

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

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OA 1437 of 2011

Surinder Kumar Patyal	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) : Maj (Retd) Balbir Singh, Advocate

For the Respondent(s) : Mr. Ram Chander, Sr. PC.

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.**

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**ORDER
25.10.2013**

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1. This is a petition under Section 14 of the Armed Forces Tribunal Act, 2007.

2. Briefly stated the facts of the case as alleged by the petitioner are that he was enrolled in Army Ordinance Corps as Sep Clerk on 21.9.1987 and rose to the rank of Havildar Clerk. He was downgraded to Medical Category CEE (Temporary) w.e.f. July 2005 when he was found to be suffering from 'DIABETES MELLITUS TYPE-2' and in October 2009, during categorization, he was diagnosed to be suffering from 'PRIMARY HYPERTENSION' and was downgraded to Medical Category BEE (Permanent) w.e.f. 28.4.2010. Thus, he was found to be suffering from PRIMARY HYPERTENSION as well as 'DIABETES MELLITUS TYPE-2'. He was screened for extension of two years service w.e.f. 22.9.2011 to 21.9.2013 and was granted extension vide letter dated 2.2.2010 with the remarks "subject to remain in acceptable medical category and receipt of ACR in appropriate grading' (Annexure A-1). It was alleged that the petitioner's extension beyond notified date was cancelled due to downgradation to Low Medical Category (permanent) vide order dated 15.3.2010.

3. It was further alleged that respondent No.3 issued discharge order of the petitioner, w.e.f. 30th September, 2011 after cancelling the routine

discharge order under which he was to retire on 21.9.2013. It was alleged that the order was issued as per the revised policy which was made applicable w.e.f. 1.4.2011 to enable the dissemination to all concerned. It was alleged that the new policy Annexure A-3 was framed vide letter 30.9.2010 dealing with disposal of permanent Low Medical Category of PBORs which policy was made effective w.e.f. 1.4.2011. It was alleged that the case for extension of service of the petitioner for two years was covered under the clause and required to be reviewed in the light of revised policy regarding procedure and criteria for screening of personnel below officer rank (PBOR) for grant of extension of service by two years for implementation of the same w.e.f. 1.4.2011.

4. It was alleged that the petitioner was fulfilling all the criteria stipulated for screening of Personnel Below Officer Rank and he was required to be screened after receipt of revised policy of 20.9.2010 and as the policy was made applicable w.e.f. 1.4.2011 and the applicant was to retire during August 2011 and, as such, he was covered under the provisions of the new policy and he was to be screened mandatorily.

5. In reply, the respondents pleaded that the petitioner completed 24 years of service in the rank of Havildar on 30th September, 2011. Therefore, the discharge order for discharging him from service w.e.f. 30th September, 2011 has rightly been issued.

6. It was further pleaded that since the petitioner was placed in Permanent Low Medical Category he could not be granted two years extension of service by screening board in pursuance of the letter issued by the respondents dated 21.9.1998.

7. It was further pleaded that the revised policy dated 20.9.2010 clearly stipulates that a low medical category person may be considered for extension of two years service in certain conditions. The same is applicable for those retirees proceeding on retirement on 1.4.2013 onwards whose screening for extension of two years service held on 1.4.2011 onwards only and there is no provision for second screening whose screening has already been carried out.

8. It was further pleaded by the respondents that the petitioner's case once considered by screening board/ by a Board of Officers and was found ineligible in view of the earlier letter dated 21.9.1998, there is no provision for second screening.

9. It was also pleaded that further extension of service for two years was not granted to the petitioner as per Government Policy since the petitioner was placed in permanent low medical category and he could be granted two years extension by screening in terms of the letter dated 21st September, 1998 only. It was further pleaded that the policy letter dated 20.9.2010 is applicable to JCOs/OR due for screening by 1.4.2011 onwards and, therefore, the petitioner is not entitled to the relief.

10. We have heard the learned counsel for the parties and have gone through the record.

11. During the course of arguments, our attention has been drawn by the learned Senior Panel Counsel for Union of India to a judgment passed by the Principal Bench in case **Naib Subedar Roshan Lal v. Union of India & others, OA No. 279 of 2011**, along with other similar OAs, decided on 3rd January, 2013.

12. We have gone through the judgment of the Full Bench of the Hon'ble Principal Bench in detail. A perusal of the same shows that the matter was referred to the Larger Bench of the Principal Bench of Delhi since it was brought to the notice of the Principal Bench that there are judgments of the Lucknow Bench in **Sub Brijesh Kumar Shukla v. Chief of the Army Staff and others** and Kochi Bench in **Hav Manktu Ram v. UOI and others** decided on 15.02.2012 and 21.3.2012 respectively and there is a judgment of Principal Bench in OA No. 513 of 2011 **Naib Subedar Gulab Rao v. UOI**, decided on 4.4.2012.

13. It was observed by the Principal Bench in the above mentioned case that there was no conflict of opinion in the three judgments referred to above.. In substance, the matter involved is about interpretation of policy

dated 20.9.2010 and also about the validity of the cut-off date fixed in the above policy. The challenges were made on the question as to whether the policy can be discriminatory since a cut off date has been provided and it may be to the detriment of the petitioners that they are not entitled to extension of service as per the previous policy, but may be entitled to extension in service as per the new policy.

14. The question was considered at length by the Hon'ble Full Bench of Principal Bench at Delhi by referring to the various judgments of the Hon'ble Supreme Court in regard to the cut-off date and as to whether the policy can be said to be discriminatory in any manner.

15. We may observe that while referring to the policies dated 21st September, 1998 and 20th September, 2010, the following observations were made by the Principal Bench in para 11 of the judgment, which may be reproduced below:

“11. Arguing the petition, learned counsel for the petitioners took us through both the policies being dated 21.09.1998 and 20.9.2010 so also the policy for promotion being dated 10.10.1997 and submitted that the eligibility criteria for entitlement to extension under the policy of 21.9.1998 was far more stringent than even the criteria for eligibility for promotion under the policy dated 10.10.1997 inasmuch as individuals placed in medical category BEE (now known as P2) were eligible for promotion to the next higher rank irrespective of his medical category being temporary or permanent so also irrespective of the disease or injury being attributable or non attributable to or aggravated to service conditions, subject to exception of psychological cases, misconduct or being self inflicted injury, these category of persons were provided to be not entitled to extension according to the policy dated 20.9.1998 and according to the learned counsel for the petitioner this was realized by the respondents to be unfair and harsh rather paradoxical and therefore, the new policy of 20.9.2010 was issued rendering persons in P2 medical category also to be entitled to eligible for extension.”

The providing of cut-off date as 1.4.2011 for applying of new policy was not held to be arbitrary or discriminatory. It was observed that the policy which was to be applicable from 1.4.2011 contemplates screening and as such screening is contemplated rather provided to be undertaken or carried out was 24 months prior to reaching the current laid down service by the individual concerned. It was also observed that the screening is undertaken only once and the new policy does not contemplate any second screening or reopening or reconsideration of the screening already carried out. It was also observed that the screening is to be carried out 24 months

prior to reaching the current laid down service limit and since the new policy is to become applicable w.e.f. 1.4.2011, all the persons retiring on or before 1.4.2013, already stands screened as per the parameters laid down in the old policy. It was also observed that in the absence of any provision for second screening or re-opening of the cases which have already been screened, the individual cannot claim to be retained simply because they claimed to be fulfilling eligibility criteria under the new policy.

16. It was also observed that the new policy is liberal as it renders P2 category persons also eligible but then on discipline parameters the policy is much too stringent inasmuch as under old policy, individual with three red ink entries was also eligible for extension as against which under the new policy the eligibility is restricted to incurring of only two red ink entries.

17. It was also observed that the requirement of screening in advance for two years was very much material. The new policy did not simply water down the earlier policy nor did it simply liberalize parameters, rather it had laid down different parameters in which process some parameters were liberalized, still some parameters were made more stringent. Therefore, it was held that the petitioners in those cases were not entitled to invoke compassion nor sympathy nor can it be said that there would be any violation of Article 14 of the Constitution. Thus, it was held that the action of the policy being made to be effective from 1.4.2011, cannot be said to be arbitrary. It was also observed that the employee has no right of extension in service though he is entitled to be considered for promotion if he fulfills the eligibility criteria and the employer can prescribe the conditions for extension of service.

18. The salient features of the new policy dated 20th September, 2010 are as under:

(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 two 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 Meghdoot**, '**Op Cactus Lily**' and other similar **CI Operations** involving fighting against Militants/Terrorists and consequently placed in medical category CEE (Permanent/Temporary) will be treated at par with 'Battle Casualty'.

(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 rounded/injured **UN Mission**, where such a deputation is to count as active service in field, will also 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 causes, 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, Storemen 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 -1 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 of 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 of Lines will not be a bar for extension of JCOs being black ink entry.*

(iii)x.....xx...xx.....x.....xx.....xx.

19. Comparative chart bringing out the salient difference in the two policies is as under:-

Policy Date	Medical Eligibility	Discipline eligibility
21.9.1998	Individual placed in P-2 (P) category not eligible for consideration for extension.	Individuals with only 3 Red Ink entries during entire service and not more than one Red Ink entry during last 5 years. Also individual who has been convicted or awarded Red Ink entry for offences mentioned in Annx 1 are not eligible for consideration for extension
20.9.2010	Individual placed in P-2 category is eligible for promotion (Excluding psychological cases, misconduct or self injury)	Individuals with only 2 Red Ink entries during entire service and not more than one Red Ink entry during last 5 years. Also individual who has been convicted or awarded Red Ink entry for offences mentioned in Annx 1 are not eligible for consideration for extension

20. A look at the policy letter dated 20 Sep 2010 clearly brings out at its heading

**PROCEDURE AND CRITERIA FOR SCREEING OF PERSONNEL
BELOW OFFICER RANK (PBOR) FOR GRANT OF EXTENSION OF
SERVICE BY TWO YEARS**

Implying that the screening process is being reviewed along with the criteria. At para 7, the applicability is spelt out, which reads as under

7. **Applicability.** The revised policy will be applicable with effect from 01 Apr 2011 to enable dissemination to all concerned and preparatory work to be carried out by Record Offices and Line Dtes.

Implying that the screening under the revised criteria, as spelt out by the new policy dated 20 Sep 2010 will be commenced wef 01 Apr 2011.

21. The petitioner was due to retire on 21.9.2013. As the petitioner was completing 24 years of service on 29.9.2011, he was screened for two years extension in 2009. Being in Low Medical Category (temporary) he was issued with extension order. However, as he became Low Medical Category (P) on 28.4.2010, the extension order was subsequently cancelled and discharged w.e.f. 31.10.2011

as per stipulation at Appx B of Policy letter issued on 21.9.1998. Therefore, there cannot be a fresh screening of the petitioner as per the new policy or to consider the question as to whether he was entitled as per the new policy to be granted extension or not, there cannot be any second screening and once his case has been duly considered and the new policy applies to the personnel screened after 1.4.2011, only those cases will be reconsidered in which no screening has been done by that date. Therefore, the petitioner is not entitled to the relief claimed by him and the petition is liable to be dismissed which is dismissed accordingly.

(Justice Vinod Kumar Ahuja)

(Air Marshal (Retd) SC Mukul)

25.10.2013
raghav

Whether the judgment for reference is to be put on internet? Yes / No.