

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**Original Application No 22 of 2020**

Tuesday, this the 23<sup>rd</sup> day of August, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex LME, No. 73537-B Dattatraya Raghunath Jayakar  
 56, Shivneri Nagar, Panchwati Chowk, Lane No. 14,  
 Kondhwa Khurd, Pune – 411048

..... Applicant

Ld. Counsel for the Applicant : **Mr. A.P. Singh**, Advocate

Versus

1. The Union of India (Rep. By Defence Secretary), Department of Ministry of Defence, South Block, DHQ Post, New Delhi-110011.
2. The Chief of the Naval Staff (for PDPA(P)/DOP(S), Integrated Headquarters, MOD (Navy), DHQ Post, New Delhi – 110011.
3. The Commodore, Bureau of Sailors, C/o INS Tanaji, Sion-Trombay Road Mankhurd, Mumbai – 400088.
4. The Logistic Officer-in-charge Records, Naval Pension Office, C/o INS Tanaji, Sion-Trombay Road Mankhurd, Mumbai – 400088.

..... Respondents

Ld. Counsel for the Respondents : **Mr. B.K. Ashok**,  
 Central Govt Counsel

**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) To quash of reversion being unconstitutional and set aside the said impugned order of the reversion to LME from Ag POME dated 23 Sep 2004 after holding the rank

of Ag POME for more than 2 ½ yrs and being deployed in the same capacity.

- (b) To direct the respondent to grant service pension as per the last salary drawn certificate issued by naval pay Office Mumbai and to enhance the disability element of disability pension accordingly in the rank of Ag POME.
- (c) To direct the respondents to issue corrigendum PPO for service pension and as well the disability element of disability pension as in pay scale of Ag POME w.e.f. 01.10.2004.
- (d) Hon'ble Tribunal may direct the respondents to pay difference of arrears of service and disability element of disability pension w.e.f. 01.10.2004 as per the last salary drawn certificate within 90 days from the date of this Hon'ble court's order. In case of failure to pay arrears within 90 days, Hon'ble Tribunal may direct the respondents to pay interest @ 12% on arrears of pensions till the effective date of payment.
- (e) Hon'ble Tribunal may issue any other direction/order as deemed fit in the fact and circumstances of instant case.
- (f) Cost of this O.A. may be allowed to the applicant.

2. The factual matrix on record is that the applicant was enrolled in the Navy on 05.09.1989 on initial engagement for 15 years. The applicant was downgraded to low medical category S3A2 (Permanent) but he was promoted to the rank of Ag POME in LMC on 29.10.2002 with the administrative approval of IHQ of MoD (Navy). The applicant was not eligible to re-engage for further extension of service due to his low medical category S3A2 (Permanent) and he

was transferred to Release Centre for discharge formalities on 05.09.2004. However, a few days prior to his release he was demoted from Ag POME to LME vide Release Centre/CABS order dated 23.09.2004 as he could not acquire 'Boiler Watch Keeping Certificate' (BWKC) within two years from the date of promotion which he could not obtain because he was not to be posed onboard ship due to his LMC which was not under power and control of the applicant. The applicant was discharged from service in the rank of LME. Being aggrieved, the applicant has filed the present Original Application to quash impugned order of reversion from Ag POME to LME and grant pensionary benefits in the rank of Ag POME from the date of discharge from service.

3. Learned counsel for the applicant submitted that applicant joined Indian Navy as MER on 05.09.1989 on initial engagement for 15 years in medical category shape-1. During his 15 years of active service, applicant was deployed onboard various ships/establishment time to time and he was promoted to higher ranks as and when due in terms of his qualification and seniority. The applicant was promoted to Ag LME rank in medical category SHAPE-1 w.e.f. 22.07.1995. The applicant appeared and qualified POME 'Q' examination/Board onboard ship INS Ranvijay successfully with overall 59.5% average marks. Thereafter, applicant was downgraded to low medical category and he was promoted to the rank of Ag POME in LMC (Permanent) on 29.10.2002 after necessary administrative approvals as his disability was declared attributable to service. On completion of

his existing engagement of 15 years, applicant was not eligible to re-engage for further extension of service due to his low medical category S3A2 (Permanent) and he was transferred to Release Centre for discharge formalities on 05.09.2004. However, a few days prior to his release he was demoted from Ag POME to LME vide Release Centre/CABS order dated 23.09.2004 as he could not be confirmed to the rank of POME due to permanent low medical category and not possessing the BWKC.

4. Learned counsel for the applicant further submitted that it is well settled that a sailor in low medical category below S2A2 cannot be posted onboard ship. Therefore, to obtain 'Boiler Watch Keeping Certificate' (BWKC) was not within the power and control of the applicant. The applicant has passed his examination/higher courses successfully prior to him being placed in low medical category S3 A2 (Permanent), therefore, demoting the applicant with remarks of 'inefficient' is not correct. The applicant held Ag POME rank and worked in that capacity with pay and allowances of that rank for more than 2½ years on the date of reversion. Thus, his reversion by the Commanding Officer from Ag POME to the previous rank, LME is not justified. As per para 14 at page 443 of NI 2/96, an Ag POME is required to render one year actual service as Ag POME including 06 months sea service and should be in possession of a Boiler Room Watch Keeping Certificate or ICE competency certificate. Since the applicant remained in low medical category S3A2 (Permanent) continuously during this period, he could not be posted onboard ship

for no fault on his part as he was in low medical category, thus he had no opportunity to obtain 'Boiler Room Watch Keeping Certificate'. The applicant was promoted to Ag POME by waiving off the mandatory Swimming Test condition after grant of approval by the competent authority despite him being in S3A2 (Permanent) low medical category.

5. Learned counsel for the applicant pleaded that applicant has served in the rank of Ag POME and drawn pay and allowances of Ag POME rank for almost 2 years and 7 months and he was reverted back to LME for want of 'Boiler Watch Keeping Certificate' which he could not obtain because he was not to be posted onboard ships due to his LMC, which was not under his power and control, therefore, applicant is entitled for all pensionary benefits in the rank of Ag POME. He pleaded to quash impugned order of reversion to LME from Ag POME and grant pensionary benefits in the rank of Ag POME w.e.f. 01.10.2004.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was discharged from service on 30.09.2004 on expiry of initial engagement after rendering 15 years and 26 days service. The applicant was promoted to Ag POME w.e.f 01.03.2002 vide IHQ of MoD (N) order dated 24.10.2002 being in low medical category S3A2 (Permanent). The applicant was due for release from service in the month of Sept. 2004, therefore, in accordance with para 14 (III) C Appendix V to Navy Instruction 2/96, '*If a sailor fails to obtain Boiler*

*Watch Keeping Certificate/Internal Combustion Engine (BWKC/ICE) competency certificate within two years from Ag. POME, a case is to be initiated by Commanding Officer through Bureau of Sailors for reverting the sailor to Leading Engineer Mechanical (LME)'. The Commanding Officer, INS Mandovi vide letter dated 11.08.2004 forwarded the case for the reversion of the applicant from the rank of Ag POME to LME in view of the fact that he was unable to obtain BWKC required for confirmation in present rank since the medical category had not been upgraded since 07.10.1999 till said date.*

7. Learned counsel for the respondents further submitted that applicant could not be transferred to any afloat billet for obtaining BWKC/ICE competency certificate since he continued to be in low medical category S3A2 (Permanent). The applicant's case for reversion to LME from Ag POME was approved by IHQ of MoD (N) vide order dated 02.09.2004 with reference to CABS fax dated 13.08.2004 and accordingly, applicant was reverted to LME and was released from service on due date i.e. on 30.09.2004 in the rank of LME with all the benefits available to him for the rank held at the time of discharge from service. The applicant is in receipt of disability element @ 50% for his disability 'Spina Bifida'. Thereafter, applicant filed a case before the Hon'ble Bombay High Court in 2011 and the Hon'ble Bombay High Court passed order dated 01.09.2004 to decide representation of the applicant with regard to grant of pensionary benefits, sympathetically, if submitted by the applicant. The applicant

did nothing for four years post issuance of the Hon'ble Bombay High Court order and filed Original Application before this Tribunal.

8. Learned counsel for the respondents further submitted that applicant was correctly promoted to the rank of Ag POME in low medical category with 'promotion swimming test' waived off, as per the regulations in force at that time. In terms of para 35(a) of Navy Order 31/04, sailor placed in medical category S3A2 are unfit for sea service but fit for ashore service with restrictions and are not to be posted on board ships. As per para 14 (iii)(C) of Appendix V of NI 2/96, *'if an ME (Engineering Mechanic) sailor fails to obtain BWKC within two years being ranked as Ag POME, the case shall be reported to the Chief of the Naval Staff through the Bureau with a view to reversion to LME for inefficiency'*. Due to low medical category S3A2 (Permanent), applicant was not transferred onboard ship and subsequently, he could not be awarded BWKC. He also submitted that applicant was not interested in getting cured and to upgrade his medical category when he was hospitalised in INHS Asvini for his medical treatment which is evident from the fact that he discontinued his medication on his own two months prior to becoming symptomatic which shows that he did not want to get medically fit and get upgraded in his medical category so that he could be posted onboard a ship. The applicant continued in the same low medical category till release from service, therefore, applicant being not eligible to be placed in a sea billet, prevented him from obtaining BWKC, and he was reverted to lower rank of LME as per the policy after taking

approval of IHQ of MOD (N) vide order dated 02.09.2004. He pleaded for dismissal of O.A. being devoid of merits.

9. We have heard learned counsel for both sides and perused the material placed on record.

10. We observe that applicant was not only promoted to the rank of Ag POME but Indian Navy was kind enough to allow him nearly three years to upgrade his medical category to get him posted on sea in order to acquire Boiler Watch Keeping Certificate but he deliberately failed to upgrade his medical category.

11. We find that applicant was promoted from LME to Ag POME rank despite being in low medical category S3A2 (Permanent) after taking approval from IHQ of MoD (Navy) and waiving off swimming test in terms of the then prevailing policy/regulations in force. The promotion to POME and confirmation to POME was conditional subject to obtaining BWKC within a period of two years and subject to 6 months sea service in appropriate medical category. By promoting applicant to the post of Ag POME on 29.10.2002, he benefitted by the prevailing policy in force that allowed taking administrative approval of IHQ of MoD (Navy), for his promotion even though he was in low medical category S3A2 (Permanent).

12. Nonetheless thereafter, applicant failed to acquire 'Boiler Watch Keeping Certificate' within a period of two years from the date of promotion to Ag POME in terms of Appendix V of NI 2/96. Since acquiring of BWKC within two years from the date of promotion to the



rank of Acting POME is a must, as per NI 2/96, for which posting on sea going ship in appropriate medical category is necessary. Applicant has however deliberately avoided upgrading his medical category to avoid sea service. The applicant was reverted from Ag POME rank to his previous rank LME, after taking necessary approval of the competent authority i.e. IHQ of MoD (Navy) vide order dated 02.09.2004 in terms of para 14 (iii) (C) of Appendix V of NI 2/96 and was discharged from service on due date i.e. on 30.09.2004 in the rank of LME and is being paid pensionary benefits of the rank of LME (including disability element) correctly as per Navy Pension Regulations, 1964. Thus, applicant's reversion to lower rank of LME is also a part of existing policy and therefore, prayer of the applicant is not justified keeping in view the policy on the subject.

13. In view of the above, we do not find any irregularity or illegality in reverting the applicant from Ag POME to the rank of LME as per promotion policy and NI 2/96. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Pending Misc. Applications, if any, stand disposed of.

	(Vice Admiral Abhay Raghunath Karve)	(Justice Umesh Chandra Srivastava)
	Member (A)	Member (J)
Dated:	August, 2022	
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