

**COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 24 OF 2009**

**IN THE MATTER OF:**

**Om Prakash (Ex. Sgt)**

Through Sh. T.N. Tripathi, counsel for the applicant

**.....Applicant**

Versus

**The Union of India and others**

Through: Ms. Jyoti Singh, counsel for respondents

**.....Respondents**

**CORAM :**

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Dated of Judgment : 19-1-2010**

1. The applicant has filed an application O.A. number 24 of 2009 before the Armed Forces Tribunal against the impugned order dated 11.2.2009 (**Annexure P-1**) by which his application for extension of service for a period of three years was rejected and seeking further direction for extension.

2. The salient facts of the application and counter are narrated in succeeding paragraphs.

3. The applicant was enrolled as an airman in the Indian Air Force on 7.2.1986 and was promoted to the rank of Sergeant (Sgt) on 1.8.2003. On completion of 23 years service the applicant submitted an application dated 29.6.2007 exercising his unwillingness to accept three years extension. Subsequently on 8.12.2008 the applicant wished to change his option which he claims is permissible under Appendix A to para 4(b) of AFO 11/99. The request was rejected on 16.2.2009 on the grounds of "interest of the service".

4. The applicant has submitted that there were pressing domestic reasons which compelled him to change his option from "unwillingness" to "willingness" for extension of service. It was further submitted that the applicant was in financial distress. It was stated that in similar cases personnel have been granted extension of service of 3/6 years and he was not being allowed to change his option that is violative of Articles 14 and 16 of the Constitution of India.

5. It was also brought out by the applicant that discharge on grounds of medical reasons should have followed the prescribed procedure.

6. The applicant has prayed that the Air Force Order AFRO/RRD/39 dated 11.2.2009, (**Annexure P-1**) which rejected his application for extension of service by three years, be quashed and he be granted extension of 3 years service.

7. The respondents in their reply have brought out that the request for change of option from "unwillingness" to "willingness" was not recommended by the commanding officer of the applicant in his "justification report". Extension of engagement of service cannot be claimed as a matter of right. It is a privilege and depends upon the discretion of the competent authority and it was stated that the discretion has been used after due consideration of relevant report. The Hon'ble Division Bench of the Delhi High Court has upheld the policy of Extension of Engagement in LPA No. 416 of 1998 filed by JWO Shankar Vs. UOI and others decided on 24.9.1998. The applicant was discharged from service on 28.2.2009 as per the provisions of AF Rules 1969, Chapter III, Rule 15(2) (b) on fulfilling the conditions of his enrolment. The applicant knew full well that option of unwillingness, once exercised, is final and no change is permitted under the rules. Extension is only provided to personnel consistent with their overall performance and those who meet minimum criteria as laid down in Para 4(a) to (g) of AFO 11/09. The applicant was in low medical category A4G4(P) and such low medical categories are only

granted extension through condonation board vide Para 4(c)(iv) of AFO 11/99. The applicant however was not discharged on medical or disciplinary grounds. He was discharged on completion of the conditions of his enrolment.

8. We have gone through the records and heard the arguments at length and also perused the judgment given in the case of *JWO Shankar Vs. UOI & Ors. Patent appeal No. 416 of 98 delivered on 24.9.1998*. The applicant was discharged on completion of his terms of engagement thus the contentions raised by the applicant that before his discharge medical invalidation proceedings by the medical board should have been conducted are not tenable. In this case the applicant had himself given his "unwillingness" thus he is debarred from changing his option as enumerated in AFO 11/99. The relevant portion of above mentioned policy is quoted as under. *Para 4(b) Willingness to Extend "Airmen willing to extend their engagement beyond 20 years shall submit Willingness Certificate as per appendix 'A' to this AFO. Airmen not willing to extend their engagement shall submit their Unwillingness Certificate as per Appendix 'B' to this AFO. Willingness/unwillingness Certificate must reach AFRO 18 months before expiry of Regular Engagement (RE). It shall be mandatory for all airmen to submit their willingness or unwillingness within the stipulated time schedule. An option once exercised will be treated as final and requests for change of option will not be entertained except under very exceptional and extreme compassionate*

grounds. *Those airmen who do not submit any option will be deemed to be unwilling for further extension of engagement and no request for grant of extension will be subsequently entertained by AFRO.....*” The applicant has not been able to put forward special circumstances on extreme compassionate grounds under which he could justify change of option. Further before granting extension justification report is required. In this case as per record the remarks of the Commanding officer did not recommend extension in the interest of service. The relevant report is as under “Remarks by Commanding Officer: *The Airman has been unable to perform his trade duty due to the physical condition involved ..... his performance, ..... has been far from satisfactory. Hence, extension of service may not be in the interest of the service – not recommended.*”. On the basis of the submission in this case the applicant had opted for “unwillingness” for extension, thereafter he had applied for change of option from “unwillingness” to “willingness”. This is not permissible ordinarily. Further the commanding officer also did not recommend grant of extension which is essential for extension. The applicant cannot claim extension of service as a right. He was not found suitable for extension. Thus the applicant has no case for extension. The judgment cited by the respondent side also supports the conclusion. It was observed in the judgment that “.... *an extension in service is not as of right.....*” On the basis of the aforesaid discussion the contention raised by the learned counsel, for the applicant, are

having no force of law. The application has no merit and it is hereby dismissed.

No orders as to costs.

**MANAK MOHTA**  
**(Judicial Member)**

**Z.U. SHAH**  
**(Administrative Member)**

**Announced in the open court**  
**Dated: 19-1-2010**