

**(2015) 02 DEL CK 0196**  
**In the Delhi High Court**  
**Case No : WP (C) No. 432 of 2013**

Ex Sub Rajender Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 12-02-2015

**Acts Referred:**

**Citation :** (2015) 149 DRJ 136 : (2016) LabIC 781 : (2015) 4 LLN 642 : (2015) 2 SCT 728

**Hon'ble Judges :** Najmi Waziri, J.;S. Ravindra Bhat, J.;Badar Durrez Ahmed, J.

**Bench :** Full Bench

**Advocate :** D.V.S. Yadav and Pankaj Yadav, for the Appellant; Saqib, Ravjyot Singh and Mahesh Sharma, Advocates for the Respondent

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## Judgement

Najmi Waziri, J.—A Division Bench of this Court, by its order dated 25th April, 2013 (hereinafter referred to as the "reference order") has referred the following questions of law for adjudication by the Full Bench:

"1) Can the right to extended service, of an Army personnel, on completion of the term of office, and attainment of the prescribed age of superannuation be equated with the right to continue in service during the term of office prescribed under the relevant rules, in the context of Para 59 of the Army Group Insurance Scheme?

2) Can it be said that the denial of extended service or extended tenure of service, upon attainment of the prescribed superannuation age, - without the concerned individual having served in such extended tenure at all - amounts to cutting short of such service, or terms of engagement, under Para 59 of the Scheme, in the given facts of the present case?"

2. The aforesaid reference order has discussed the facts which lead to the present proceedings, hence, this judgment sets out only the limited circumstance in which the questions of law have arisen. The petitioner was enrolled in the Indian Army on the 17th March, 1982 and was to complete the normal tenure of

his service i.e. 28 years in March, 2010. In December, 2008, he was granted an extension of service by two years. This period would have commenced on 17th March, 2010 and ended two years later. However, in January, 2010, before the start of the extended tenure of service, the extension was cancelled since the petitioner had been down-graded to a lower medical category. He was discharged from service on 31st March, 2010, that is, at the end of his normal tenure of service. Neither the discharge from service nor the cancellation of the extension of service was challenged by the petitioner. Later, he applied for benefits under the Armed Group Insurance (AGI) Scheme, but the request was rejected by the respondents. He has impugned the said rejection in the writ petition.

Contentions of the Parties:

3. The learned counsel for the petitioner contends, as he did before the Division Bench that:

a. since the Government of India, Ministry of Defence vide its letter dated 29.9.2009, has accepted to pay the disability pension to all ranks who proceed on discharge from service at their own request, hence there cannot be any artificial impediment for grant of Army Group Insurance Fund Benefits to the petitioner;

b. the Army Group Insurance Fund Organisation is a registered Society and is amenable to the writ jurisdiction of this Court, it cannot act arbitrarily against service personnel who are invalided out of service;

c. Army personnel who have legitimate expectation of being covered under the AGI Scheme and the same cannot be denied to a service personnel for untenable and abstract reasons;

d. the grant of extension of service to the petitioner in 2008 for a period of two years was to be calculated from March, 2010;

e. at the time he was given the extension, the petitioner was in SHAPE-I medical category;

f. the extension was cancelled on 12.1.2010 because of his low medical categorisation i.e. aggravation of hypertension;

g. but for the cancellation of the extension of service in January, 2010, the petitioner would have continued in service till 2012;

h. clearly the service of the petitioner (which would otherwise have been till March, 2012) was cut short due to his release on medical grounds;

i. therefore, the petitioner would be entitled to AGI Scheme benefit under paragraph 59 of the Scheme and the respondents' denial of the said benefit to him is illegal;

4. The learned counsel for the petitioner relies upon the judgment in Sagrika

Singh v. Union of India and Ors. Judgement and order dated 29th August, 2011 in WP (C) No. 3850/2010 to support his contention. The said case related to a Short Service Commissioned officer who - due to low medical categorisation during her extended (second five years) tenure - was disqualified from claiming the option of a further four years" tenure. The rejection by the respondents in granting to the petitioner therein, the AGI Scheme benefits was challenged before this Court. While recognising the rule of service jurisprudence that denial of service upon occurrence of a contingency or non-fulfilment of a term is not regarded in law as curtailment of service, the Division Bench observed:

"22. ....But in the instant case we are not concerned with service Jurisprudence on the subject, but with the term of an insurance fund and needless to state the term incorporated in the Rules of the Fund would be a term of insurance."

5. The Court went on to interpret paragraph 59 of the AGI Scheme in the facts of that case. It held that the petitioner therein was a Short Service Commissioned officer (as opposed to a permanently commissioned officer) , and that such an officer would only have terms of engagement and not service applicable to that rank; her initial term of engagement was for five years with a right to be considered for extension of service, for another term of five years and finally for a term of four years, each time subject to the requisite medical fitness, etc. Therefore, it was held that the terms of engagement required the petitioner to serve for fourteen years, subject to her fulfilling the eligibility conditions. The Court further held that her right for consideration for extension of service (by another four years) , contingent upon her suitability, had been affected by her medical condition. It reasoned that the service would have been extended for an additional four years, but for the lower medical categorisation. Accordingly, it was concluded that this amounted to curtailment of tenure of service due to medical grounds, hence the petitioner therein was held to be entitled to the benefits under paragraph 59 of the AGI Scheme. The learned counsel for the petitioner, relying upon the aforesaid ratio in Sagarika Singh (supra) contends that the present petitioner too would likewise be entitled to the benefits under para 59 of the AGI Scheme, particularly because the petitioner had already been granted on extended tenure but was prevented due to medical exigency, hence, his service was cut short due to release on medical grounds.

6. The Division Bench hearing the instant petition, finding itself unable to agree with the interpretation placed upon paragraph 59 of the AGI Scheme and the reasoning adopted by the coordinate Division Bench in Sagarika Singh (supra) , had referred the aforesaid two issues to be adjudicated by a Full Bench.

7. Mr. Akhil Sibal, the learned counsel for respondent No. 3 - Army Group Insurance submits that the AGI Scheme is designed to cater to curtailment of tenure in unforeseen situations, such as death, disability or invalidity, and not to persons who have been unable to secure an extension after completion of regular tenure or terms of engagement. He contended that upon the regular tenure coming to an end, unless (a) the petitioner is found eligible for extension, (b) the

petitioner's service is extended, and/or (c) the petitioner's extended period in service commences, but is thereafter cut short, the petitioner cannot claim benefits under the AGI Scheme.

8. The learned counsel further contended that as per Regulation 163 of the Army Regulations, the retirement age of JCOs is 28 years pensionable service extendable by two (2) years by screening or 52 years of age, whichever is earlier. This being the applicable term of service/tenure limits for retirement of JCOs, he contended that the petitioner would be governed by the same. He further submitted that as per the said Regulation, the petitioner was subjected to medical screening. He referred to a communication dated 03.09.1998 of the Ministry of Defence in this regard which laid down the revised terms of service/tenure and the age limits for retirement w.e.f. 30.5.1998, in partial modification of the existing rules as contained in Regulation 163 of the Army Regulations, 1987, stipulating that "all JCOs and NCOs shall be screened 3 years in advance of the date of superannuation by a Screening Board to be held at Unit/Regiment/Corps basis as applicable, to assess their suitability for retention. Such JCOs/NCOs, who are not found suitable for retention as a result of screening, shall be retired as per rules."

9. The petitioner's medical screening was done by a Board on 27.8.2007 and 28.12.2007, whereby his service was extended by two (2) years from 17.3.2010 to 16.3.2012. This, however, was subject to his meeting the medical requirements. Consequent upon the subsequent medical screenings held on 4.1.2008 and 20.6.2008, the petitioner was placed in Low Medical Category P2 (T-24) Temporary due to Primary Hypertension for six (6) months each. In the subsequent medical examination held on 5.12.2008, the petitioner was downgraded to Lower Medical Category P2 (Permanent) for two (2) years up to 5.12.2010 on account of persistence of the said affliction. Thereafter, the petitioner was again medically examined on 12/18.1.2010 and because of the continuance of his Permanent Low Medical categorisation, his extension in service was cancelled. The Release Medical Board too, by its opinion dated 18.2.2010, reiterated the Permanent Low Medical categorization and put his disability at 30 per cent for life, on account of Primary Tension I-10. He was discharged from service on 31.3.2010. The learned counsel for respondent No. 3 argued that an individual, who suffers from medical conditions which resulted in his disqualification for the extended tenure, would not be entitled to the benefits of the insurance scheme because it would not tantamount to cutting short of the tenure of service. He refers to their communication in this regard to the petitioner of 21.5.2012, which clarifies that:

"2. It is intimated that the disability benefit is paid by Army Group Insurance Fund to its member whose service is cut short due to invalidment/release on medical ground before completion of terms of engage for service applicable to that rank. Since you have been discharged from service on completion of terms of service, i.e. 28 years applicable Sub, hence you are not eligible for grant of

disability benefit from AGIF.

3. The disability benefit paid by Army Group Insurance Fund is entirely different from disability pension paid by Union of India, through CDA (Pension) , Allahabad. The criteria for eligibility of the payment of disability benefits paid by the Army Group Insurance Fund and disability pension paid by Union of India, for CDA (pension) Allahabad are different, not comparable and these should not be linked in any way. AGIF disability pension benefit scheme has no co-relation with disability pension paid by CDA (Pension) Allahabad."

10. The learned counsel further refers to the terms of the Army Group Insurance Scheme, in particular para 59 thereof, which deals with disability benefits. The relevant portion of paragraph 59 reads as under:

"59. The objective of AGIF disability Scheme is to provide financial benefit to individual whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement of service applicable to that rank the disability benefit is paid as a lump sum benefit based on initial assessment by Invaliding Medical Board or release Medical Board before completing the contractual period of service for the rank and meeting the eligible conditions. The disability benefit admissible is 50 percent or as specified of the prevalent insurance cover for 100 percent disability on the date of invalidment and proportionately reduced for lower percentage of disability upto 20 percent or as specified. However, the following categories of personnel are NOT eligible for disability cover-

xxxx xxxx xxxx xxxx xxxx

(d) Personnel granted extension, who were LMC (temporary) or permanent or were in Hospital on the crucial date of commencement of extension and subsequently released in LMC Permanent or invalided out in category EEE during the currency of the extended tenure."

11. The learned counsel for respondent no. 3/AGIF also contended that an insurance contract has to be strictly construed without re-writing the contract or substituting the terms which were not intended by the parties. He relied upon the dicta of the Supreme Court in Vikram Greentech (I) Ltd. and Another Vs. New India Assurance Co. Ltd., wherein it was held that:

"An insurance contract is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberrima fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract.

The four essentials of a contract of insurance are: (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium, and (iv) the amount of insurance. Since upon issuance of the insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of the risks covered by the insurance

policy, its terms have to be strictly construed to determine the extent of liability of the insurer.

The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy."

12. The learned counsel for respondent No. 3-AGI, also relied upon *Suraj Mal Ram Niwas Oil Mills (P.) Ltd. Vs. United India Insurance Co. Ltd. and Another*, , wherein the Supreme Court held that:

"In a contract of insurance, the rights and obligations are governed by the terms of the said contract. Since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer and no exception can be made on the ground of equity.

The courts should always try to interpret the words in the insurance contract as they have been expressed by the parties. It is not open for the court to add, delete or substitute any words. The words used in the insurance contract must be given paramount importance."

Analysis:

13. While the law laid down by the Supreme Court requires that the terms of an insurance contract (and here the Scheme being one species of such arrangement as it does not have a statutory basis) have to be strictly construed and the courts would not venture into an exercise that could result in re-writing the contract or substituting the terms which were not intended by the parties; this Court however, is not required to comment upon that aspect.

14. Paragraph 59 of the AGI Scheme provides that the benefits of the scheme will be available to such individuals whose service is cut short before completion of the terms of engagement. Once it is clear that extended tenure in service is not a matter of right, then the logical sequitur would be that the denial of the extension of tenure in service cannot amount to cutting short of the terms of engagement of service. In *Sagarika Singh*, the petitioner could not have and quite rightly did not demand the further extension of four years in service after the initial period of ten years i.e. five years plus five years, since she was ineligible to enter upon the second extended tenure of four years of service because of a lower medical categorization. Her tenure was for only ten years and not for fourteen years.

15. Elaborating on the distinction between the terms of "office" and "tenure" of a public servant, the Supreme Court in *Shanker Raju Vs. Union of India (UOI)*, ,

held:

"25. Prior to and after its amendment, Section 8 speaks of "Term of Office". In our view the Legislature has used this expression consciously. The expression "Term" signifies a fixed period or a determined or prescribed duration. The word "term" when used in reference to the tenure of office, means ordinarily a fixed and definite time. There is a distinction between the words "term" and "tenure" as applied to a public officer or employee. The "term", as applied to an office, refers to a fixed and definite period of time. The word "tenure" has more extended meaning than the word "term" and "tenure" of an office means the manner in which the office is held especially with regard to time.

26. The learned Counsel Shri Narasimha submits that the Legislature, while amending Section 8 of the Act, has not placed any bar or embargo or any outer limit of number of years that can be served by a Member of the Tribunal. Therefore, a Member of the Tribunal who has served for ten years as a Member is still eligible to apply and participate in the selection process for being appointed as a Member. Though the argument advanced looks attractive, but on a deeper consideration, we find no merit in the contention canvassed by the learned Counsel. In our view, the language employed in the Section does not admit any ambiguity. The language of the Statute is clear and unambiguous. Section 8(1) of the Act provides the term of office of Chairman of the Tribunal, which shall be five years from the date he assumes his office. The proviso qualifies and carves out an exception to the main enactment. The exception is, though a Chairman can hold office as such for a term of five years, he cannot hold such office after he attains the age of sixty-eight years. Sub-section (2) of Section 8 of the Act provides the "Term of Office" of a Member of the Tribunal. First part of the Section envisages that a member of the Tribunal shall hold the office for a "term of five years". The term as applied to an office, refers to a fixed and definite period of time that an appointee is authorised to serve in office. Alternatively, it can be said that the term of office that is used by the Legislature could only mean the period or limit of time during which the incumbent is permitted to hold the office. The second part of the Section gives discretion to the appointing authority to extend the term of office of a member of the Tribunal to one more term of five years. The expression "extendable", that finds a place in the Sub-section, could only mean that the term of office of an incumbent as a member of the Tribunal can be extended if the parties agree. The proviso appended to the Sub-section again carves out an exception to the main provision and restricts a member for holding office after he has attained the age of sixty five years. The proviso takes care of a situation where a member whose term of office is extended for a further period of five years cannot hold such office if he has attained the age of 65 years during the extended period of five years. A combined reading of both parts of Section 8(2) of the Act clearly demonstrates that a member of a Tribunal can hold such office for a fixed and definite period of time, i.e. for a period of five years from the date on which he enters upon his office and that period may be extended for one more term of five years. What is

contended before us by the learned Counsel for the Petitioner is that there is neither prohibition nor any embargo for a member who has completed 10 years as Member to participate in the selection process for being appointed as a Member of the Tribunal for another term of five years. This, in our opinion, is impermissible since the total term that a person can hold the office of the Member of the Tribunal is only for a period of 10 years. In our view, if the office is created by the Legislature under due authority, it may fix the term and alter it"

16. In *State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal*, , the Supreme Court held that an employee has a legitimate right to remain in service till he attains the age of superannuation, but beyond that age, he has no such right unless extended by the employer. It was also held that it is a discretion available with every employer, management, State or otherwise. The Court, in the facts of that case, went on to hold that the employer is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. *D.C. Aggarwal (Dead) by LRs. Vs. State Bank of India and Another*, .

17. A public servant's right to continue in a post is a matter of status and will ordinarily be subject to the applicable rules and regulations. Although the rules may prescribe a possibility of extended tenure subject to fulfilment of certain specified conditions, such extension cannot be regarded as a matter of entitlement. A public servant can demand a right to continue in service for the prescribed tenure but, cannot demand an extension of the tenure in service without meeting the conditions specified for being considered for the grant of the extended tenure. Support for this proposition could be found in *All India Judges' Association and Others Vs. Union of India and Others*, ; *Ramesh Chandra Acharya Vs. Registrar, High Court of Orissa and Another*, .

18. The petitioner's terms of engagement are governed by the Army Regulations and Regulation 163 thereof provides for the retirement age of JCOs. It's noteworthy that the same was not considered in *Sagarika Singh*. Regulation 163 reads as under:

(a) Retirement of JCOs of all Arms of the Services, who opted for revised terms operative from 01 Dec 76, is compulsory on completion of the following service, tenure or age limits:-

(i) Nb Ris/Nb Sub 26 years pensionable service or 50 years of age, whichever is earlier.

(ii) Ris/Sub. 28 years pensionable service or 50 years of age, whichever is earlier."

19. The extended tenure comes with the rider of requisite medical fitness (and fulfilment of such other conditions as may be) of the employee as of the date of commencement of the extended tenure. For the extended tenure to be deemed part of tenure of service, the extended tenure ought to first commence. If after

the commencement of such extended tenure the service is cut short due to invalidment or release on medical grounds before the completion of the period, the employee would be entitled to the benefit of the AGI Scheme, under paragraph 59 thereof. Therefore, the commencement of the extended tenure is sine qua non for it to be regarded as "terms of engagement of service" and without the commencement of the extended tenure all rights vested in that tenure would remain inchoate. To use an analogy in sports, a person will be considered to be a competitive race only when he/she assembles on the race starting line and take the first step, i.e. crosses the starting line after the Starter Pistol is fired. All preparations prior to the competitive race would merely be preparatory exercises. Similarly, the grant of the extension in tenure of service to the petitioner in 2008 and the subsequent medical tests were mere preparatory ground for the commencement of additional tenure. The status of employment in extended tenure of service is a matter of fact. Unless the fact occurs, upon fulfilment of the eligibility criteria, the status of employment or being in service would not exist. If the eligibility is not met the employee would not be able to relay into the extended tenure. The medical fitness/qualifying standards is the relay-baton with which the employee moves into the successive extended tenure.

20. For the petitioner to be granted the benefit under para 59 the AGI Scheme, he ought to have entered into the extended tenure of service, an event which did not come about in his case since his extended tenure had already been cancelled and he superannuated from service as per Regulation 163 of the Army Regulations. Since the petitioner had superannuated from service upon the attainment of the age so prescribed for JCOs and consequently categorised in Low Medical Category for his post-retirement benefits, it cannot be termed as cutting short of his service or terms of engagement or that of his extended tenure. The extended tenure would be a bonus or bankable tenure which could be enjoyed only if the petitioner was medically fit to enter upon that tenure. This Court agrees with the view of the Division Bench which passed the reference order, that the provision for extension in tenure of service is nothing more than an expectation and a right to be considered. It is at best an entitlement of a weaker kind, dependent upon fulfilment of eligibility condition as compared to the right to continue in service till the completion of the entire term prescribed under the rules.

21. According to Army Regulation 163(a) (ii) the petitioner, a Subedar, was to compulsorily retire on the completion of 28 years of pensionable service. His normal tenure under the said Regulation ended in March, 2010, when he completed his 28 years of service. The extended period of service was to commence from 17.3.2010. Till he entered that day in service he could not be regarded as having entered the extended tenure. The cancellation of the extended tenure was while he was serving his normal prescribed tenure of service and not while he was in the extended tenure. Given the fact that the petitioner had not commenced upon the extended tenure therefore the question of curtailment of the same could not arise. He was instead discharged from

service upon the completion of his normal tenure of 28 years of service. His extension was cancelled vide order dated 12.1.2010, which was subsequently ratified by the Release Medical Board proceedings which were held on 18.2.2010, which placed him in permanent Low Medical Category.

22. In view of the preceding discussion, this Court finds itself unable to agree with either the reasoning or the interpretation of para 59 of the Army Group Insurance Scheme in Sagarika Singh (supra) . The said opinion is accordingly overruled. We are of the view that the right to extended service cannot be equated with the right to continue in office and that the denial of extended tenure of service does not amount to curtailment of terms of engagement for the purpose of paragraph 59 of the AGI scheme. Accordingly, both the questions referred for adjudication by this Bench are answered in the negative.

23. List before the Roster Bench on 26.02.2015 for consideration of other issues.