

**IN THE ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI.**

OA No.01 of 2010

LME KV Prakash

...Petitioner

Versus

Union of India & others

...Respondents

For the Petitioner : Mr. K. Ramesh, Advocate

For the Respondents: Mr. R.Balasubramanian, ASG with Mr.
J.S.Yadav, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN.S.S.DHILLON, ADMINISTRATIVE MEMBER

JUDGMENT
(1.8.2012)

BY CHAIRPERSON:

1. Petitioner by this petition has prayed that directions may be given to the respondent to promote the petitioner to the rank of Petty Officer w.e.f. 1.7.2007 as officially approved vide Promotion order with its inherent pay and allowances, extension of service and consequential grant of pension as also direct the respondents to convene a Release Medical Board for assessment of Disability

Percentage in terms of Guide to Medical Officers (Military Pensions), 2002, and grant the Disability Pension as quantified.

2. The petitioner was enrolled on 18.1.1993 as a sailor in Navy. After putting 15 years of service, he received his promotion order for the rank of Petty Officer. The promotion order was issued on 20.12.2007 though entitled w.e.f. 1.7.2007. In view of not having residual service of 10 months, he could not be promoted to Petty Officer thereby denying him rank, service extension, pay and allowances and other benefits and he was discharged from Indian Navy on 31.1.2008. It is alleged that promotion order was wrongly delayed from 1.7.2007 to 20.12.2007 without any reason. It is also pointed out that if hypothetically the promotion order was received by 1.7.2007, the applicant could have been promoted with condonation of 3 months so that the residual service of 10 months upto 31.1.2008 could have been looked into. However, due to delay the petitioner could not avail his promotion.

3. A reply has been filed by the respondents and they have taken the position that it is true that petitioner was enrolled on 18.1.1993 for 15 years and was released from Naval Service on 31.1.2008 on completion of initial engagement of 15 years service. The

petitioner on being offered further re-engagement, gave his unwillingness for further service on 16.3.2006. The petitioner had also submitted his unwillingness when he was selected to undergo Mechanical course vide INS Rana letter dated 253/1 dated-16.2.1999 for advancement into higher pay group. The petitioner on his eligibility for acting promotion was offered further two years re-engagement so that he could have obtained his Boiler Room Watchkeeping certificate, failing which one is reverted to his lower rank. His refusal for extension of engagement resulted in the petitioner's non-promotion and this is not related to the delay in issue of promotion order. Since the petitioner has given his unwillingness that has resulted in his ineligibility for promotion. It is also pointed out that at the time of release from service a release Medical Board is held for all sailors. The petitioner's release Medical Board was conducted on INHS Kalyani and duly approved by the Commanding Officer on 18.10.2007 and he was duly informed about his disability categorization wherein the petitioner was informed that he was not entitled to Disability Pension in terms of Regulation 100 of Navy (Pension) Regulation, 1964. It is also pointed out that the applicant has misled the Court by concealing material facts as Medical Board has found that he is not suffering

from any disease attributable or aggravated by the service. It is also alleged that petitioner has tampered with the stamp of RK Verma, Surgeon Commander, INHS Kalyani. The Abstract of AFMSF16/17 has been produced and it shows that petitioner's has not produced the correct documents. It is also pointed out that Sailor on promotion to Acting Petty Officer Engineering Mechanic is required to obtain Boiler Room Watchkeeping certificate within two years of being promoted in order to remain in that rank otherwise he is supposed to be reverted to Leading Engineering Mechanic vide Article 24 para 9 Chapter II of Navy Instructions 2/96 and IHQ MoD policy letter RP/2025/ME dated 17.5.2007. The applicant was also in Medical Category S2A2 (Pmt) for Disc Disorder and was in Sea Going medical category with restrictions. Hence he could have been placed in sea billet only under the supervision of a medical officer. As the applicant was on his own accord, willingly leaving service on 31.1.2008 and was required to report to the Release Centre on 1.1.2008 for release formalities, there was no time to transfer the applicant to afloat unit to obtain Boiler Watch Keeping Certificate/Internal Combustion Engine competency certificate which is required for the confirmation in the rank of Acting Petty Officer Engineering Mechanic. The applicant

also did not express his willingness to sign for further service on promotion as no such request was received at the Bureau. Hence the applicant was released from service without promotion to Acting Petty Officer Engineering Mechanic.

4. Therefore, in these circumstances petitioner has himself given his unwillingness and he was in low medical category and he also lacked the necessary Boiler Room Watchkeeping Certificate, therefore he could not be given benefit of so called promotion.
5. Hence we don't think that this is the case which requires any interference by this Court and the same is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS Dhillon]
Member (A)

New Delhi
1st August, 2012