IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

OA No.279/2011

Nb Sub Roshan Lal .....**Petitioner**

Versus

Union of India & Ors. .....**Respondents**

WITH

OA NO.307/2011
OA NO.265/2011
OA NO.308/2011
OA NO.282/2011
OA NO.283/2011
OA NO.284/2011
OA NO.586/2011
OA NO.281/2011
OA NO.09/2012
OA NO.73/2012
OA NO.587/2011
OA NO.137/2012 with M.A. NO.196/2012
OA NO.118/2012
OA NO.441/2011
OA NO.561/2011
OA NO.576/2011 WITH M.A. NO.534/2012
OA NO.330/2012
OA NO.10/2012
OA NO.422/2012
OA NO.421/2012

For petitioner: Mr. K. Ramesh, Advocate except for OA No.576/2011 and OA No.330/2012
Mr. S.M. Dalal, Advocate in OA No.576/2011
Mr. Sant Ram, Advocate in OA No.330/2012

For respondents: Mr. R. Balasubramanian, ASG(OA No.441/2011)
With Mr. Ankur Chibber, Advocate (OA No.279/2011)
Major Sarika P. (OA No.307/2011, 308/2011, OA No.421/2012)
Mr. S.P. Sharma proxy for Mr. Ashwani Bhardwaj, Advocate (OA No.284/2011)

Mr. S.P. Sharma, Advocate (OA No.586/2011, OA No.576/2011)
Mr. J.S. Yadav, Advocate (OA No.265/2011, OA No.137/2012, OA No.118/2012
Mr. Mohan Kumar, Advocate (OA NO.282/2011, OA No.73/2012, OA No.561/2011)
Mr. S.K. Sethi proxy for Ms. Jagrati Singh, Advocate (OA No.283/2011, OA NO.10/2012)
Mr. S.K. Sethi, Advocate (OA NO.09/2012 and OA No.330/2012 and OA No.422/2012)
Mr. Anil Gautam, Advocate (OA No.281/2011 and OA No.587/2011)

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE MR. JUSTICE N.P. GUPTA, MEMBER.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

Judgment
3rd January,2013

N.P.Gupta, Member (Judicial)

This bunch of matters have come to this larger Bench pursuant to the order passed by the regular Bench on 06.09.2012 in OA No.279/2011 to the effect that learned counsel for the parties submitted that there is a conflict of decision on the issue involved in the present bunch of cases with regard to the policy dated 20.09.2010, in asmuch as the Principal Bench has taken one view of the matter and as against this, Allahabad Bench and Kochi Bench had taken a separate view. Therefore, it was felt necessary to refer the matter to the larger Bench.

2. Obviously all these matters involved the common question of law and are, therefore, being decided by this common order.

3. Hearing the learned counsel for the parties, at the outset, we were taken through the three judgments being those of the Principal Bench and the Lucknow and Kochi Benches of this Tribunal. The judgment of the Principal Bench is dated 04.04.2012 passed in OA 513/2011 Nb. Subedar Gulab Rao Vs. Union of India. The judgment of Lucknow Bench is dated 15.02.2012 passed in bunch of cases led by OA No.234/2010 Sub. Brijesh Kumar Shukla Vs. Chief of the Army Staff and others and the judgment of the Kochi Bench is dated 21.03.2012 again passed in bunch of cases led by OA No.67/2011 Hav. Manktu Ram Vs. Union of India and others.

4. After going through these three judgments, not only we have no hesitation in observing rather learned counsel for either side also felt and conveyed that there is no conflict of opinion in the aforesaid three judgments but in substance the matter involved is about interpretation of policy dated 20.09.2010 and also about the validity of the cut off date fixed in the above policy. In that view of the matter instead of hearing this Bench has reference to answer the exact preposition of law or to resolve the purported conflict, the matters were heard on merits and are being decided by this common order.

5. We may at this place also observe that so far as the judgment of Lucknow Bench mentioned above is concerned , that bunch of matters involved challenge to the validity of policy dated 20.09.2010 on the grounds interalia that the policy being for the welfare of the personnel of Indian Army, the implementation of the same ought to have been made with immediate

effect and not on a subsequent date, in other words fixing of dates regarding implementation of the policy was contended to be manifestly illegal , arbitrary and offends Article 14 of the Constitution. The Lucknow Bench after going through the matter thread bear and considering and relying upon catena of judgments of Hon'ble Supreme Court did come to the conclusion firstly, that the cut of date fixed being 01.04.2011 is neither arbitrary nor illegal nor offends Article 14 of the Constitution and thus was held to be valid. The Bench also observed that even otherwise it did not find any ground to interfere in the policy.

6. So far as the judgment of Kochi Bench is concerned, in that bunch of matters the denial of extension of service to the applicants therein was challenged as arbitrary and illegal and the applicants claimed to be entitled to further extension of service as per provisions of the policy. The Kochi Bench noticed the contention of the learned counsel for the respondents therein that the controversy is identical to be one raised before the Lucknow Bench and therefore, the matter should be decided in the light of the prepositions laid down by Lucknow Bench. The counsel for the petitioners herein submitted that Lucknow Bench did not take note of the decision rendered by Division Bench of Hon'ble Delhi High Court in Gurmeet Singh Vs. Union of India which decision was affirmed by the apex court in Special Leave Petition. According to learned counsel therein, in identical circumstances, Hon'ble Delhi High Court allowed the applicants to continue and complete the tenure and the case was further directed to be considered for further promotion. The Kochi Bench found after going through the judgment of the Hon'ble Delhi High Court

that the policy of 20.09.2010 was not under challenge before the Hon'ble Delhi High Court, rather earlier letter dated 13.06.2007 amending 1998 policy was under challenge and since the policy of 1998 stood resented by subsequent policy dated 20.09.2010, which has been up held by Lucknow Bench, therefore, controversy before the Hon'ble Delhi High Court was not similar to that before the Lucknow Bench. It was also noticed that Hon'ble Delhi High Court was not considering the cases in the category of past cases as postulated under the said policy and thus, it was found that Hon'ble Delhi High Court judgment in Gurmeet Singh case has no application. Then the Kochi Bench agreed with the judgment rendered by Lucknow Bench and decided the OAs by dismissing them in light of the judgment rendered by Lucknow Bench,.

7. Then so far as judgment of Principal Bench in Gulab Rao's case is concerned, after going through that judgment what we find is that in that case the individual was for the first time screened on 09.07.2011 ie after the cut off date fixed in the policy dated 20.09.2010, being 01.04.2011. Likewise the Bench referred to and relied upon Appendix B read with note of para 3 of Appendix A. And contemplated with exception, a PBRO who could not be screened that extension of service under the existing policy as per laid down screening schedule given at para 4 due to LMC, court cases, or any other circumstances beyond his control will be screened by the Screening Board before retirement and the bench found, that since he was to retire after 01.04.2011, and screening was also conducted after that date, he was held entitled to be governed by the policy of 20.09.2010. Regarding this judgment,

we may simply observe firstly, that it does not laid down any general proposition on the aspects which has been canvassed before us and are being considered now and subsequently we are not sitting in appeal over the said judgment dated 04.04.2012.

8. The fact thus remains that there are no conflicting decisions on the policy and therefore, we have heard learned counsel for the parties on the merits of the matter.

9. Coming to the merits, we may briefly narrate the facts which are very necessary for appreciating the controversy. The facts are that all the persons being the petitioners in these matters are the persons who are to retire or to be discharged on completion of their colour service or original terms of engagement, on or before 31.03.2013. Likewise all the persons are those persons who have already been screened by the Screening Board in accordance with the requirements of the earlier policy being dated 21.09.1998 and are sought to be discharged either on account of having not been found entitled to extension of service for two years or having been found entitled on screening but because of drop in performance or medical category criteria before commencement of the period of extension they are not allowed to avail the extension and some of the persons are those who became disentitled to complete the extension period after having started to avail it, on account of the reasons or conditions incorporated in the policy of 21.09.1998.

10. The claim of the petitioners is that since all the petitioners are in actual service "within original terms of engagement or colour service", on or after 01.04.2011 or were availing the extended period as on the date on or after 01.04.2011, they are entitled to the benefit of policy the dated 20.09.2010 as this policy is a beneficial policy to the employees.

11. Arguing the petition, learned counsel for the petitioners took us to through both the policies being dated 21.09.1998 and 20.09.2010 so also the policy for promotion being dated 10.10.1997 and submitted that the eligibility criteria for entitlement to extension under the policy of 21.09.1998 was far more stringent than even the criteria for eligibility for promotion under the policy dated 10.10.1997 in asmuch as individuals placed in medical category BEE (now known as P2) were eligible for promotion to the next higher rank irrespective of his medical category being temporary or permanent so also irrespective of the disease or injury being attributable or non attributable to or aggravated to service conditions, subject to exception of psychological cases, misconduct or being self inflicted injury, these category of persons were provided to be not entitled to extension according to the policy dated 20.09.21998 and according to the learned counsel for the petitioner this was realised by the respondents to be unfair and harsh rather paradoxical and therefore, the new policy of 20.09.2010 was issued rendering persons in P2 medical category also be entitled to eligible for extension. In that view of the matter since practically all the petitioners here included in this bunch, except one or two are the persons who a re sought to be discharged either by having not been found eligible for extension or having been found to as suffered

drop in eligibility or to have not remain entitled to continue in the period of extension only on account of their having been categorised as category P2, since in the new policy P2 category persons are also eligible for extension, they seek to challenge their discharge. Compassion and sympathy has also been invoked and with compassion and sympathy ground of discrimination under Article 14 of the Constitution was sought to be made out by submitting that when a person of P2 category can be promoted and under new policy has been held eligible for extension then to discharge the persons falling in that category simply because they happened to be retiring on or before 01.04.2013 is highly unjust, improper, inequitable and required to be held to be discriminatory so as to be violating Article 14 of the Constitution.

12. The other submission made is that when the policy was framed being dated 20.09.2010, to ameliorate the conditions of the individuals, it should have been made effective forthwith instead of making it defective from any future dates as it resulted into deprivation of benefits to the individuals being discharged during the interregnum period. Then the next submissions made was that the date fixed for commencement of the policy being dated 01.04.2011 is arbitrary.

13. Then yet another important rather strongest submission made was that those policy dated 20.09.2010 in its own terms is made applicable w.e.f. 01.04.2011 but then notwithstanding this all the petitioners who are continuing in service whether being original period of engagement or extended period of engagement are also sought to be deprived off the benefit of the policy on the spacious ground that the policy being applicable to only those persons who are to retire or get discharged on or after 31.03.2013 and thus persons retiring or being discharged

during these period from 01.04.2011 to 30.03.2013 are sought to be deprived of all the benefits of this policy despite the policy having been made applicable w.e.f. 01.04.2011, the petitioners are entitled to reliefs claimed . The petitioners also submitted that in order to cover up rather salvage the situation, during the pendency of these proceedings the respondents have issued letter dated 11.01.2011 purported to clarifying that every JCO/OR is entitled to screening for extension of two years service in the present rank as per policy dated 21.09.1998, as revised vide policy dated 20.09.2010 effective from 01.04.2011 and that this is amply clear from the earlier letter that the date for new policy to be effective is from 01.04.2011 to screen individuals due for extension w.e.f. 01.04.2013 and that there is no provision for second screening. It is submitted that this purported clarification is clearly bad and deprives the petitioners of their rights and is required to be struck down. Learned counsel for the petitioners relied upon judgment of the Hon'ble Supreme Court in *Government of Andhra Pradesh. Vs. D.Janardhana Rao reported in AIR 1977 SC page 451 specially pra 9*, then reliance has also placed on another judgment of Hon'ble Supreme Court in *M.Venkateswarlu and others Vs. Govt. of Andhra Pradesh. reported in 1996 5 SCC page 167* and another judgment of the Hon'ble Supreme Court in *K.J.S.Buttar Vs. Union of India and another reported in 2011 11 SCC page 429* to calculate with a beneficial provision can be given with retrospective effect and therefore, there was no occasion for making it effective not even prospectively but from a future date and Buttar's case was relied upon to contend that with the fixing of cut off date is bad as the cut off date fixed being 01.01.1996 was struck down by Hon'ble Supreme Court in Buttar's case.

14. On the other hand learned Additional Solicitor General supported the impugned action of the Government. Learned counsel submitted that there is no question of any paradoxical situation as contended by the learned counsel for the petitioners in asmuch as in his submission criteria for promotion and criteria for

extension of service after completion of original tenure can very well be prescribed by the employer to be different and criteria for extension can be prescribed to be mere stringent . According to the learned counsel, within the terms of engagement or original consideration for promotion is a right and deprivation of that right , different parameters are expected while extension of service is not a right rather it is the prerogative of the employer whether to retain an employee who has completed the original tenure of service or not to retain and for taking such decision it is very well within the right of the employer to provide any stringent parameters as the employer can very well insist and the extension of services of only best persons and therefore, there was nothing wrong in providing two different parameters one for promotion and other for extension. Thus according to the learned counsel it can not be said that by the new policy of 20.09.2010 any paradox was sought to be removed.

15. Then taking us to the genesis of the phenomena of extension of two years, learned Additional Solicitor General pointed out that it was in view of the decision of Ministry of Personnel /Grievance and Pension conveyed vide Office Memorandum dated 13.05.1998 thereby the retirement age was extended by two years which on the civil side was increased across the Board and the Ministry of Defence took that into consideration and issued a letter dated 30.05.1998 to the effect that the modalities of the implication of the orders regarding retirement age of Army personnels by two years are active consideration and orders would be issued shortly and in the meantime the President was conveyed to be pleased to defer the retirement of all Army personnel's who are to retire on 31.05.1998 and thereafter till final orders are issued except the categories motioned therein . We may observe that the petitioners falls within the category of persons so exhibited . Then came to be issued a letter dated 03.09.1998 by the Government of India, Ministry of Defence, conveying certain modifications to the terms of engagement w.e.f. 30.05.1998 and in this, it was stipulated that all personnels shall be served three 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 and such personnels those who are not found suitable as a result of screening shall be retired as per rules. We are told that this period of three years was reduced in 2002 to two years. Thus it was submitted that except for the category of personnel's mentioned in the letter dated 30.05.1998, the retirement age of all personnels were increased by two years while the category of persons mentioned therein were categorized for consideration for extension and it was stipulated that for extension they shall be screened and screening was to take place initially three years in advance and subsequently it was reduced to a period of two years in advance.

16. Learned Additional Solicitor General submitted that it is in this sequence and with reference to these two letters dated 30.05.1998 and 03.09.1998 that the procedure and criteria for screening was laid down vide letter dated 21.09.1998 which is said to be the policy letter of September,1998 and in this, in para 4 it was clearly stipulated that all PBOR will be screened for extension by two years by the /screening Board to be held on Unit/Regiment/Corps basis as applicable can assess what is stipulated for extension and the procedure and criteria was laid down in Appendix A. Likewise retention of a PBOR for extension tenure was stipulated to be governed by consideration as per Appendix B to this letter and according to para 4 of Appendix A, screening was to be carried out 36 months prior to the reaching current laid down service guidelines, hence it should be conduced by the same Board which are constituted and assembled for the purpose of deciding promotions for the same rank as per the current practice in various Army services and then in this very appendix, eligibility and suitability parameters were laid down on the medical anvil of willingness, medical classification, physical fitness, ACR/Character Roll and discipline while in Appendix B retention during the extended period was stipulated to be subject to maintaining the standards mentioned therein regarding medical,

discipline and ACR and stipulating that if it is noticed that there was drop in any of the above criteria at any time during extended tenure the individual will be discharged within a period of maximum six months after serving show cause notice and that the period of six months is basically meant for discharge drill. With prefacing the above it was submitted by learned Additional Solicitor General that six months time is required for the various authorities to do the initial needful so also even discharge drill does take this time as the matter has to be handled at various levels by various authorities on various purposes .

17. Likewise when new policy was laid down it was required to disseminated to the authorities concerned and carry out preparatory work by the Record Office and Line Directorate and this precisely was mentioned in para 7 of the letter dated 20.09.2010 and therefore, since the policy letter was issued on 20.09.2010, taking six months time, a cut off date was fixed as 01.04.2011 and then next submission that the date was fixed for reasonable nexus .Learned counsel then submitted that whenever a new policy is laid down, of necessity, a cut off date has to be fixed and fixation of such a date is the prerogative of he employer. However if such fixation of dates can be said to be having no nexus sought to be achieved aim or is not based on any reasonable differentia or is much off wide then of course it may be assailed but in absence of any such thing no fault can be found with it. Learned counsel in that regard relied upon the Judgment of Hon'ble Supreme Court in *Rama Rao Vs. All India Referred Class Bank Employees Welfare Association reported in 2004 (2) SCC page 76 specially paras 29 and 31 to 33* so also on yet another judgment of Hon'ble Supreme Court in *Achhibar Maurya Vs. State of U.P reported in 2008 (2) SCC page 639.*

18. Regarding the judgment cited by the learned counsel for the petitioner, it was submitted that the judgment in D. Janardhana Rao and M.Venkateswarlu cases

have no bearing on the aspect involved in the present case as both those cases related to power of Governor relaxing certain provisions and has no bearing on the aspect of validity of cut off date. Then regarding KGA Buttar's case it was submitted that, that case is also not applicable to the present controversy as in that case certain pensionary benefits were increased and the benefit of such increase was restricted to be available only to persons retiring after 01.01.1996 and similar benefits were denied to similarly situated sufferers who were retired prior to 01.01.1996 and reliance of Constitutional Bench judgment of Hon'ble Supreme Court in D.S.Nakaria's case, it was found that the fixing of the date violating the Article 14 as it brought about a different class between homogenous class. It was also noticed that even the Government itself by subsequent letter had made the benefits available to 03.01.1996 retirees. While in the present case the question involved is as to whether the eligibility criteria for retention in service by extending the service is modified should be applied from the date mentioned therein or also should be applied to the persons like those as contended by the petitioners. In the submissions of the learned Additional Solicitor General it was in the nature of a new policy laying down eligibility criteria for extension and it was open to the employer to laid down such policy with effect from particular date so as to make eligible the benefits or consequences of the new policy to the category of persons on one side of the cut off date. Learned counsel submitted that it is always natural consequences of fixation of cut off date that some persons would fall on the right side and other would fall on the wrong side but then that by itself can not be a ground to strike down the cut off date as that is the natural consequences.

19. Then defending the aspect of benefit being available to the persons retiring on or after 01.04.2013, learned Additional Solicitor General again read to us the policy of 20.09.2010 and pointed out that it is clearly stipulated that the policy will be made applicable w.e.f. 01.04.2011 and the policy itself contemplates screening and

such screening is contemplated rather provided to be under taken or carried out 24 months prior to reaching the current laid down service by the individual concerned. Obviously, screening is integral part of the policy and is included in applicability of the policy with obvious consequences. Therefore, if the policy is to commence from or is to be applied from 01.04.2011, and requires screening to be effected or carried out 24 months prior to reaching the current laid down service limit, obviously extension is to be available only after two years and the persons retiring on or before 01.04.2013 can not claim benefit of this policy.

20. Another limb of argument of the learned Additional Solicitor General was that undisputedly screening is to be undertaken only once. The new policy also does not contemplate any second screening or re-opening or reconsideration of the screening already carried out. Since even under the old policy , the screening is to be carried out 24 months prior to reaching the current laid down service limit, and since the new policy is to become applicable w.e.f. from 01.04.,2011 all the persons retiring on or before 01.04.2013 already stands screened, obviously on the parameters laid down in the old policy and in the absence of any provision for second screening or re-opening of the cases which have already been screened, the individual can not claim to be retained simply because they claimed to be fulfilling eligibility criteria under the new policy. It was then submitted that the contention of the petitioners about the new policy being beneficial one is also not wholly correct in asmuch as of course on the medical category parameters the new policy is a bit literal as it renders P2 category persons also eligible but then on discipline parameters the policy is much too stringent in asmuch as under old policy, individual with 3 red ink entries was also eligible for extension as against which under the new policy the eligibility is restricted to incurring of only two red ink entries. In the submissions of the learned Additional Solicitor General if the contentions of the petitioners are accepted, then all the persons who have earlier been even found eligible under the

old policy will have to be reconsidered to see as to whether they fulfil other criteria being of red ink entries in the event the exercise will do more harm than good as large number of persons may have to be asked to quit and therefore, also the submissions made by learned counsel for the petitioners can not be accepted.

21. We have considered the submissions of either side, have gone through various policies and the judgment of the Hon'ble Supreme Court cited by either side and those of Lucknow Bench, Kochi Bench and this Principal Bench.

22. At the outset we may observe at the cost of repetition that so far the judgments of this Principal Bench, Lucknow Bench and Kochi Bench are concerned, there is no conflict of opinion so as to require adjudication about the correctness of either of the views by this Larger bench. Therefore, we are not detaining ourselves on that.

23. Taking up the submissions made by the learned counsels; so far the first submission made by the learned counsel for the petitioners are concerned, the submission is quite attractive and accordingly we have seriously considered the same that when a person with particular category can be promoted why he can not be given extension and that whether it is a paradox which has been removed or sought to be removed by the new policy of 20.09.2010, but find the submissions to be not capable of being accepted. We may straightaway observe that right to get promotion in the cadre is a natural phenomena and right to be considered for such promotion is the legally vested right of the employee subject to fulfilling the requisite eligibility conditions. Obviously, if the employer had laid down parameters for eligibility

for promotion, which eligibility may have permitted medical P2 category persons also for promotion but then so far extension is concerned, right to get extension is neither a normal phenomena of service nor is it a vested right. On the other hand as pointed out by the learned Additional Solicitor General that it was in view of giving effect to the Government of India letter dated 30.05.1998 whereby the retirement age of the employees was increased by two years and accordingly, Ministry of Defence had also increased the retirement age of the various categories of persons enblog carving out exception for certain categories of persons mentioned in the letter dated 30.05.1998 and 03.09.1998 and various categories of persons whose retirement age was not enblog increased, for them orders were issued by way of policies to screen them for extension of their service for two years. Obviously, so far services as such is concerned, the tenure was not increased but there was a screening laid down to be held and on the individual fulfilling the criteria laid down for screening was held entitled to two years extension of service. This was all together new policy for giving extension of two years service and for that willingness was also required to be obtained. This is a different story that at the discretion of the employer unwilling person also could be given extension while medical fitness criteria was laid down, obviously laying down that the candidate should be of AYE category then physical fitness criteria and ACR criteria was laid down. Not only this in that policy it was further laid down that the screening is to be done three years in advance before due date of retirement. Of course that period shall reduce to two years but then the screening in advance by certain number of years was very much the sine-qua-non and as per the policy even the person who had been approved on the

screening was required to continue to fulfil the eligibility criteria not only till the time of commencement of extension of service but also during the entire period of extension . It is always a choice of the employer if the employer would like to apply the best of the lot for giving extension and in that process if the parameters happened to be stringent as compared to the parameters available to the entitled individual to complete the original tenure of service, including earning promotion, in our view it can not be said that any paradox existed nor can be said that lying down the stringent parameters for extension is or was in any manner unfair or even harsh.

24. It is after expiry of practically 12 years that the policy had undergone a change. Here again we would like to observe that lying down a new policy it was a matter of removal for paradox as alleged by the petitioner but the petitioners but it is a matter of laying down fresh parameters all together and in that process may be that some parameters had remained common in the two policies while some parameters were liberalized and at the same time some parameters were made still more stringent. In that view of the matter it can not be said that there was only compassion which had worked with the employer or that any paradox was removed . Significantly the requirement of screening in advance by two years was very much material. In our view the new policy did not simply water down the earlier policy nor did it simply liberalize parameters, rather it had laid down different parameters in which process some parameters were liberalized still some parameters were made more stringent, the petitioners are neither entitled to invoke compassion nor sympathy nor can it be said that there would be any violation of the Article 14 of the Constitution.

25. So far as the second submission is concerned, about the action of the policy being made to be effective from 01.04.2011, being arbitrary is concerned, in our view this submission also has no force. As found above, the new policy was not a policy laid down only to ameliorate the conditions of the individual but is a new policy laying down different parameters. Obviously, rather, of necessity as and when an employer lays down or frames a new policy some date has to be fixed from which date it is to be effected and unless that date so fixed, is hit by the mischief of judicially pronounced parameters, no interference can be made therein. In the present case, this is a different story that the validity of the cut off date has already been upheld by the judgment of Lucknow Bench in Sub. Brijesh Kumar's case as noticed above, still we have again re-examined the issues and find that the fixation of cut off date does not suffer from any of the wises making it presumable to be interfered with nor it hit with Article 14 of the Constitution. Rather, as submitted by learned Additional Solicitor General that to start implementation of the policy, it is required to be disseminated to all concerned authorities and enable them to carry out preparatory work by the Record Office and Line Directorates. We find this to be the precise reason mentioned in para 9 of the earlier letter dated 20.09.2010. Obviously, for constituting Screening Boards and starting to undertake screening, good amount of spade work has to be done including individually the individual required to be screened, assimilating necessary dates of those individuals, constituting Screening Boards at different places and so on so forth and looking to the large number of employees required to be screened, practically six months time as was contemplated to be required and taken into account for fixing the cut off date can not be said to be arbitrary. Even in the earlier policy of 1998 also, six months time was contemplated. Then two judgments of the Hon'ble Supreme Court relied upon by the learned Additional Solicitor General being in Rama Rao's case and Achhibar Maurya's case to support our this view apart from the judgments taken into account and followed by the Lucknow Bench being those in *Dr.Ami Lal Vs. State of Rajasthan reported in*

1997 Vol.6 SCC page 614, Government of A.P Vs. N. Subrayadu and others reported in 2008 Vol 14 SCC page 702, Council of Scientific and Industrial Research Vs Ramesh Chand Aggarwal reported in 2009 3 SCC page 35 and Hardev Singh Vs. Union of India 2011 Vol 10 SCC page 121 which in turn can proceeds on the basis of good number of earlier judgments of Hon'ble Supreme Court then the judgment of in *Balco Employees Union Vs. Union of India reported in 2002 (2) SCC 333* does also support this preposition . Thus we do not find any force in this submission either.

.26. In addition we may also rely upon the judgment of Hon'ble Supreme Court in *Krishna Kumar Vs. Union of India reported in 1990 Vol. 4 SCC page 207* being the Constitutional Bench judgment so also that in *V. Kasthuri Vs. Managing Director, State Bank of India reported in AIR 1999 SC page 81* where after dealing with and discussing the judgment in D.S.Nakara's case *(D.S.Nakara Vs. Union of India reported in 1983 SC 130)*, the Hon'ble Supreme Court upheld the cut off date and permissibility of such fixation of cut off date. So far the judgment cited by the learned counsel for the petitioner in K.J.S Buttar's case is concerned, one thing is that in that case Hon'ble Supreme Court found the fixation of the date to be hit by Article 14 of the Constitution, likewise we also find that the question involved in Buttar's case was all together different in asmuch as in that case only rate of pensionary benefits of specified nature of pension was increased and entitlement to such increase of pension had been confined to the employees who had retired after cut off date and those who retired earlier were not held entitled which was found to be violative of Article 14, while in the present case, as held above, the policy of September,2010 is a new policy laying down different parameters and if it is made applicable or to be available only to a category of persons who are in service after 01.04.2013, it can not be said that fixing of this cut off date is in any manner bad so as to require interference.

27. Then we take up the next submissions made on the basis of the persons serving during the period 01.04.2011 to 31.03.2012 being deprived of the benefit of new policy despite the policy in its own terms having been made applicable from 01.04.2011.

28. Making this submission also it was submitted that when the policy was made applicable w.e.f. 01.04.2011, all those employees who are in service as on 01.04.2011 do become entitled to the benefit of new policy and since the petitioners fulfil the eligibility criteria for being granted extension they can not be denied extension. It was also submitted that even if hyper technically they are found to be not entitled still the policy should be read in a benevolent manner so as to extend benefit of this policy to them. As a limb of that very argument, it was submitted that the clarificatory letters are subsequent improvements and can not be said to be form part of policy and since those letters are also coming in the way of the petitioners they also should be strucked off In our view this submission also does not have force in asmuh as to start with we may observe that the new policy is a policy by way of a complete body providing complete mechanism of its operation and applicability right from the start point and therefore, when it is made applicable w.e.f. 01.04.2011, it necessarily means that it is to start its operation from the start point w.e.f.01.04.2011. In our opinion this start point of operation is undertaking of screening and therefore, screening is to take place in accordance with new policy w.e.f. 01.04.2011 from which date the policy has been made applicable. Since even an old policy as well as a new policy, the screening is to be undertaken two years before the scheduled date of superannuation or discharge, the obvious consequence is that the screening is to be only of those incumbents who are to get superannuated or discharged on or after 01.04.2013. Clarificatory letters may be not forming part of policy then the first one was issued immediately on 28.10.2010 itself and of course other one is of 11.01.2011 but then in our view even in the absence of

these letters a bare reading of the policy and in this scheme of things this is the only consequence with which clause and the policy was and is required to be implemented in that fashion only. Therefore, nothing much turns on these two letters. This is one aspect of the matter. The other aspect of the matter is that the employees who are continuing under the terms of their original engagement and are scheduled to superannuate or get discharged on or before 31.03.2013 so also the employees who are continuing on extension during this period and their extension had been cut short in accordance with the old policy are concerned, they are all employees who have already been screened under the old policy of 21.09.1998 and either have not been found suitable or approved for extension or did not remain eligible to have extension till commencement of the extension or who did not retain eligibility till completion of extension. However, the fact remains that all those persons have been screened under old policy. Admittedly the screening is to be undertaken only once and since it had already been undertaken in accordance with the policy of 1998, in absence of any expressed provision or any provision by necessary implication being there in the new policy, they can not be subjected to either second screening nor the earlier screening can be allowed to be reviewed or reconsidered. Obviously, therefore, they can not claim either second screening or review of the old screening or reopening of the screening already done.

29. Yet another aspect of the matter is, as rightly highlighted by the learned Additional Solicitor General that even if by erring infvour of the petitioners, the cases of such employees were to be reopened then this can not be done that only their cases be considered from the stand point as may be beneficial to them rather the reconsideration can possibly be directed on all the parameters meaning thereby that if those persons do not fulfil the other stringent parameters then also they have to go but at the same time once this is reopened, then the re opening is not only conferred to the 22 petitioners but in order to avoid flooding of the court with litigations, the

reopening to be undertaken qua all those persons falling in the same category with the obvious result that even the cases of those persons who have been approved under the old policy, will also have to be reopened to check as to whether they are entitled to extension under the new policy and the possibilities are not ruled out that large number of persons already approved, may be found to be ineligible as under the old policy the eligibility criteria tolerated up to 3 red ink entries while the criteria under the new policy tolerates only up to 2 red ink entries and therefore all those candidates who are having 3 red ink entries will have to be made to quit. This would result into a big upheaval apart from the fact that it is likely to do more harm than it likely to bring benefits a handful of persons and therefore also we do not stand advised even to lean in favour of the petitioners on this aspect, even if we were to liberally interpret the policy so as to provide benefit to maximum persons.

30 So far the judgments relied upon by the learned counsel for the petitioners being those in D. Janardhana Rao's case and M.Venkateswarlu's case are concerned, both of them deal only with scope of provisions of Rule 47 of Andhra Pradesh State and Subordinate Service Rules 1963 where under a cover was available for relaxation under certain circumstances and Hon'ble Supreme Court was judging the validity of the exercise undertaken or exercise of power by the concerned authority under the said Rule 47 with effect from particular date. As against which in the present case, the new policy does not contain any such provision for giving relaxation except those as contained in Note appended to para 3 of the policy dated 20.09.2010 and admittedly, cases of none of the petitioners fall in the said Note. Thus, so far as the petitioners are concerned, there is no power of relaxation reserved in the policy and therefore the two judgments relied upon do not help the petitioners.

31. So far as the judgment in KJS Buttar's case is concerned, that has already been discussed above, and found to be of no help to the petitioners.

32. Thus taken from any stand point, in our view, the petitions do not have merit and are liable to be dismissed and are accordingly dismissed. Parties are left to bear their own costs.

A.K. MATHUR
(Chairperson)

N.P. GUPTA
(Member)

S.S. DHILLON
(Member)

New Delhi
3rd January,2013
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