(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 SectionÃ, 14 of the ArmedÃ, ForcesÃ, TribunalÃ, ActÃ, 2007Ã, byÃ, theÃ, applicantÃ, whoÃ, isÃ, a

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

(a) ToÃ, 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) ToÃ, grant suchÃ, other reliefs as may beÃ, deemed fit andÃ, properÃ, forÃ, theÃ, endsÃ, of justiceÃ, inÃ, law,Ã, equityÃ, and natural justiceÃ, as deemed

appropriate in the facts and circumstances of the case.

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

RespondentsÃ, Ã, Ã, toÃ, Ã, Ã, disposeÃ, Ã, Ã, ofÃ, Ã, Ã, 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.Ã,

TheÃ, applicant had undergone his periodic medicalÃ, Ã, examinationÃ, Ã, ofÃ, 20.12.2019Ã, Ã, andÃ, Ã, wasÃ, Ã, inÃ, Ã, SHAPE-1.

DischargeÃ, Ã, OrderÃ, Ã, wasÃ, Ã, issuedÃ, Ã, videÃ, Ã, letterÃ, Ã, dated 16.02.2020 (Annexure A-1) to superannuate on 30.04.2021Ã, on

completion of 26Ã, Ã, yearsÃ, Ã, Ã, ofÃ, Ã, service.Ã, Ã, Ã, TheÃ, Ã, Ã, applicant'sÃ, Ã, postingÃ, Ã, toÃ, Ã, Army Marksmanship Unit (AMU) was

issued vide Record Office letter datedÃ, 17.03.2020.Ã, 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.Ã, 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 theÃ, applicant's willingness for extension,Ã, he wasÃ, not granted extensionÃ, andÃ, inÃ, AugustÃ, 2020,Ã, wasÃ,

despatchedÃ, toÃ, AMUÃ, on posting. It is the applicant's case that he was asked to submit an unwillingness certificate of retention I 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,Ã, theÃ, Recategorisation Medical Board upgraded theÃ, applicantÃ, toÃ, SHAPE-1.Ã, TheÃ, applicantÃ, thenÃ, submittedÃ, an

applicationÃ, dated 18.02.2021 (AnnexureÃ, A-4)Ã, toÃ, hisÃ, Unit CO requestingÃ, thatÃ, hisÃ, screeningÃ, testÃ, forÃ, grantÃ, of extensionÃ,

be conducted and that this application was never replied to. The case for his extension was also taken up by his ten 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 brieflyÃ, tookÃ, usÃ, Ã,

throughÃ, Ã, theÃ, Ã, policyÃ, letterÃ, 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,Ã, 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 twoÃ, Ã, Ã,

years prior andÃ, Ã, Ã, addedÃ, Ã, Ã, thatÃ, Ã, Ã, asÃ, Ã, Ã, perÃ, Ã, Ã, the respondents,Ã, Ã, Ã, theÃ, Ã, applicantÃ, Ã, hadÃ, Ã, failedÃ, Ã, inÃ, Ã,

bothÃ, Ã, firingÃ, Ã, 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 wasÃ, notÃ, toÃ, beÃ, conducted,Ã, howÃ,

couldÃ, theÃ, respondentsÃ, have conducted that test?

5. The Counsel then stated that though the applicant had beenÃ, foundÃ, unfitÃ, forÃ, extensionÃ, inÃ, JulyÃ, 2020Ã, andÃ, wasÃ, later placed in

LMC, in February 2021, he got medically upgraded andÃ, thenÃ, submittedÃ, anÃ, applicationÃ, forÃ, reconsiderationÃ, along withÃ, Ã, theÃ, Ã,

willingnessÃ, Ã, andÃ, Ã, medicalÃ, Ã, fitnessÃ, Ã, certificates,Ã, Ã, duly recommended by AMU.Ã, The Counsel thenÃ, 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 reportÃ, Ã, toÃ, Ã, theÃ, Ã, UnitÃ, Ã, forÃ, Ã, theÃ, Ã, screeningÃ, Ã, Board.Ã, Ã, The Ã, Ã, 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 wasÃ, then located in theÃ, 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 applicantÃ, hadÃ, beenÃ, unfairlyÃ, deniedÃ, extensionÃ, andÃ,

thisÃ, had deniedÃ, himÃ, theÃ, Ã, opportunityÃ, forÃ, anÃ, additional Ã, twoÃ, yearsÃ, of service and had thus affected his livelihood. To meet the

ends of justice,Ã, Ã, theÃ, Ã, CounselÃ, urgedÃ, Ã, thatÃ, twoÃ, yearsÃ, Ã, ofÃ, extensionÃ, be granted and the JCO be reinstated into service

now.

Arguments by the Counsel for the Applicant

6. The Counsel statedÃ, Ã, Ã, thatÃ, Ã, Ã, thereÃ, Ã, Ã, were aÃ, Ã, Ã, catenaÃ, Ã, Ã, 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. [0.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 datedÃ,

16.05.2020 (AnnexureÃ, Ã, R-1)Ã, Ã, andÃ, Ã, statedÃ, thatÃ, theÃ, Ã, newÃ, policyÃ, wasÃ, toÃ, be effective after 01.06.2020.Ã, He further

added that,Ã, as per this policy,Ã, Ã, anÃ, Ã, individualÃ, wasÃ, Ã, requiredÃ, Ã, toÃ, Ã, passÃ, Ã, PPT/Ã, Ã, BPETÃ, as applicable and also

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

run which was not heldÃ, Ã, dueÃ, Ã, toÃ, Ã, theÃ, Ã, thenÃ, Ã, prevailingÃ, Ã, CovidÃ, Ã, Ã, situation.Ã, Ã, Ã, Having participated in the event, the

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

7. TheÃ, Ã, CounselÃ, Ã, thenÃ, Ã, statedÃ, Ã, thatÃ, Ã, theÃ, Ã, contentionÃ, ofÃ, the applicant that only one consideration was given is incorrect.

The first chance was given in July 2020.Ã, During theÃ, second chance in August 2020,Ã, 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 weighingÃ, 102Ã, Kgs.Ã, The

JCOÃ, was then warned for being overweight and was subsequently placed in temporary LMC for obesity.Ã, Ã, TheÃ, CounselÃ, furtherÃ,

addedÃ, thatÃ, consequentÃ, toÃ, his joining AMUÃ, onÃ, posting,Ã, he was medically upgraded and he thenÃ, submittedÃ, anÃ, applicationÃ,

forÃ, reconsideration.Ã, TheÃ, Unit then intimated AMU to despatch the applicant to the Unit for undergoing the screening test. Referring to the

assertion of the CounselÃ, forÃ, theÃ, applicantÃ, thatÃ, theÃ, testÃ, conductedÃ, byÃ, 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,Ã, screening boards are to be conducted at the unit

levelÃ, Ã, andÃ, Ã, thatÃ, Ã, evenÃ, Ã, ifÃ, anÃ, Ã, individualÃ, Ã, wasÃ, Ã, awayÃ, Ã, onÃ, Ã, Extra Regimental EmploymentÃ, (ERE)Ã,

elsewhere,Ã, he was required to report toÃ, the unit for undergoing theÃ, screening process.Ã, 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 couldÃ, notÃ, considerÃ, himÃ, forÃ, grantÃ, of extension,Ã, andÃ, heÃ, was

dischargedÃ, Ã, fromÃ, Ã, serviceÃ, Ã, onÃ, Ã, completionÃ, Ã, ofÃ, hisÃ, Ã, service.Ã, Ã, The CounselÃ, concludedÃ, that there hadÃ, been noÃ,

mala fideÃ, in the applicant's consideration for extension; that he was not granted extensionÃ, sinceÃ, heÃ, didÃ, notÃ, clearÃ, theÃ, requisiteÃ,

testsÃ, despite repeatedÃ, Ã, Ã, offersÃ, Ã, Ã, byÃ, Ã, Ã, theÃ, Ã, Ã, Unit;Ã, Ã, Ã, and,Ã, Ã, Ã, therefore,Ã, Ã, Ã, theÃ, Ã, Ã, OAÃ, Ã, 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,Ã, Ã, shouldÃ, haveÃ, beenÃ, consideredÃ,

byÃ, theÃ, 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 perÃ,

laid down screeningÃ, schedule given at Para 4 below, due toÃ, Ã, Ã, LMC, courtÃ, Ã, Ã, casesÃ, Ã, Ã, orÃ, Ã, Ã, anyÃ, Ã, Ã, other

circumstancesÃ, Ã, beyondÃ, Ã, hisÃ, Ã, controlÃ, Ã, willÃ, Ã, beÃ, Ã, screenedÃ, Ã, byÃ, the Screening Board before retirement'. Thus, under this

provision theÃ, applicantÃ, wasÃ, givenÃ, hisÃ, firstÃ, chanceÃ, inÃ, JulyÃ, 2020;Ã, 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 theÃ,

ScreeningÃ, Board.Ã, Ã, Subsequently,Ã, onÃ, beingÃ, upgraded,Ã, the Unit directed that theÃ, applicant to report to the Unit for the Screening

Board. We see from the records that the applicant's EREÃ, Ã, UnitÃ, Ã, hadÃ, Ã, beenÃ, Ã, repeatedlyÃ, Ã, intimatedÃ, Ã, toÃ, Ã, despatchÃ, Ã, the

applicant to the Unit for the consideration. As seen from the communications,Ã, theÃ, UnitÃ, wasÃ, willingÃ, toÃ, holdÃ, theÃ, Screening Board as

late asÃ, 15.03.2021Ã, and even in the communication datedÃ, 01.04.2021,Ã, theÃ, UnitÃ, stillÃ, maintainedÃ, thatÃ, theyÃ, 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. HavingÃ, declinedÃ, toÃ, reportÃ, forÃ, theÃ, screeningÃ, toÃ, theÃ, unit,Ã, 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 extensionÃ, alsoÃ, doesÃ, notÃ, holdÃ, water.Ã, AsÃ, perÃ, theÃ, policy,Ã, the ScreeningÃ, BoardsÃ, areÃ,

toÃ, beÃ, heldÃ, onÃ, Unit/Regiment/Ã, Corps/ Records Office basis and also that the screening process will be undertakenÃ, Ã, Ã, byÃ, Ã, Ã,

theÃ, Ã, Ã, sameÃ, Ã, Ã, BoardÃ, Ã, Ã, constitutedÃ, Ã, Ã, forÃ, Ã, Ã, deciding promotionsÃ, Ã, forÃ, Ã, theÃ, Ã, sameÃ, Ã, rank.Ã, Ã, TheseÃ, Ã,

promotionÃ, Ã, BoardÃ, Ã, in infantry battalions as convened by the CO and are exclusively heldÃ, Ã, inÃ, Ã, theÃ, Ã, UnitsÃ, Ã, only.Ã, Ã, AsÃ, Ã,

isÃ, Ã, theÃ, Ã, practice,Ã, Ã, thoseÃ, Ã, dueÃ, Ã, for promotionÃ, andÃ, areÃ, outsideÃ, theÃ, unitÃ, onÃ, EREÃ, areÃ, temporarily recalledÃ, Ã,

forÃ, Ã, attendingÃ, Ã, theÃ, Ã, promotionÃ, Ã, cadres.Ã, Ã, Ã, InÃ, Ã, aÃ, Ã, 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.