

**Central Administrative Tribunal
Principal Bench, New Delhi**

T.A. No.11/2013

Wednesday, this the 13th day of February 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri D Tiwari 293538-G MWO
Junior Armament Officer (JAO)
In ARC DG (S) Cabinet Secretariat
G-127 Nanakpura
South Moti Bagh, New Delhi

..Applicant

(*Nemo*)

Versus

1. Union of India
Through the Cabinet Secretary
Govt. of India Bikaner House (Annexe)
Shahjahan Road, New Delhi – 11
2. Air Officer Commanding
Air Force Central Medical Establishment
Subroto Park, New Delhi
3. Directorate General of Medical Services (Air)
Air Hq. R K Puram, New Delhi – 66

..Respondents

(Mr. D S Mahendru, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

This case has a very long and chequered career. The applicant joined as Flight Gunner, in the Indian Air Force in October 1981. He was re-employed on temporary basis as Junior

Armament Officer in the pay scale of ₹10000-15200 through order dated 20.07.2006. He was trained and was also subjected to medical examination. In the medical examination conducted on 17.08.2010, he was placed in the category of 'A4G4'. Taking this fact into account, the competent authority passed order dated 18.10.2010 declaring the applicant permanently unfit for Gunner Branch due to 'mixed hearing loss (RT) ear'. However, he was assigned some other duties.

2. The applicant filed W.P. (C) No.8405/2010 in the Delhi High Court challenging the said order. It was on 12.02.2013, that the Hon'ble Delhi High Court transferred the W.P. to this Tribunal and it was re-numbered as T.A. No.11/2013.

3. On 24.04.2014, learned counsel for applicant has withdrawn the T.A. stating that the applicant is a member of Armed Force and that this Tribunal has no jurisdiction to decide the dispute. Curiously enough, the applicant filed W.P. (C) No.7028/2015 challenging the order in T.A. The W.P. was disposed of leaving it open to the applicant to file R.A. before this Tribunal. Accordingly, R.A. No.83/2016 in T.A. No.11/2013 was filed. By referring to various stages and orders, the Tribunal passed order dated 30.01.2017 restoring the T.A. to original file.

4. The case was being listed from time to time. In November 2018, there was no representation on behalf of applicant. It was

directed to be listed on 29.01.2019 and despite that, the applicant is not forthcoming.

5. On their part, the respondents filed a counter affidavit, stating that the T.A. has become infructuous, as the applicant has retired from service on 31.12.2018. We have perused the records.

6. It is a case of re-employment of the applicant as Junior Armament Officer. By its very nature, the post requires complete physical fitness in all respects. In a medical examination, it was found that the applicant suffered some hearing disability. Even from the records, it is evident that in the course of one of the training flights, the eardrum of the applicant was broken and efforts were made to restore it. The latest of such medical examinations discloses that the applicant was not fit to hold the post of Junior Armament Officer. Whatever be the grounds urged by the applicant, this Tribunal cannot sit as an appellate authority, as regards the findings given by specialized agency. The question of jurisdiction was left open to be decided, but we are not addressing the same since the applicant is not forthcoming.

7. Be that as it may, the applicant has retired from service on 31.12.2018 and there is nothing, which can be done at this stage. Unlike in Civil Service, a combatant cannot be promoted or permitted to hold a post on notional basis, with retrospective effect.

8. We do not find any merits in this T.A. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 13, 2019
/sunil/