

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

Circuit Bench at Bengaluru

O.A.NO. 294 of 2016

FRIDAY, THE 17TH DAY OF NOVEMBER, 2017/26TH KARTHIKA, 1939

CORAM:

HON'BLE MR. JUSTICE BABU MATHEW P. JOSEPH, MEMBER (J)
HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

EX SGT SUDESH PAL, NO.723328T,
HOUSE NO.10, AISWARYA COMPLEX,
BHARATHI NAGAR, HUNSAMARANAHALI.P.O.,
KARNATAKA - 562 157,

..... APPLICANT

BY ADV.SRI.V.K.SATHAYANATHAN.

Versus

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI - 110 011.
2. THE CHIEF OF THE AIR STAFF,
AIR HQ (VB), RAFI MARG, NEW DELHI - 110 106.

..... RESPONDENTS

3. THE AIR OFFICER-IN-CHARGE ADMINISTRATION,
AIR HEADQUARTERS (VAYU BHAVAN), RAFI MARG,
NEW DELHI - 110 106.
4. THE COMMANDING OFFICER, 29 WING AIR FORCE,
AIR FORCE STATION BAMRAULI, ALLAHABAD - 211 012.
5. THE AIR OFFICER COMMANDING,
AIR FORCE RECORD OFFICE, SUBROTO PARK,
NEW DELHI - 110 010.

BY ADV.SRI.C.B.SREEKUMAR, SENIOR PANEL COUNSEL.

O R D E R

VAdm M.P.MURALIDHARAN, MEMBER (A)

1. The Original Application has been filed by Sudesh Pal, Ex Sergeant, No.723328T, of the Indian Air Force, seeking reinstatement and extension of service.

2. The applicant was enrolled in the Air Force on 30 April 1993 and was discharged from service with effect from 30 April 2016 under Air Force Rule 15 [2(b)] after rendering 23 years and 04 days of service (Annexure A6).

3. The learned counsel for the applicant, submitted that the applicant was enrolled in the Air Force with terms of engagement 20 years regular and 02 years reserve. The learned counsel submitted that extension of service can be granted to personnel upto the age of superannuation on fulfilling specified conditions in accordance with the policy at Annexure A1. In accordance

with the policy, willingness certificate is to be given 2 years prior to the date of completion of term of engagement. The applicant, whose initial term of engagement was completing on 26 April 2013, had submitted his willingness for further extension of service for 03 years and his period of engagement was extended upto 26 April 2016. During this period the applicant was placed in low medical category S3 (A4G4) from 20 May 2013 for Delusional Disorder and Diabtetes Mellitus Type II. The applicant was diagnosed with Diabetes Mellitus in 2012 and Delusional Disorder in 2013.

4. The learned counsel further submitted that the applicant who was in low medical category A4G4, was entitled to be considered for further extension of service as per policy by a Condonation Board. The applicant was also upgraded to A4G2, and therefore, eligible for further extension in accordance with Air Force Order (AFO) No.16 of 2010 (Annexure A1). The specialist opinion on the

applicant's categorisation was annexed at Annexure A3. The learned counsel further submitted that eventhough the applicant had submitted his willingness for extension of service in time and had also been upgraded to accepted medical category of A4G2 on 19 April 2016, the applicant was informed that his extension of service had not been approved. He has been discharged with effect from 30 April 2016 (Annexure A4). The applicant was subjected to a Release Medical Board, which assessed him to be in low medical category S2 and the opinion of the specialist is placed at Annexure A5.

5. The learned counsel further submitted that eventhough the applicant was in low medical category, the Condonation Board has to consider each case based on medical opinion and Executive Report of performance of the applicant. The learned counsel further submitted that many other similarly placed persons, including who had been suffering from psychiatric illness, have been granted

extension of service, whereas the applicant was denied further extension. The learned counsel therefore prayed that the applicant be reinstated in service, and be granted extension of service with all consequential benefits.

6. The respondents in their reply statement submitted that the applicant, who was enrolled in the Air Force on 27 April 1993, had in March/April 2012 before expiry of his initial period of engagement, submitted his unwillingness for further extension of service and accordingly order for his discharge was issued. On 16 August 2012, the applicant applied for a change of option and indicated his willingness to continue in service, and was therefore granted extension of service from 26 April 2013 to 26 April 2016. In March 2013, he was diagnosed as a case of Type II Diabetes Mellitus and was placed in temporary low medical category A4G4. The respondents further submitted that the classified specialist in psychiatry in May 2013, had opined that the applicant was a case of

Delusional Disorder. Since he was responding to treatment, he was retained in service in low medical category. He was also placed in low medical category for Type II Diabetes Mellitus. During periodical reviews of the medical condition of the applicant, the specialist in psychiatry had opined that in view of his Delusional Disorder, there were employability restrictions and he was to work under supervision. The applicant's case for medical category was considered in accordance with IAP 4303 (Annexure R1). He was recommended for medical category A4G4 for Delusional Disorder and A4G2 for Type II Diabetes Mellitus with composite medical category of A4G4 in September 2015.

7. The respondents submitted that in February 2014 the applicant submitted his willingness for extension of service from April 2016 to April 2019. The respondents further submitted that since the applicant was in low medical category during the period he was granted initial

extension of service, his case for further extension was considered by a Medical Condonation Board, based on the medical reports as well as detailed Executive Reports from his unit in accordance with AFO 16 of 2010 (Annexure A1). Due to delays in getting of medical reports and Executive Reports, his case was taken up by Condonation Board in February 2016 and the competent authority did not approve further extension of service to the applicant. The Release Medical Board also assessed him to be suffering from both the disabilities and recommended his release in medical category A4G4. However, the disabilities were considered as neither attributable to nor aggravated by service in terms of Guide to Medical Officers 2008 and he was not recommended for grant of any disability pension.

8. Heard rival submissions and perused records.

9. It is not disputed that the applicant, whose initial terms of engagement was for a period of 20 years with

effect from 30 April 1993, was given a first extension of service for three years from April 2013 to April 2016. The contention of the applicant is that eventhough he had indicated his willingness for further extension of service upto 2019 his service was not extended, eventhough he was eligible to be granted extension. The respondents, on the other hand, have submitted that the applicant was not granted further extension of service based on recommendations of the Condonation Board, which is to consider the cases of personnel in low medical category for further extension of service.

10. As observed, extension of engagement of Airmen is to be in accordance with Air Force Order (Annexure A4) No.16 of 2010 (Annexure A1). The orders specify that on completion of initial term of engagement, airmen may be granted extension in two blocks of three years each or a single block of six years, subject to conditions specified. The policy has been formulated to ensure that only those

airmen, who meet the minimum criteria, are granted extension of engagement. The conditions specified include service requirements, willingness for extension of engagement, Annual Confidential Reports and Assessment, Medical Fitness, Passing of Promotion Examinations and Suitability for extension, among other criteria. The medical fitness for extension of service has also been specified. Those Airmen in medical category A4G1, A4G2, A4G3 will be considered subject to their medical examination. Airmen placed in medical category A4G4 would also be considered for grant of extension of service, if they are fit to perform their trade duties provided they meet other conditions. However, it is further specified that grant of extension of service in respect of such Airmen will be considered by a Condonation Board on case to case basis. Based on the approval of the Condonation Board, airmen may be granted extension.

11. In case of the applicant, it is observed that he

was in fully fit medical category at the time when he changed his option for extension of service from unwillingness to willingness in August 2012. He was accordingly granted extension of service of three years from April 2013 to April 2016. When he submitted his willingness for second extension of service in February 2014, he was observed to be in low medical category A4G4, and therefore, his case was referred to a Medical Condonation Board. Based on the Condonation Board held in February 2016, he was not approved for further extension.

12. As observed from the Executive Report placed before us by the respondents, the applicant was suffering from persistent Delusional Disorder from January 2013 and from Diabetes Mellitus Type II from May 2013, and was in composite medical category of A4G4. The report also indicates that he was to work under supervision. The specialist opinion of April 2016 (Annexure A5), indicates

that the applicant was initially referred for psychiatric review in January 2013, as he became suspicious and fearful of people around him and suspected personnel trying to harm him by spraying medicines on his garments and later believed that his entire family being persecuted. He was managed with medicines and placed under surveillance. It is observed that eventhough the applicant was placed in low medical category for Diabetes Mellitus and Delusional Disorder, he was allowed to continue in service till completion of his first extended tenure. But as observed earlier, he was employed under supervision.

13. As observed earlier the applicant's case for further extension was referred to a Condonation Board. The Air Force Order on the subject of extension, specifies medical fitness as one of the criteria and irrespective of the medical category, personnel have to undergo a medical examination prior to grant of extension and those placed in medical category A4G4 may be considered for extension of

engagement, subject to recommendation by a Condonation Board. It is also observed that the Condonation Board has a Medical Advisor Member among others.

14. It is not disputed that the applicant was not granted extension of service, based on the recommendation of the Condonation Board. In our view it was upto the Condonation Board to make suitable recommendations for grant of extension of engagement to personnel in low medical category depending upon the merits of each case. Nothing has been placed before us to indicate that the Condonation Board was prejudicial to the applicant. Therefore in our view, the applicant was not granted extension of service based on his medical category. We would also observe that in the Armed Forces, personnel are expected to be in fully fit category to meet any contingency to safeguard national interests. While there could be some sheltered appointments for personnel in low medical category, it is not desirable to

have large number of people in low medical category. In the instant case, the applicant despite being in low medical category, was allowed to continue his extended first tenure and it was only the second extension that was denied to him. It is also observed that in addition to the disability of Diabetes Mellitus he was also assessed to have Delusional Disorder. It is well known that personnel with psychiatric disorders are not normally granted further extension of service in the Armed Forces. We therefore do not find any merit in the contention of the applicant that he should have been given further extension of service.

15. Eventhough it is not an issue for consideration before us, we observe that the applicant at the time of discharge was suffering from Diabetes Mellitus and Delusional Disorder, both of which were considered as neither attributable to nor aggravated by service. While medical documents on the issue have not been placed before us, taking all facts into consideration, it is always

open to the applicant to prefer a claim for grant of disability element of pension, if he so desires.

16. In view of the forgoing, we do not find any merit in the claim of the applicant for his reinstatement and extension of service, and the Original Application is accordingly dismissed. However the applicant may prefer a claim for grant of disability element of pension, to the competent authority, if he so chooses.

17. There will be no order as to costs.

18. Issue free copy to the parties.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

Sd/-
JUSTICE BABU MATHEW P. JOSEPH
MEMBER (J)

(true copy)

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