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

+ W.P.(C) 432/2013

RAJENDER SINGH

..... Petitioner

Through: Mr D.V.S. Yadav, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Rakesh Kumar, CGSC for

Respondents 1 and 2

Ms Anjali Vohra, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **18.11.2015**

On 25.04.2013, the following questions were framed for a decision of a Full Bench in the light of a previous judgment of another Division Bench of this Court in ***Sagrika Singh vs. Union of India and Ors.*** CWP No. 3850/2010 (decided on 29th August, 2011).

“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?”

In ***Sagrika Singh*** (*supra*), the conclusions of the Court turned on the expression “terms of engagement” and the term “service applicable to the rank”. The Division Bench then went on to hold that the petitioner in that case was entitled to disability pension notwithstanding the intervening disability she had incurred during the final four year extension.

The Full Bench of this Court by its judgment of 12.02.2015 did not agree and overruled the view adopted in ***Sagrika Singh***’s case (*supra*) and declared that the right to extended service cannot be equated with the right to continue in office and the denial of the extended service does not amount to curtailment of terms of engagement for the purpose of para 59 of the Army Group Insurance Scheme. Consequently, both questions referred were answered in the negative.

The petitioner’s attempt to have the said judgment reviewed was unsuccessful. It is argued today that the writ petitioner was as a matter of fact not medically examined on 05.12.2009, but, in fact examined on 12.12.2008. Learned counsel further submits that the writ petitioner was thereafter examined only at the time of release of medical board in February, 2010, i.e., before the original tenure (of 28 years in terms of Regulation 163) ended on 30.03.2010.

This Court has considered the records. In Annexure P-3 to the writ petition—which is dated 18.01.2010, the Army Authorities had

stated that the petitioner had been downgraded to lower medical category with effect from 05.12.2009. In the writ petition too, there is no reference to the circumstance as to whether the petitioner was, in fact, examined only in October, 2008 before his examination in December, 2010. In fact, the only reference to his medical examination is with regard to the cancellation of his two years' extension of service on 18.01.2010 in para 9. Furthermore, we also notice that in the reply of the respondent to the relevant pleadings at para 2 (reply on merits), there is a categorical averment that the petitioner's medical category was downgraded with effect from 05.12.2009. In these circumstances, there can be no doubt that even before the petitioner was supposed to enter his extended tenure, he had been downgraded. Furthermore, there is no dispute about the fact that at the time that discharge Medical Board was held—as late as in February, 2010, the petitioner continued to being in the same medical category. In other words, his medical condition had not improved. As a consequence, on application of the principle enunciated by the Full Bench, the petitioner was clearly disentitled to the relief sought in the present petition, i.e., to the financial benefits from Army Group Insurance Scheme.

The writ petition is consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 18, 2015/bg