

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.1204/2012**

% **Date of decision: 31st July, 2013**

B. G. CARIAPPA

..... Petitioner

Through: Mr.V.K.Kanagaraj, Sr.Advocate with
Mr.S.S.Pandey and Mr.Vipul Jai,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Himanshu Bajaj, Advocate with
Col.N.K.Ohri.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (Oral)

1. The petitioner has assailed the order dated 13.12.2011 passed by the Armed Forces Tribunal dismissing his petition whereby he assailed the order dated 4.5.2011 whereby the respondents rejected the petitioners case that he would not be permitted to serve in re-employment upto the age of 58 years. The petitioner retired from regular employment with the Indian Army on attaining age of 54 years on 30.09.2008 in the rank of Colonel. He sought re-employment with the

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respondents which was granted to him with effect from 30.11.2008. The second extension was granted to the petitioner with effect from 3.9.2011.

2. It appears that the petitioner was subjected to a medical examination on 7th March, 2006 in which examination he was categorised as S1H1A2P1E1. The Medical Board also prescribed the following employability restrictions:

F-2 (i) Fit for normal army duties any where except in
High Altitude Area above 2700 mtrs – 9000 ft.

(ii) Places that has sub zero temperature for more
than 3 months in a year.

F-3(a) Have access to basic specialist at Mil/Civil
Hosp.

3. The petitioner was posted at Andman & Nicobar when he was subjected to a second medical examination for extension of his employment in the year 2008. In this medical examination, the petitioner's categorization as well as employability restrictions as noted in the medical examination of 2006 were repeated.

4. A third medical examination of the petitioner was conducted on 18th February, 2010 for purposes of his second extension.

5. Learned counsels for the parties have drawn our attention to the petitioner's medical classification. It is pointed out that the petitioner's medical classification as well as employability restrictions in the third medical examination remained the same as before. However, the Medical Board overlooked mentioning his employability criterion in terms of F-1/F-2/F-3 in the Medical Board

Proceedings dated 18th February 2010.

6. The services of the petitioner were however extended by the order dated 10th November 2010 till the date he attained the age of 57 years and subjected to his remaining in the current medical status. Learned Senior counsel for the petitioner has submitted that in view of the failure of the Medical Board to notice the petitioner's employability categorization, he remained under the impression that there was no further medical examination required for the purposes of extension of his service upto the age of 58 years. The petitioner applied for third extension of his re-employment upto the age of 58 years. The respondents appeared to have issued a communication dated 4th May 2011 informing similarly placed personnel including the petitioner that they were due for release from the re-employment between 1st September 2011 to 31st October 2011.

7. The petitioner responded by his letter dated 7th June 2011 submitting that he had been granted four years of re-employment being medically categorised as F2 which was eligible for four years subject to employability restriction of F1A or F1B. In this communication, the petitioner mentioned that there was no mention of the employability restriction as F1A or F1B in his latest Medical Board proceedings and that therefore he was unaware that he was not eligible for re-employment from 57-58 years. The petitioner noticed that it was not known to him as to why his services for one whole year were cut short, the petitioner claimed that

he was performing all duties including physical activities at his current posting and sought a personal interview to justify his case for extension of service.

8. The respondent rejected the same by their letter dated 27th June 2011 informing the petitioner that being in a medical category with employability restrictions as mentioned by him, translated into F2 (i); F2(ii) and F3, and therefore he was eligible to serve only upto 57 years of age.

9. It is stated that in the counter affidavit on record that the petitioner sought an early review medical board which was conducted on 21st July 2011 which returned the petitioner's re-employability categorization as F1B. The petitioner appears to have applied for re-employment with the respondent by his letter dated 22nd July 2011. The request of the petitioner was rejected by the respondents reiterating the stand taken in their letter dated 4th May 2011.

10. As a result, the petitioner assailed the action of the respondent by way of OA No.345/2011. We may note that this petition was filed on 1st September 2011 before the date of the petitioners' disengagement i.e. upon the termination of his second re-employment on 3rd September 2011 on which date the petitioner would have attained 57 years of age. The petition was opposed by the respondent and was rejected by the Armed Forces Tribunal by its judgment dated 13th December 2011. The Armed Forces Tribunal was persuaded to reject the petition on the sole ground that the petitioner applied belatedly and that his medical categorization in the board

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proceedings dated 18th February 2010 did not give him employability eligibility up to 58 years of age.

11. The challenge by the petitioner in the instant writ petition is opposed by the respondent on the ground that the petitioner was aware of his employability criterion in view of the clear intimation to this effect in the first medical board for re-employment conducted on 7th March 2006 as well as the second medical board held in the year 2008. It is contended that the omission to state the re-employment criterion in the third medical board on 18th February 2010 is of no benefit to the petitioner for the reason that the conditions and the re-employment restrictions remained the same. It is further contended that the policy of the respondents did not create or confer any legal right to continue in re-employment and that he had no right to re-engagement. The third objection raised by Mr. Himanshu Bajaj, learned counsel for the respondents is to the effect that the petitioner in any case had been notified by the communication dated 4th May 2011 that the respondent were not considering his re-employment beyond 57 years of age. The fault for the delay in the instant case rests squarely on the shoulders of the petitioner. The above submissions on behalf of the respondents are opposed by the petitioner.

12. We have heard learned counsel for the parties at length.

13. This matter has to be considered in the context of the policy which has been framed by the respondents with regard to the re-employment of officers who seek

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extension of engagement beyond 57 years of age. It appears that the initial policy dated 18th July 2007 provided as follows:

“General

2. In the light of the amendment to ‘Terms and Conditions for Re-employed Officers issued vide ADG PS letter quoted at paragraph 1 (b) above, there is a need to revise the procedure for grant of extension from 57 years to 58 years to the officers meeting the revised medical classification, subject to being placed in employment index F-1A or F-1B.”

14. So far as the procedure for review consideration for extension beyond 57 years is concerned, the same was provided in para 4 onwards. So far as the present consideration is concerned, paras 4 and 6 are material and read as follows:

“4. Medical Category for Extension beyond 57 years:

All re-employed officers who are in Low Medical Category (LMC) are required to undergo Review/Reclassification Medical Board after every two years, as is the case in regular service (DGMS 5 letter No.12642/DGMS-5(A) dated 22 Apr 92 refers). Hence, all LMC re-employed officers are expected to undergo at least one Reclassification Medical Board till the age of 57 years. Grant of extension beyond 57 years of age will be governed by the latest medical board which is valid at the time the officer attains 57 years of age.

6. Submission of Documents for Consideration.

Officers who have either been upgraded to medical category with employment restrictions as permitted vide AGPS/PS-2 letter dated 20 Apr 07 or are seeking review of medical category for continuation of service up to 58 years of age, should submit their latest Reclassification Medical Board proceedings six months prior to attaining the age of 57 years. No extension beyond 57 years of age would be

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granted in cases where relevant documents are not submitted within the stipulated time.”

15. This policy came to be amended by an order dated 1st March 2011 passed by the respondents. As per this order, the above noted para 6 was revised to stand substituted by the following para 6:

“6. Submission of Documents for Consideration.

Officers who after joining re-employment, have either been upgraded to medical category with employment restrictions as permitted vide AGPS/PS-2 letter dated 20 Apr 07 or are seeking review of medical category, for continuation of service up to 58 years of age, should submit their Reclassification Medical Board proceedings within one year of joining initial re-employment. No extension would be granted in cases where relevant documents are not submitted within the stipulated time.”

16. This direction of 1st March 2011 stipulated that the change in the policy would be applicable for all officers being considered for extension of service up to 58 years of age “with effect from 1.7.2011”.

17. It is undisputed that the petitioner would have attained 57 years of age on 3rd September 2011 and would have become eligible for consideration for extension of service thereafter. As such the consideration of the petitioner had to be in terms of the policy letter dated 1st March 2011.

18. Para 6 of the policy letter dated 1st March 2011 postulates that the reclassification medical board proceedings have to be submitted within one year of joining the initial re-employment. Learned counsel for the respondent has urged

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that there is a clear reference to the expression "initial re-employment" and that the petitioner had to submit the medical report within one year of his initial re-employment.

19. So far as the petitioner is concerned, he was re-employed with effect from 7th March 2006. The petitioner was relieved from service on 30th September 2008.

His first re-employment was with effect from 30th November 2008. If we construe

the policy in the manner which has been suggested by the learned counsel for the respondent, it would appear that to be eligible consideration for extension of his re-engagement after 54 years of age, the petitioner was required to submit his reclassification medical board proceedings within one year from 30th November 2008 i.e. on or before 30th November 2009 even though the period of extension has to commence in 2009. This means that a person who may have been fit in 2009 but was rendered unfit immediately before the consideration of his employment in the year 2011 or 2012, would be considered fit for re-engagement.

This certainly cannot be the spirit and intendment of the policy of re-engagement or of the requirement of the medical examination. The policy has been formulated clearly to engage only those personnel who are fit for re-employment and are considered and granted the re-employment. Certainly, consideration of a fitness certificate of the year 2008 for re-employment in the year 2011 results is most unreasonable and could not have been the intention of the policy.

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20. It has also been stipulated in the letter dated 1st March 2011 that this policy would take effect from 1st July, 2011. It contains no last date for submission of the documents. There is also no stipulated prescription in the policy for cases as the petitioner who already stand re-employed and would become eligible for consideration for extension after the policy came into force.

21. So far as the petitioner is concerned, the respondents have erroneously applied the stipulation contained in para 6 of the policy dated 18th July 2007 and have rejected his extension for the reason that he had failed to submit the relevant documents with six months prior to attaining the age of 58 years. This stipulation stands substituted by the para 6 as contained in the amended policy dated 1st March 2011.

22. There is yet another reason as to why the submissions of the respondents do not find favour with us. It has been urged that the re-employment categorisation in terms of the rank of the person being F1/F2/F3 has to be stipulated by the medical experts who conduct the medical examination. This was clearly mentioned in the medical examination of the petitioner conducted on 7th March 2006 and in the second medical examination in the year 2008. The shape categorization of the petitioner was mentioned in the third medical examination conducted on 18th February 2010. However, his re-employment categorization was admittedly not mentioned therein.

23. The respondents have easily submitted that the categorization having been mentioned in the medical examination conducted on 7th March, 2006 and in the year 2008 was relevant and sufficient notice to the petitioner of his re-employment categorization even in the third medical examination. However, the petitioner has addressed a communication dated 7th June 2011 wherein he informed the respondents that there was no mention of the categorization and as such he was unaware that he was not eligible for re-employment from 57 to 58 years.

In the response dated 27th June 2011, the respondents have taken the same stand as has been taken before this court. In the circumstances of the case, we see no reason to disbelieve the petitioner who would not have benefited in any manner by not having himself medically examined, had he been not remained under the impression as stated in his communicated dated 7th June 2011.

24. We have noted above that it cannot be the spirit and intendment of the policy of the respondent to obtain a medical fitness of the year 2009 for the purposes of consideration of the petitioner's fitness for his re-engagement after he attained 57 years of age on 3rd September, 2011. Be that as it may, even if the matter is examined from the perspective of delay in getting himself medically examined and having faulted in submission of the regular medical record to the respondents, the facts which have been placed before us would show that the petitioner's Review Medical Board was conducted on 21st July, 2011 and he submitted the medical

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board proceedings to the respondents on 22nd July, 2011. This was certainly within one year of petitioner's last re-employment on 10th November, 2010. In the medical board proceedings dated 21st July, 2011, the petitioner's employability had fallen in the category of F1B. The petitioner, therefore, in our view had complied with the requirements of para 6 of the policy dated 1st March, 2011, if it is held that the same applied to him.

25. Even if we assume that the submission of the medical certification by the petitioner did not comply with the requirement of the policy dated 1st March, 2011. It is pointed out by learned counsel for the petitioner that the respondents had declared that policy of 1st March, 2011 would take effect from 1st July, 2011. The petitioner has pleaded ignorance of employability certification. The respondents rejected the petitioner's request for re-engagement by the communication of 27th June, 2011. Barely five days thereafter the petitioner applied and had been granted the medical review on 21st July, 2011. The result thereof was submitted by the petitioner on 22nd July, 2011 to the respondents. In view of the above discussion no fault is attributable to the petitioner for delay, if any, in submission of the medical certificate.

26. It also has to be borne in mind that the respondents' policy stipulation dated 1st March, 2011 did not prescribe any last date for submission of the medical certification so far as cases as the petitioner are concerned. In this background, the

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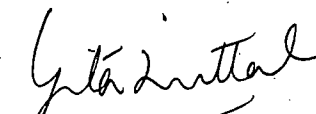
order dated 4th May, 2011 of the respondents as well as the order dated 13th December, 2012 of the Armed Forces Tribunal are erroneous and legally unsustainable.

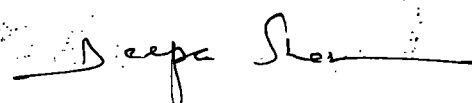
27. We may now consider what benefits would be admissible to the petitioner at this stage in the light the petitioner having attained 58 years of age as on 3rd September, 2012. There is therefore no possibility of granting re-employment to him. The petitioner was seeking extension of his re-employment with the respondents after his regular service had come to an end on account of his having superannuated. Certainly, re-employment, or for that matter – its extension, cannot be claimed as a matter of right. The respondents were required to consider the case of the petitioner and to grant him re-employment based not only on his eligibility and medical fitness but also on the basis of availability of posts.

28. In this background, the petitioner cannot be granted the relief of extension or consideration for extension of his re-employment in the instant case. The impugned orders dated 13th December, 2011 and 4th May, 2011, however, are not legally sustainable and are set aside and quashed.

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29. The petitioner is entitled to costs of this litigation which are quantified at Rs.25,000/-. The costs shall be paid to the petitioner within six weeks from today.


(GITA MITTAL)
JUDGE


(DEEPA SHARMA)
JUDGE

JULY 31, 2013/rb