

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

A.

OA 1544/2016

L/Nk Charan Singh

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. Rajiv Manglik, Advocate

For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
27.02.2024

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

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HON'BLE LT GEN CP MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the instant OA has been filed with the following prayers :-

- (a) To quash and set aside the order dated 01 Aug 2015 qua the applicant directing discharge of the applicant from service; and*
- (b) To direct the respondents to grant extension of service to the applicant for a period of 5 years treating the low medical category P2 (Temp or Permt) being permitted in terms of the policy letter dated 20 Sep 2010; and*
- (c) To direct the respondents to re-instate the applicant back into service with all consequential benefits including the back wages for the period for which the applicant has remained out of service in the intervening period from 01 Nov 2016 till re-instatement.*

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FACTS OF THE CASE

2. The applicant was enrolled in the Defence Security Corps (DSC) for a period of 10 years on 28th October, 2006 prior to which the applicant was working with Territorial Army for a period of approximately 07 years and six months. The applicant was diagnosed with '**PRIMARY HYPERTENSION**' in July 2007 and he was medically downgraded in low medical category (LMC) P2(T) and later on he was downgraded to P2 (P). The applicant was due to complete his initial tenure of 10 years in Oct 2016 and therefore his willingness was sought for extension of service for which the applicant gave his willingness and submitted his request in Apr 2015 which was duly recommended by his immediate Superior Officer and Commanding Officer.

3. However, the Commanding Officer stated in the documents that the applicant does not fulfill eligibility criteria; being low medical category. The respondents thereafter issued the discharge order in respect of the applicant vide letter No. CA- 1/1612/CTE/DO/Ser-299/2015 dated 1st August, 2015. The applicant was meanwhile due for his Re-categorization Medical Board on 5th August, 2016 and accordingly, he

reported for the same and post examination by the Medical Authorities he was found to be asymptomatic of the illness and was upgraded to medical category P2 (T-24).

4. Thereafter, the office of the applicant gave signal No. AFA/506/PI-776-'A'/ Retirement/DSC dated 10th Aug, 2016 to the Respondent No. 3, i.e. OIC DSC Records requesting for the cancellation of the discharge order in respect of the applicant due to the upgradation of the medical category of the applicant from P2 (P) to P2 (T-24). The respondent No. 3 issued letter No. Doc-IX/PI-776A/10303674/SR dated 18th Aug, 2016 wherein it was stated that as per Para 5 (e) of ROI/ 03/2003 the applicant is ineligible for grant of extension being in Low Medical Category P2(Permanent) and also stated that as per Para 13 of the Appendix 'C' to AO 03/2001 a JCO/OR who is in permanent low medical category 2 or 3 in any shape and reports to hospital for Medical Board consequent to issue of orders of his discharge/ release from service in accordance to the policy, the medical board will ensure that the individual is examined for release purpose only and his existing medical category is not changed.

5. The applicant was accordingly re-examined medically and the medical category of the applicant was held to be P2 (Permanent) for the purpose of release.

SUBMISSION ON BEHALF OF THE APPLICANT

6. Learned counsel for the applicant argues that since the applicant's medical condition had improved, the medical categorization of the applicant was upgraded from P2 (Permanent) to P2 (T-24) but the same was not accepted by the respondents due to their arbitrary policy of not changing the medical category after issuance of the discharge/release order; thereby depriving the applicant from upgraded medical category by virtue of his improved medical condition.

7. He further submits that the Army HQ has categorically permitted the extension of service to the PBOR in Low Medical Category-P2 (Temporary or Permanent) and thus the subordinate office cannot adopt a contrary policy to the same enunciated by the Army HQ.

8. Learned counsel for the applicant also submits that the respondents themselves permit P2 category for grant of extension of service from 55 years to 57 years in the DSC and, therefore, the denial of the same to the PBOR, who is in a lower age, physical capacity of the

individual being strong, being denied the benefit is discrimination and illogical.

9. He further quotes Army Order 3/2001 which clearly stipulates that individuals in P2 category are capable of performing all duties except for duties where severe stress and strain is involved and, therefore, denial of the extension of service on the grounds of low medical category is illegal. Since the applicant has performed all the duties in P2 category from 2008 to 2016 for a prolonged period of 08 years before discharge, it is, therefore, logical to presume that the applicant can perform such duties after extension and thereafter denial of extension of service on any ground is not correct.

10. Learned counsel for the applicant further submits that the policy of the respondents not to upgrade the medical category in Review Medical Board (RMB) after the issue of discharge/release order is biased and illogical and against the policy of the improvement of health wherein the respondents have created a class between the class without any ratio and allowed higher age of 55 years and above to be

granted extension and denial of the same to below 55 years is gross violation of Article 14 and 16 of the Constitution of India.

SUBMISSION ON BEHALF OF THE RESPONDENTS

11. The respondents have submitted a detailed counter affidavit based on which the learned counsel submits that the applicant was downgraded to low medical category P2 (P) on 6th August, 2014 for diagnosis '**PRIMARY HYPERTENSION**' which is unacceptable medical category for grant of further periodical extension of service. Accordingly, the applicant was discharged from DSC service on 31st October, 2016 on completion of initial terms of engagement after rendering 10 year and 04 days of qualifying service.

12. He further argues that the applicant has been granted discharge from DSC service including for which he has been granted pension which also takes into consideration his previous service in the Infantry Battalion (Territorial Army) thereby completion of the total service period of 16 years 04 months and 19 days, he has been granted service pension vide PCDA (P) Allahabad PPO No. S/39489/2016 (Army) dated 22 September, 2016. Referring to the ROI of DSC records 14/1992 amended vide ROI 03/2003, Learned counsel for the

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respondents submits that on completion of initial terms of engagement the employees are again granted extension of service subject to fulfillment of certain eligibility criteria which include age, ACR, discipline and medical category etc.

13. In the instant case of the applicant, his initial terms of engagement was for a period of 10 years from 28th October, 2006 to 27th October 2016 after which he was eligible for an extension of 05 years subject to fulfillment of all service criteria. He was, however, downgraded to low medical category (P) w.e.f., 20th August, 2007 and on successive reviews he still remained in the same category till he was downgraded to the low medical category P2 (P) on 19th July, 2008 for two years and remained in the same category till 5th August, 2016. The applicant, however, underwent a re-categorisation medical board erroneously on 6th August 2016 which revised his category to P2(T-24) against the policy laid down vide Para 13 of Appendix C to A03/2001 as the discharge orders had been issued vide DSC Records dated 01 Aug 2015 and he was eligible to undergo RMB and not Re-cat Medical Board. Accordingly, the RMB held on 30th August 2016

assessed his disability as '**PRIMARY HYPERTENSION**' and placed him in medical category P2 (P).

14. During the currency of initial terms of engagement, the applicant being placed in an unacceptable medical category for diagnosis '**PRIMARY HYPERTENSION**' was not granted further extension of service and accordingly the discharge order was issued by DSC records vide letter dated 1st August, 2015. Learned counsel further argues that a large number of DSC personnel have already been discharged from DSC service ineligible for further extension of service due to their being placed low medical category (P) under the provisions of the Govt of India, Ministry of Defence letter A/00592/DSC-2/813-III/D(GS-IV) dated 5th December, 1981 read in conjunction with DSC Records ROI 14/1992 amended vide ROI 03/2003. Thereafter, the cancellation for discharge order on the request of the applicant will be injustice to all the individuals who have already been discharged from service under similar circumstances.

CONSIDERATION

15. On perusal of the documents placed on the record, and considering the submissions of the either side, we frame two issues for consideration:

- (a) Whether the Re-Cat Board of the applicant dated 05.08.2016 is legally valid as per the extant policies ?**
- (b) Whether the applicant was entitled to be granted extension in DSC Service in low medical category P2 (Pmt/Temp), in view of the existing policies and guidelines ?**

16. In order to recapitulate the brief facts, the applicant was re-enrolled in the DSC on 28.10.2006 for an initial term of engagement of 10 years as per the policy issued by the Govt of India, Min of Def vide letter no. A/00592/DSC-2/813-III/D (GS-IV) dated 05.12.1981 amending Para 1(a) and 1(b) of Govt of India, Min of Def letter no. TER/257/NDSC/1747/D(IS) dated 23.03.1956. The amended Para 1 (b) which is relevant for our consideration stipulates as under:

(b) Sepoys

The initial period of engagement for Sepoys in the Corps will be 10 years, Those who are recommended and selected for further retention, if willing, be given 5 years extension at the time or till they reach the age of superannuation, i.e. 55 years.

(a) Legal Validity of the Re-Cat Medical Board dated 06.08.2016

17. During the initial terms of engagement, the applicant was downgraded to low medical category P3 (T-24) on 20.08.2007 up to 19.07.2008, for detection of 'Primary Hypertension' which was then changed to P2 (Permanent) on 19.07.2008 initially for 2 years, and further extended to 05.08.2016 which was the date of next review.

18. Meanwhile, the willingness of the applicant was sought for the extension, to which he affirmed his willingness in Apr 2015, duly recommended by the Medical Officer vide signature dated 24.04.2015 with a note - "LMC personnel are eligible for grant of extension of service.", and the same has been recommended by the Commanding Officer of the individual vide signature dated 27.04.2015, with due specification that the applicant does not fulfill the criteria for extension being LMC (P2 Permanent) but recommended for extension.

19. However, vide order dated 01.08.2015 DSC Records issued his discharge order referring to Govt of India, Ministry of Defence letter no. TER/257/MDSC/1747/D (IS) dt 23.03.1956 as amended vide A/00592/DSC-2/813-III/D (GS-IV) dated 05.12.1981, Para 5 (e) (i) (Re-constructed ROI-1/94) of DSC ROI 3/2003 and AO 3/2001, in

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compliance of which, the applicant was discharged from service w.e.f. 31.10.2016.

20. Before proceeding further, we find it proper to examine the legal validity of the Re-Cat Medical Board dated 05.08.2016, in view of the relevant provisions of Army Order 03/2001/DGMS, of which para 13 stipulates as under:-

"13. When a JCO/OR, who is in permanent low medical category '2' or '3', in any SHAPE factor, reports to hospital for medical board, consequent to issue of orders for his discharge/release from service, in accordance with the prescribed policy, the medical board will ensure that the individual is examined for release purpose only and his existing medical category is not changed."

21. A basic analysis of the aforesaid provision makes it abundantly clear that where a JCO/OR reports for medical board, consequent to his discharge order, which in the instant case was issued vide DSC Records letter no. CA-1/1612/CTE/DO/Ser-299/2015 dated 01.08.2015, the personnel should have been examined for release only, with an additional clause that the medical category is not to be changed.

22. We find that the aforesaid provision is well clear leaving no room for ambiguity, and in view of the fact that the Re-Cat

Medical Board was conducted on 06.08.2016, approximately one year after the discharge orders were issued, the respondents have acted as per the existing policy in force, and therefore, the Re-Cat Medical Board has been carried out in violation of the aforesaid policy, and is thus, held to be legally invalid.

(b) Eligibility for Extension

23. Settling the aforesaid question, we now proceed to examine the issue (b) under consideration before us, for which it is relevant to refer to Appendix A of letter no B/33098/AG/PS-2 dated 20.09.2010 vide which procedure and criteria for screening of PBOR in Army is laid down, and the same is reproduced as under:

**PROCEDURE & CRITERIA FOR SCREENING OF PBOR IN
THE ARMY**

1. **Aim.** To screen PBOR for the grant of extension by two years,
2. **Criteria.** The following guiding principles will be adhered to while considering the grant of two years extension in age/service

(a) **Willingness of the individual.** An individual will be deemed to be willing for 2 years extension in age/service unless he submits his unwillingness certificate two years before his retirement date, duly counter signed by OC unit.

(b) **Medical Classification.** The medical criteria for 2 years extn in age/service will be same as for promotion in respect of JCOs and OR as laid down vide IHQ of MoD (Army) letter No.B/33513/AG/PS-2 (c) dt 10 Oct 97. They should be in medical category 'AYE'. However, personnel in lower

medical category (both temporary and permanent) as a result of the circumstances indicated below would be eligible:-

(i) Eligible upto Medical Category 'CEE'

(aa) Battle casualties as defined in special Army Order 8/S/85 including those casualties in fighting against armed hostiles shall also be treated as battle casualties.

(ab) Personnel wounded/injured during deployment in 'Op Medghdoot', 'Op Rhino', 'Op Rakshak', 'Op Pawan', 'Op Bajrang', 'Op Bluestar', 'Op Cactus Lilly' and other similar Operations involving fighting against Militants/Terrorists and consequently placed in medical category CEE (Permanent/Temporary) will be treated at par with 'Battle Casualties'.

(ac) JCOs/NCOs Wounded/injured during battle inoculation, field, mine training using live ammunition and while handling/disposing live ammunition, explosives, bombs and Improvised Explosive Devices and placed in Medical Category CEE (Permanent/Temporary) will also be treated as battle casualties.

(ad) JCOs and NCOs who sustain injuries or are wounded as a result of accidental explosion of mines caused while laying operationally oriented mine fields or lifting or negotiating mine fields laid by the enemy or own forces in operational areas, near the international borders or the Line of Control and consequently placed in Medical Category CEE (Permanent/Temporary) will also be treated as battle casualties.

(ae) JCOs/NCOs, who are wounded/injured during UN Mission, where such a deputation is to count as active service in field, will be treated as battle casualties.

(ii) Eligible upto Medical Category 'BEE'; Personnel placed in medical category BEE will be eligible for extension in service. This will include both temporary and permanent low medical categories. This will be irrespective of whether or not the disease, sickness or injury is attributable /non-attributable to or aggravated by service conditions. However, cases of medical category BEE (both temporary and permanent) due to psychological clauses, misconduct or self inflicted will not be eligible for extension in service.

(iii) (aa) Eligibility at (i) and (ii) above is subject to proficiency of the affected personnel being of a specially high standard and suitable appointments being found for them within the Regiment/Corps.

(ab) The above yardsticks will apply uniformly to all categories of JCOs/NCOs and no consideration will be given to categories like Clerks, Storeman etc. on the ground that a particular disability (hearing, eye-sight and so on) does not interfere in the performance of their duties.

(c) Physical Fitness. PBOR should be physically fit, related to job content depending on trade or category. Arms/Services will lay down specific standards in this regard.

(d) ACRs Criteria

- (i) Nk/Hav. - Last five reports
irrespective of rank
should not be less
than average.
- (ii) Nb Ris/Nb Sub/Ris/Sub - Same as per Nk/Hav.
- (iii) Ris Maj/Sub Maj - In last five reports
at least three reports
should be 'High
Average' and remaining
two reports should not be
less than 'Average'.
- (iv) Sep/LNK/TS LNK/TS NK - No ACR criteria is
applicable to them.

(e) Discipline. The individual should meet the discipline criteria as given below:-

- (i) An individual should not have more than two red ink entries (including recordable censure in the case of an Nb Sub/Sub) during the entire service and not more than one red ink entry in the last five years. However, for extension in the rank of Sub Maj there should be no red ink entry including recordable censure in the rank of JCO.

(ii) An individual who has been convicted or awarded Red ink entry for an offence mentioned in the Annexure-I to Appx 'A' on the date of screening will not be eligible for extension and will be discharged in accordance with the existing rules on the subject. However, an individual who has been convicted or awarded Red ink entry for an offence mentioned in Annexure-II to Appx 'A' will not be eligible for extension in service for three years from the date of conviction or award of such red ink entry. Black ink entries will however not debar the PBOR for extension, if otherwise eligible. Award of upto 14 days Pay Fine and Confinement to Lines will not be a bar for extension of JCOs being black ink entry.

(iii) In exceptional cases, such as distinction achieved by an individual in War of peace, the GOC-in-C command, on the recommendations of the OIC Records, may waive the stipulations given in Sub Para (i) and (ii) above.

Note: This criteria will be applicable to all Regt/Corps less DSC, In whose regards orders issued separately vide letter No. B/33513/AG/PS-2(c) dt. 18 Jun, 2009 will be applicable.

3. xxx xxx	xxx	xxx	xxx
4. xxx xxx	xxx	xxx	xxx
5. xxx xxx	xxx	xxx	xxx

6. Applicability. The revised policy will be made applicable with effect from 01 Apr 2011.

24. On a brief look at the aforesaid policy letter, it can be ascertained that this policy letter governs the extension criteria for the PBOR in Army, but the note to Point 2(e) "Discipline" makes it clear that while other requirements as enshrined under the heading "Criteria" are to fulfilled by the concerned PBOR, as per the conditions laid down in the aforesaid letter except the criteria of discipline for which, the

aforesaid letter is not applicable to DSC personnels and the same is governed by another policy letter No. B/33513/AG/PS-2(c) dt. 18 Jun, 2009, and thus, for the limited question of medical requirements, we proceed to examine the aforesaid letter.

25. A perusal of aforesaid letter, specifies five components of the criteria to be fulfilled by a PBOR seeking extension, of which the only component under examination is the "Medical Classification" under Para 2 (b) of the letter, which clarifies that the medical criteria for 2 years extension enshrined a person to be in medical category 'AYE' but concurrently lays down exceptions for the personnel in low medical category (both temporary and permanent).

26. The first exception deals with those personnel in medical category 'CEE' who could be held eligible for extension, based on certain conditions as enshrined, the applicant does not fall in this exception. However, second exception provides for eligibility of personnels falling in low medical category up to 'BEE', thereby, explaining that the personnel placed in medical category 'BEE' will be eligible for extension in service, which will include both temporary and permanent low medical categories, and this has to apply uniformly

irrespective of whether or not the disease, sickness or injury is attributable/non-attributable to or aggravated by service conditions.

27. However, we find that there are subsequent exceptions to the aforesaid exceptions, the first one being that the personnels being in low medical category due to psychological causes, misconduct or self inflicted injuries will not be eligible for extension in service, and second being, that the aforesaid eligibility of grant of extension in service to personnels in low medical category 'BEE' shall be subject to proficiency of the affected personnel being of a specifically high standard, and suitable appointment found for them within the Regiment/Corps.

28. At this moment, we find it pertinent to refer to Para 5(e) of ROI 14/1992 as amended by ROI 03/2003, relied upon by the respondents, which states to the effect:

RESTRICTED
DEFENCE SECURITY CORPS RECORDS OFFICE
INSTRUCTIONS

ROI No. 03/2003

TERMS AND CONDITIONS OF SERVICE
DEFENCE SECURITY CORPS JCOS/OR

1. Refer to ROI 14/92 as amended from time to time.
2. Vide Para 5 (e) of ROI (re-constructed vide ROI 01/94) is deleted and re-constructed as under:-
Para 5 (e). Medical category.
(i) Should be in the medical category S1H1A1P1E1, willing and recommended by OC unit. Extension of service commencing with

effect from 01 Jan 2004 will not be granted to LMC personnel placed in permanent categories irrespective of disease/disability excluding Battle Casualty. However, willingness/unwillingness certificates will be submitted to DSC Records through the DSC channel as hitherto as per time frame given in ROI 14/92. Cases of personnel whose willingness certificates have already been received in DSC Records through DSC channel and granted further extension of service commencing from 01 Jan 2004 onwards, vide Records Part II orders, will be reviewed and their discharge orders issued. Simultaneously, discharge order on completion of terms of their initial/extended period of engagement in the aforesaid cases will be issued by DSC Records, immediately without waiting for their willingness/unwillingness certificates, irrespective of option exercised by them.

(ii) Cases of LMC personnel upgraded to medical category S1H1A1P1E1 after issue of discharge orders will be intimated to the DSC Records through fastest means i.e. FAX/Telegrams by the Units immediately on receipt of intimation from hospital authorities at least two months prior to date of discharge for review and necessary action as deemed fit. Extension in such cases may be granted subject to approval of medical board by competent authority and individual remaining in acceptable medical category i.e. S1H1A1P1E1 on the date of expiry of previous terms of engagement. Representations received after the above time frame (2 months) will not be entertained.

29. It is important to note that post ROI 03/2003, there is another ROI 02/2011 which has been formulated and is titled as, "Procedure and Criteria for Screening of JCOs and OR in Defence Security Corps". The relevant paragraphs of the aforesaid letter is reproduced as under:

RESTRICTED
DEFENCE SECURITY CORPS RECORDS
RECORD OFFICE INSTRUCTIONS

ROI No: 02/2011

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**PROCEDURE AND CRITERIA FOR SCREENING OF JCOs AND OR
IN DEFENCE SECURITY CORPS**

1. Copy of SOP No. A/00585/Extn/DSC-1 dated 07 Jun 2011 issued by IHQ of MoD (Army), DSC Dte, regarding revised procedure and criteria for screening of JCOs and OR in Defence Security Corps (DSC) for grant of two years enhanced service beyond 55 years age is enclosed as Appendix 'A' to this ROI.
2. xxx xxx xxx xxx xxx
xxx
3. xxx xxx xxx xxx xxx
xxx

**RECOMMENDATION OF OC UNIT IN RESPECT OF PERSONNEL
PLACED IN MEDICAL CATEGORY SHAPE-2**

4. Since LMC SHAPE-2 (both temporary and permanent) personnel except those downgraded due to psychological causes, obesity, misconduct or self-inflicted injuries, are eligible for extension of service in terms of para 2(b)(ii) of the SOP, OC/Unit PI will forward recommendation in this regard as per Appx 'C' to this ROI to DSC Records 26 months in advance prior to attaining 55 years of age, so that his screening board can be conducted 24 months in advance and to endorse suitable recommendation by the Screening Board.
xxx xxx xxx xxx xxx
xxx
9. ROI Nos 02/1999, 03/1999, 08/1999 and 02/2000 are hereby superseded.

30. At this point, we find it important to refer to SOP Policy No. A/00585/Extn/DSC-1 dated 08.06.2011 addressed by Deputy Directorate General DSC, General Staff Branch, IHQ of MoD (Army) to DSC Records, titled "Procedure and criteria for screening of JCOs and or in Defence Security Corps", which seems to be an extension of earlier policy letter B/33098/AG/PS-2 dated 20.09.2010 vide which procedure and criteria for screening of PBOR in Army is laid down.

31. On an examination of the aforesaid SOP pertaining to DSC, we find that it lays down almost similar criteria for grant of extension to DSC personnel, as has been laid down for the screening of PBOR in Army vide policy letter B/33098/AG/PS-2 dated 20.09.2010 with the only change being in the terminology, from low medical category 'BEE' to low medical category 'SHAPE-2', thereby, clarifying that an extension can be granted to a DSC personnel placed in medical category 'SHAPE-2' which will include both temporary and permanent low medical categories, with the only addition in exception being that if a personnel is in low medical category 'SHAPE-2' due to obesity, he shall not be eligible for extension.

32. Since, the applicant is seeking extension with effect from his date of discharge w.e.f. 31.10.2016, at the time the aforesaid SOP Policy No. A/00585/Extn/DSC-1 dated 08.06.2011 read with ROI 02/2011 was in effect. However, later on another ROI 03/2018 dated 24.04.2018 was enforced in addition to ROI 02/2011, which laid down the explanation to the effect vide Para 2 and 3 reproduced as under:

"2. Personnel placed on 'Temp Low Med Cat' during 2 years' enhanced service are not to be discharged unless they are declared to be in unacceptable Med Cat. The 'drop in criteria' would be applicable

once declared to be in unacceptable Permt Low Med Cat SHAPE-3 (Pmt). Indls placed on 'Temp Low Med Cat' would not be treated as 'Drop in Criteria'. 'Drop in Criteria' would be applicable from the date on which indl is dec;ared to be in unacceptable Permanent Low Med Cat i.e. SHAPE-3 (Permt). Once indls are placed in unacceptable 'Permt Low Med Cat (SHAPE-3) Permit during two years enhances service he will be discharged from service within six month from the date of serving him show cause notice.

3. JCOs and OR, who are placed in Low Med Cat SHAPE-3 (both temp and permt) and SHAPE-2 (both temp and permt) due to obesity, psychological causes, misconduct or self inflicted injuries would be treated as 'drop in criteria' during enhances service as the same is an unacceptable med cat during currency of enhanced service he will be discharged from service within six month from the date of serving him show cause notice."

33. We further find that post the issuance of ROI 03/2018, the subsequent policy that brought substantial changes were only brought through Adjutant General's Branch Letter No. B/10185/DSC/MP-3 dated 03.05.2018 and IHQ of MoD Letter No. A/00585/LMC/Policy/DSC-1/57 dated 20.11.2018, applicable wef 01.04.2019 stating to the effect that all DSC persons who are in permanent low medical category shall be discharged with the end of contract and will not be granted extension if not in SHAPE-1, while the persons who are placed in temporary Low Medical Category for 'Alcohol Dependence Syndrome' (ADS S-Category) will be observed for two months, and post that, if not improved, the services will be terminated during contract or extension

period in line with the statutory provisions of Army Rule 13(3) Item III (iii) (a) (i), issued vide Gazette Notification SRO No. 22 dated 13.05.2010 as no sheltered appointment is available in DSC.

34. It is pertinent to observe that while the ROI 03/2003 specifies that all the LMC personnel placed in permanent low medical categories irrespective of disease/disability will not be eligible for grant of extension, and the same does not provide for any extension but the subsequent policy letters including ROI 02/2011 issued by IHQ of MoD provide for the contrary with exceptions carved out for the personnels placed in low medical category, and therefore, the respondents cannot apply 'pick & choose' policy as per their whims and fancies, relying upon RoI 03/2003 to discharge a DSC personnel, and then the benefit of subsequent policy letters is in effect to others by granting extension to another similarly placed DSC personnel. Needless to observe that such a partisan approach and procedure adopted by the respondents is arbitrary in nature, and therefore, is in contravention of Article 14 of the Constitution.

35. It is important to observe that while ROI 03/2003 leaves out no room for any exception, ROI 02/2011 carves out several exceptions,

and ironically, while ROI Nos 02/1999, 03/1999, 08/1999 and 02/2000 are superseded by the subsequent ROI 02/2011, it does not supersede ROI 03/2003, thereby, leaving the discretion with the authorities to decide as to whether they wish to proceed with ROI 02/2011 or ROI 03/2003, creating enough room for arbitrariness and discrimination.

36. While the specific challenge to ROI 03/2003 has not been made before us, it would not be appropriate for us to interfere in that domain, and therefore, in line with the judgment of Hon'ble Supreme Court in *Union of India & Ors. v. Manju Rani Routray & ORS. [2023INSC787]*, we hold that this judgment will not come in the way of any court dealing with the issue of the vires of the ROI 03/2003 in any pending proceeding or in any proceeding that may be initiated afresh.

37. At this moment we find it pertinent to refer to the observations made by a **Larger Bench** of the **Hon'ble High Court of Delhi** in *Ex Sub Rajender Singh v. Union of India & Ors. [WP (C) No. 432 of 2013]* dated 12.02.2015 vide Para 17 as reproduced:

"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."

38. Keeping in view the word of caution as laid down in the aforesaid judgment and examining the instant case on the basis of existing ROI 02/2011 read with the SOP Policy No. A/00585/Extn/DSC-1 dated 08.06.2011, which were in force at the time of rejection of extension of the applicant, we find that the applicant being downgraded to P-2 category w.e.f. 20.08.2007, which continued till 05.08.2016, for approximately 9 years, without any hindrance to the work assigned to the applicant, and no record has been brought forth by the respondents to substantiate that there was indeed an hindrance to the work done by the applicant by virtue of him being in low medical category for the disability - Primary Hypertension.

39. It is important to note the fact that there has been absolutely nothing on record in the medical documents to show that the health or the disability of the applicant has worsened post 05.08.2016 and all of a sudden, a case is being prepared

for his discharge, by denying the extension to him, on the ground that he is suffering from a disability, and he is in low medical category, notwithstanding the fact that he is in the same low medical category for the same disability for past 9 years, without any change in circumstances, and constantly working to the satisfaction of the respondents.

40. Noting the fact that the recommendation of the Medical Officer and the Commanding Officer were made while acting in consonance with SOP Policy No. A/00585/Extn/DSC-1 dated 08.06.2011, and the same was required to have been given weightage coupled with the due compliance of SOP prepared by the Respondents itself, we find that the Respondents have not arbitrarily in the matter, and thus, in view of the detailed discussion herein, the decision of the competent authority, denying extension to the applicant is held illegal, and quashed in entirety.

41. However, keeping in view that the subsequent amendments in the policy have been made in aftermath of the unfortunate terrorist attack on Pathankot Air Base, and that it has

been 7 years since his discharge, while applicant has been continuously raising his grievance since then, we are inclined to grant notional re-instatement and further notional extension to the applicant, who in view of the subsequent policy changes, would not have continued in the DSC, after his first extension of service due to his low medical category. He shall be further entitled to all the consequential benefits accruing from his fresh date of discharge. However, there shall be no pay for the period of notional extension of service.

42. However, we find it important to emphasize that the extension of service is not a continuing wrong unlike grant of pensionary benefits, and unless the grievance has been continuously raised with the competent authority or the judicial fora, revisiting the similar cases existing pre-2018 policy change would be a wrong approach to be adopted thereby leading to unending litigation.

43. In view of the aforesaid discussion, this OA 1544/2016 is allowed to the extent of aforesaid directions. The respondents are directed to give effect to the directions issued

by this Tribunal within three months of the date of pronouncement of this judgment.

44. Pending application(s), if any, are directed to be disposed off.

45. No order as to costs.

Pronounced in an open Court on this day of 27 February, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

Ps
OA 1544/2016