

(2022) 07 AFT CK 0007

Armed Forces Tribunal Principal Bench, New Delhi

Case No: O.A. No. 872 Of 2021

Nb Sub Babu A

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: July 8, 2022**Acts Referred:**

- Armed Forces Tribunal Act 2007 - Section 14

Hon'ble Judges: Rajendra Menon, Chairperson; P. M. Hariz, Member (A)**Bench:** Division Bench**Advocate:** Mohan Kumar, Dr. Vijendra Singh Mahndiyan**Final Decision:** Dismissed

Judgement

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act 2007 by the applicant who is a

serving JCO and is aggrieved by not being granted extension of service. The JCO had made the following prayers :-

(a) To set aside the impugned discharge order issued by the Records, The Madras Regiment vide its letter No 01320/F0/11/2020/RA (MP) dated 16 Feb 2020.

(b) To set aside the Screening Board Proceeding dated 04 Aug 2020.

(c) To grant such other reliefs as may be deemed fit and proper for the ends of justice in law, equity and natural justice as deemed

appropriate in the facts and circumstances of the case.

And in the interim, stay the operation of the discharge order No 01320/F0/11/2020/RA (MP) dated 16 Feb 2020, and direct

Respondents to dispose of the applicant's representation dated 18.02.2021.

Brief Facts of the Case

2. The brief facts of the case as per the applicant are that he was promoted as Nb Sub on 01.01.2019 after 23 years and 09 months of service.

The applicant had undergone his periodic medical examination of 20.12.2019 and was in SHAPE-1.

Discharge Order was issued vide letter dated 16.02.2020 (Annexure A-1) to superannuate on 30.04.2021 on

completion of 26 years of service. The applicant's posting to Army Marksmanship Unit (AMU) was

issued vide Record Office letter dated 17.03.2020. Between April 2020 and August 2020, the individual had been sent on a few temporary duty

assignments, where he had to undergo requisite quarantine as this was the peak Covid period. In July 2020, the applicant was screened for extension

and underwent the physical tests. He was made to undergo the horizontal and vertical rope tests which were not applicable to the applicant being

above 45 years of age. Despite the applicant's willingness for extension, he was not granted extension and in August 2020, was

despatched to AMU on posting. It is the applicant's case that he was asked to submit an unwillingness certificate of retention in service if he

wanted to proceed on posting to AMU. On 21.08.2020 the applicant was placed in Low Medical Category (LMC) P3 (T-24) for obesity. In February

2021, the Recategorisation Medical Board upgraded the applicant to SHAPE-1. The applicant then submitted an

application dated 18.02.2021 (Annexure A-4) to his Unit CO requesting that his screening test for grant of extension

be conducted and that this application was never replied to. The case for his extension was also taken up by his unit, AMU. Since there was no

decision on his application and the fact that he was due to superannuate on 30.04.2021, the OA was filed.

Arguments by the Counsel for the Applicant

3. The Counsel explained the service profile of the applicant and elaborated on the circumstance of the case. The Counsel briefly took us

through the policy letter dated 20.09.2010 (Annexure A-2) on the salient aspects of the policy on grant of extension and elaborated that

the screening board was to be conducted 24 months prior to reaching the current laid down service limits of 26 years. The Counsel then added that

while the applicant was to have undergone three considerations for extension, he was given only one consideration in July 2020 wherein he was

found unfit for extension. The Counsel further added that consequent to being posted to AMU, that AMU had found him fit for extension, but was still

not granted extension, on the plea that the JCO had to undergo the screening test in the Unit.

4. The Counsel then stated that even as per the latest policy on grant of extension at Annexure R-1, the applicant was to be screened two

years prior and added that as per the respondents, the applicant had

both firing and physical tests during the screening in July 2020. The Counsel then firmly stated that since the applicant was above 45 years

of age, he was only required to undergo the PPT and not BPET, and yet during the screening Board in July 2020 the applicant had been made to do

horizontal and vertical rope tests which were part of the BPET tests. The Counsel asserted that if a test was not to be conducted, how

could the respondents have conducted that test?

5. The Counsel then stated that though the applicant had been found unfit for extension in July 2020 and was later placed in

LMC, in February 2021, he got medically upgraded and then submitted an application for reconsideration along with the

willingness and medical fitness certificates, duly recommended by AMU. The Counsel then stated that despite the fact

that a Screening Board had been held at AMU and the applicant had passed all the tests (Board Proceedings filed as part of Rejoinder), the

respondents insisted that the applicant report to the Unit for the screening Board. The Counsel

vehemently asserted that an Army Establishment had conducted the Screening Board and yet the respondents would not accept it. The Counsel

further added that the Unit of the applicant was then located in the North East under Eastern Command and he was expected to go to the Unit

merely for the screening test. The Counsel concluded by firmly stating that the applicant had been unfairly denied extension and

this had denied him the opportunity for an additional two years of service and had thus affected his livelihood. To meet the

ends of justice, the Counsel urged that two years of extension be granted and the JCO be reinstated into service

now.

Arguments by the Counsel for the Applicant

6. The Counsel stated that there were a catena of judgements which have held that grant of extension is not a

right and relying on this Tribunal's Order dated 06.08.2018 in the case of Lt Cdr Puneet Pal Kaur Vs. Union of India & Ors. [O.A. No. 1017 of 2018],

read out Para 20 of the order. The Counsel then took us through the salient aspects of the latest policy promulgated vide Record Office letter dated

16.05.2020 (Annexure R-1) and stated that the new policy was to be effective after 01.06.2020. He further

added that, as per this policy, an individual was required to pass PPT/BPET as applicable and also

achieve minimum standards in firing. The Counsel further added that horizontal/vertical rope test was conducted as an alternate to the 2.4 Km

run which was not held due to the then prevailing Covid situation. Having participated in the event, the

applicant cannot challenge it now merely since the outcome has not been favourable to him.

7. The Counsel then stated that the contention of the applicant that only one consideration was given is incorrect.

The first chance was given in July 2020. During the second chance in August 2020, the applicant had given a certificate (Annexure R-4)

expressing his temporary inability for taking the physical test due to his medical condition and obesity, as he was weighing 102 Kgs. The

JCO was then warned for being overweight and was subsequently placed in temporary LMC for obesity. The Counsel further

added that consequent to his joining AMU on posting, he was medically upgraded and he then submitted an application

for reconsideration. The Unit then intimidated AMU to despatch the applicant to the Unit for undergoing the screening test. Referring to the

assertion of the Counsel for the applicant that the test conducted by AMU wherein the individual had passed the tests, the

Counsel for the respondents stated that as per the policy, in the case of infantry battalions, screening boards are to be conducted at the unit

level and that even if an individual was away on Extra Regimental Employment (ERE)

elsewhere, he was required to report to the unit for undergoing the screening process. The Counsel then drew our attention to Annexure R-

6 (Pages 63 to 66) regarding the numerous communications from the Unit to AMU intimating that the applicant be sent to the Unit for the test; and

since the applicant declined to report to the Unit, they could not consider him for grant of extension, and he was

discharged from service on completion of his service. The Counsel concluded that there had been no

mala fide in the applicant's consideration for extension; that he was not granted extension since he did not clear the requisite

tests despite repeated offers by the Unit; and, therefore, the OAA be dismissed.

Consideration of the Case

8. Having heard both sides, the only issue to be decided is whether the respondents have fairly dealt with the applicant in not granting the applicant

extension of service?

9. The latest policy on grant of extension clearly lays down that the screening is to be carried out 24 months prior to an individual reaching the current

laid down service limit. Thus, in the case of the applicant who was due for superannuation on 30.04.2021, he should have been considered

by the Screening Board by April 2019. Though the reasons for this have not been advanced either by the applicant or the respondents, we find

that the policy also stipulates 'In exception to the above, a JCO/OR who could not be screened for extn of service under the existing policy as per

laid down screening schedule given at Para 4 below, due to LMC, court cases or any other

circumstances beyond his control will be screened by the Screening Board before retirement'. Thus, under this

provision the applicant was given his first chance in July 2020; was afforded another chance to pass the tests in August

2020. Since the applicant was placed in LMC from August 2020 to February 2021, when he was upgraded, he could not be considered by the

Screening Board. Subsequently, on being upgraded, the Unit directed that the applicant to report to the Unit for the Screening

Board. We see from the records that the applicant's ERE Unit had been repeatedly intimated to despatch the

applicant to the Unit for the consideration. As seen from the communications, the Unit was willing to hold the Screening Board as

late as 15.03.2021 and even in the communication dated 01.04.2021, the Unit still maintained that they were willing to

consider him for extension once he reported to the unit. Since the applicant did not report to the Unit, the Unit is justified in not considering the

applicant for further extension. Having declined to report for the screening to the unit, the applicant has no grounds now to

claim that he was not given requisite consideration.

10. As regards the assertion of the Counsel for the applicant that the tests conducted by AMU in February 2021 should meet the criteria and that the

applicant should have been granted extension also does not hold water. As per the policy, the Screening Boards are

to be held on Unit/Regiment/Corps/ Records Office basis and also that the screening process will be undertaken by

the same Board constituted for deciding promotions for the same rank. These

promotion Board in infantry battalions as convened by the CO and are exclusively held in the Units only. As

is the practice, those due for promotion and are outside the unit on ERE are temporarily recalled

for attending the promotion cadres. In a similar manner, those due for screening have to report to the Unit from

being screened for grant of extension. Therefore, we uphold the stance of the Unit that the applicant should have reported to the Unit to undergo the screening process.

11. In the light of the above consideration, we dismiss the OA being bereft of any merit.

12. No order as to costs.