

(2007) 02 DEL CK 0200
In the Delhi High Court
Case No : Writ Petition (C) 1233 of 2007

NG Santosh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-02-2007

Acts Referred:

Army Act, 1950 — Section 41(1)

Citation : (2007) 95 DRJ 232

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : J.P. Tiwary, for the Appellant; Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—Having rendered pensionable service in the Indian Army, the petitioner was considered for extension of service by two years in terms of a Government of India policy which envisages such extension. The authority considering him for the said benefit found him eligible and extended his service by a period of two years from 19.12.2005 to 18.12.2007. Some time later it transpired that the petitioner having been convicted for an offence punishable u/s 41(1) of the Army Act and sentenced to undergo detention for a period of ten days, was ineligible for any such extension. A show cause notice was accordingly served upon the petitioner calling upon him to explain as to why the order of grant of extension of service to him be not recalled and he be not discharged from service as he was already due for such discharge upon superannuation. The petitioner submitted a reply to the show cause notice and is now before us challenging his proposed discharge w.e.f. 28.02.2007. The solitary contention, which the petitioner urges before us through his counsel Sh. J.P. Tiwary, is that having been considered for grant of extension and an order granting extension of service having been passed and the petitioner having already served, pursuant to the such extension order, for a period of one year and two months, the extended period of service could not be cut short. It is also argued by the learned Counsel

that the respondents ought to have examined the question of eligibility of the petitioner at the appropriate stage and having failed to do so they could not wake up and deny to the petitioner a benefit that had already accrued to him.

2. On behalf of the respondents it was on the other hand submitted that the grant of extension of two years in the service of those who were due for retirement was subject to their screening by a Screening Board, which was to be held on the Unit/Regiment/Corps/Record Office basis in order to assess their suitability for extension. The procedure and criterion for screening was according to them laid down in terms of a communication dated 21.09.1998 issued by the Army Headquarter. An individual who had been convicted or awarded red ink entry for any offence mentioned in the Annexure to the Appendix, was not eligible for such extension. By reference to the Annexure to the Appendix, it was argued that conviction and punishment for an offence punishable u/s 41(1) of the Army Act disentitled the petitioner to the grant of extension once the error in the grant of extension was noticed.

3. The material facts are not disputed . That the petitioner was due for retirement and would have gone out of service by the end of December, 2005 is not in dispute. That he was granted extension only pursuant to the Government of India policy which permits two years extended service being allowed to such retiring personnel is also not in dispute. Such extension was, however, bound to be and was indeed subject to screening by a Screening Board to be held on Unit/Regiment/Corps/Record Office level with a view to assessing the suitability of the candidate for the grant of that benefit. This is evident from the instructions issued by Army Headquarter by their order dated 21.09.1998 , para 4 whereof reads thus:

4. Screening All PBOR will be screened for extension by two years by the Screening Board to be held on Unit/Regiment/Corps/Records Office basis, as applicable to assess their suitability for extension. The procedure and criteria for screening is laid down in Appx "A" to this letter.

4. The procedure and criteria for screening of Persons Below Officers Rank (PBOR) in the Army is separately stipulated in Appendix referred to in para 4 above. A reading of the said appendix shows that not only is the willingness of the individual essential but his medical fitness and ACRs/Character Rolls are also taken into consideration while granting or refusing the extension. Similarly, discipline is a major consideration in the matter of granting or refusing extension of service. It is so provided in Para "e" of the appendix which is in the following words:

Discipline The individual should meet the discipline criteria as given below:

(i) An individual should not have more than three red ink entries (including recordable censure in the case of a Nb Sub) during the entire service and not more than one red ink entry in the last five years. However, for extension in the rank of Sub Maj there should be no red ink entry including recordable censure in

the rank of JCO.

(ii) An individual who has been convicted or awarded Red Ink entry for an offence mentioned in the Annexure to this appendix on the date of screening will not be eligible for extension and will be discharged in accordance with the existing rules on the subject. Black ink entries will however not debar the PBOR for extension, if otherwise eligible. (iii) In exceptional cases such as destination achieved by an individual in War or Peace, the GOC-in-C Command, on the recommendation of the OIC Records, may waive the stipulations given in Sub Para (i) and (ii) above.

5. A plain reading of the above would show that in terms of Sub Para (ii) (supra) an individual who had been convicted for an offence mentioned in the Annexure to the Appendix "A" as on the date of screening is not eligible for extension and is liable to be discharged in accordance with the existing rules on the subject. Conviction u/s 41(1) of the Army Act for disobedience to the superior officers is one of the offences commission whereof dis-entitles the candidate from grant of extension. That the petitioner was convicted for an offence punishable u/s 41(1) of the Army Act and sentenced to undergo 10 days detention on that account is not disputed before us. Such being the position, the petitioner was clearly ineligible for the grant of extension. Just because that part had been overlooked by the screening board at the appropriate stage and an order for grant of extension issued, did not mean that the error could not be corrected after affording to the petitioner an opportunity of showing cause against the same. The petitioner was given a show cause notice and an opportunity to submit a reply before the decision to discharge him was taken. There was in that view no violation of Principle of Natural Justice in the process of taking a final decision regarding his continuance in service. Suffice it to say that in the absence of any challenge to the procedure and the criterion for screening as stipulated by the Army Headquarter pursuant to the Government of India policy and the admitted facts as emerging on record, the petitioner was ineligible for the extension which was erroneously granted in his favor. The discharge of the petitioner from service w.e.f. 28.02.2007 would Therefore not violate any of his fundamental or statutory rights to warrant interference by this Court. The petitioner has already served for nearly 14 months pursuant to the order of extension of service. Learned Counsel appearing for the respondents submitted that the respondent shall not take any steps for recovery of the salary and emoluments or other benefits which the petitioner may have availed of for the said period. In that view there is no justification for any interference from this Court.

6. The writ petition fails and is hereby dismissed but in the circumstances without any order as to costs.