in the extended tenure. Given the fact that the petitioner had not commenced upon the extended tenure therefore the question of curtailment of the same could not arise. He was instead discharged from service upon the completion of his normal tenure of*

*28 years of service. His extension was cancelled vide order dated 12.1.2010, which was subsequently ratified by the Release Medical Board proceedings which were held on 18.2.2010, which placed him in permanent Low Medical Category.*

*22. In view of the preceding discussion, this Court finds itself unable to agree with either the reasoning or the interpretation of para 59 of the Army Group Insurance Scheme in Sagarika Singh (supra). The said opinion is accordingly overruled. We are of the view that the right to extended service cannot be equated with the right to continue in office and that the denial of extended tenure of service does not amount to curtailment of terms of engagement for the purpose of paragraph 59 of the AGI scheme. Accordingly, both the questions referred for adjudication by this Bench are answered in the negative.”*

whereby both the questions of law put forth for adjudication were answered in the negative and the verdict of *Sagarika Singh (Supra)* in WP(C) 3850/2010 dated 29.08.2011 was expressly overruled with it having been expressly observed to the effect that it was held by the Hon'ble High Court of Delhi by the Full Bench that it was of the view that right to extended service cannot be equated with the right to continue in office and that the denial of extended tenure of service does not amount to



curtailment of terms of engagement for the purpose of paragraph 59 of the AGI scheme. In view of the said observations in the verdict dated 12.02.2015 in WP(C) 432/2013 in the case of *Ex Sub Rajender Singh vs. UoI & Ors.* the issue is no more *res-integra*.

11. In the circumstances, the OA is dismissed.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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