

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

OA 960 of 2011

Col (Retd) Dalwinder Singh	...	Petitioner
Vs		
Union of India and another	...	Respondent(s)

For the Petitioner :	Petitioner in person
For the Respondent(s) :	Mr. RN Sharma, CGC
	with Mr. Ram Chander. Sr. PC.

Coram: **Justice Prakash Krishna, Judicial Member**
Lt Gen (Retd) NS Brar, Administrative Member

ORDER
25.02.2014

This petition has been filed seeking declaration to the effect that the policy under which the petitioner has been deprived of further extension of re-employment for one year (beyond 57 years of age) due to low medical category, S1H1A2 (P)P1E1(F-2) is illegal, null and void, ineffective, against the interest of the employees etc. etc. and claims entitlement to serve for extended period of one year upto the age of 58 years.

Brief background is that the petitioner was commissioned in the Army on 11.06.1977 and retired on 30.09.2008. he was re employed for two years vide letter dated 19.06.2008 (Appendix B). While in service, the petitioner was placed in low medical category, S1H1A2(P)P1E1(F-2), which was attributable to military service. As per the employment management index (Appendix-A), he was unfit to serve in High Altitude Areas above 2700 metres and places with sub zero temperature for more than three months in a year. As per the Scheme of re-employment issued vide letter dated 05.06.2000, (Appendix C), Re-employed Officers are required to serve in two tenures for one year and six months each in station which is in service interest and station based on individual requirements The petitioner was posted at Faridkot and opted for second posting at the same place. The second extension was granted at the same place vide letter dated 12.08.2010 (Appendix E). However, this extension was upto the age of 57 years due to being low medical category although he had applied for re-employment upto the age of 58 years. His request for extension was turned down (Appendix G and H). Thereafter vide letter dated 12.03.2011, the petitioner applied for review of policy which was declined (Appendix I & J).

It is then stated that as the petitioner had done 1st tenure at Faridkot and was willing to do 2nd tenure also at Faridkot, which does not fall under any of the

restrictions imposed by medical category, there was no reason to deny him the extension.

With the above alleged facts, the petitioner prays for declaration of the policy to be null and void and consequently to be re-employed for one year.

Written statement has been filed by the respondents and it is stated that as per the policy applied uniformly, medical restrictions are that –

“1. The Re-employment of officer is extended from 57 to 58 years, if the individual fulfils the following criteria as per AG/PS-2 (a) letter No. B/32228/PC/AG/PS-2(a) dated 20 Apr 2007.

“For extension from 57 years of age to 58 years only – A2 or P2 or H2E2 or P2 for dental only, who do not have any restriction i.e. they are placed in employment index F-1A or F-1B provided S factor is not below S-1.”

2. The above policy debars an officer in employment index F2 for extension in service from 57 years to 58 years. Making any exception either based on place of posting or other criteria would amount to providing ‘sheltered appointment’ which for obvious reasons is not applicable to a re-employment officer.”

It is then stated that re-employment is accepted by individuals on the terms and conditions of re-employment policy, which cannot be the subject-matter of challenge subsequently.

Reliance is placed on the judgment of Chennai Bench of Armed Forces Tribunal in **O.A No. 24 of 2010** titled **Major General EJ Kochekkan versus Union of India and others**, decided on **21.01.2011** to say that the Tribunal does not have the powers under Articles 226 and 227 of the Constitution of India to decide the validity or otherwise of any Government policy.

It is further stated that the petitioner was in medical restriction F-2 as per Medical Board proceedings with effect from 13.11.2009 and as per terms and conditions of re-employment governed by SAI 1/S/80 and letter dated 20.04.2007, re-employed Officers with employment restrictions F-2 can serve upto the age of 57 years only (Annexure R-1).

Heard the petitioner in person and the learned counsel for the respondents.

Policy instructions for re-employed Officers lay down standards which read as under (Annexure R1 & R2) :-

Medical Standards

27.(a) Initial Re-employment and Extension upto 57 years of Age

- (i) SHAPE-1 or equivalent [H2 or E2 or P2 (Dental)]
- (ii) A2 or P2 or H2 E2, or
- (iii) Either A2 or P2 combined with H2 or E2.
- (iv) Officers graded S2 or lower will be ineligible.

(b) Extension Beyond the Age of 57 Years: Officer should be in medical category SHAPE-1 or equivalent only.

(c) War Wounded Officers: Acceptable medical standards, both for initial re-employment and extension beyond 57 years, are :-

- (i) SHAPE-1 or equivalent [H2 or E2 or P2 (Dental)], or
- (ii) A2 or P2 or H2E2, or
- (iii) Either A2 or P2 combined with H2 or E2, or
- (iv) H3 or A3 or P3 or E3.

(d) Officers invalided out of service on medical grounds will not be eligible for re-employment.

(e) Officers in temporary low medical category will be considered for re-employment only when their medical category stabilises.

Review of Re-employment

55. Continuation of initial/extension of re-employment will be contingent on favourable recommendations for retention/extension in the ACRs earned during period of re-employed service. Officers not recommended for retention/extension in ACRs will be liable for release from re-employed service with three months notice.

Medical category of re employed officers is required to be re assessed before attaining the age of 57 years for the purposes of consideration of extension to 58 years of age in accordance with policy letter dated 18.07.2007 (Annexure R3). The same was done in the case of the petitioner and the medical category assessed as the same (Appendix A). His medical category was thus re confirmed according to which he was not eligible for extension as per policy.

Perusal of the policy shows that re employment is subject to selection depending upon the service requirement. Officer should be willing to serve in any station in India in any capacity. Should be in acceptable medical category. Re employed officers failing to meet the criteria will not be granted extension. Services of re employed officer can be terminated by serving a three months notice. The petitioner was appointed in accordance with and

accepted re employment in accordance with the policy. His extension upto 57 years of age was also in accordance with the policy. We find no illegality or violation of any rule or policy in his being re employed upto 57 years of age and declined extension upto 58 years of age.

In so far as the question of interfering with the policy is concerned, we find no substantial grounds to consider this issue and also find no reason to go into this issue merely because it does not suit the requirements of an individual. We also find that the petitioner has already exceeded the maximum permissible age of re employment of 58 years and any review, even if done, would be infructuous.

In the facts and circumstance of the case we find no merit in the plea of the petitioner. This petition is accordingly dismissed.

[Justice Prakash Krishna]

[Lt Gen (Retd) NS Brar]

25.02.2014

RS

Whether the judgment for reference is to be put on internet? Yes