

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

31.

O.A. No. 194 of 2012

Naib Risaldar LM Pandey

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. Archana Ramesh with Mr. K. Ramesh, Advocates.

For respondents: Mr. V.S. Tomar, Advocate.

CORAM:

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

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

ORDER

20.07.2012

1. Petitioner by this petition has prayed that the Respondents may be issued directions to quash and set aside RVC Records Letter dated 8th February 2012 being contrary to the main Army HQ Policy Letter dated 21st September 1998 and further issue directions to the Respondents to grant the Petitioner extension of two years service from 30th October 2012 to 30th October 2014 in terms of Army HQ Policy Letter dated 21st September 1998 to meet the ends of justice. He further prays for adequate compensation.

2. Petitioner was enrolled in the Remount and Veterinary Corps on 18th October 1986 and he became Naib Risaldar during the tenure of service. Thereafter he applied for extension of his service on 1st January 2011. On account of some death in the family on 26th February 2011 he gave his unwillingness and immediately within six calendar days on 4th March 2011 on account of the advice of the family, he realised his mistake and again gave his willingness. His application was forwarded by the Commanding Officer.

Finally RVC Records rejected his application for willingness by the order dated 8th February 2012. Therefore, the Petitioner has challenged this order of rejection of his unwillingness by filing this petition.

3. A reply has been filed by the Respondents and the Respondents in their reply have stated that he was due for extension of service after his promotion to the rank of Naib Risaldar. He submitted his unwillingness certificate without any threat, coercion or inducement and accordingly the Board of Officers did not recommend his name for extension for two years. As per the extant policy issued by IHQ of MoD (Army) dated 6th May 2003 it is submitted that option once exercised cannot be allowed to be changed because the Board of Officers has to finalise the list and forward the same to various authorities for their necessary action.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the Petitioner has strenuously urged before us that as per the policy once willingness is given it is final and then Government should have acted upon that. Since it is final then even if he has given his unwillingness, though unwillingness was revoked, should have ignored it. Therefore according to learned counsel for the Petitioner as per the policy once willingness is given it becomes final and revocation is not possible then act of unwillingness for revocation has no value. Learned counsel for the Petitioner has invited our attention to a decision of the Hon'ble Supreme Court in **Dharampal Singh v. Union of India (2007) 15 SCC 770**.

6. We have bestowed our best of considerations. It is true that if before his unwillingness is communicated then the Petitioner would have been appointed on the basis of the first willingness certificate given by him because as per the policy once a willingness has been given that would be final but unfortunately within very short span of time Petitioner gave willingness. Therefore the authorities has not considered his ~~was~~ willingness and adhered to follow the unwillingness of the Petitioner. The judgment cited by learned counsel for the Petitioner is a case in which a notice was been given for seeking voluntary retirement and before the date of voluntary retirement Petitioner revoke the notice of voluntary retirement. The case in hand is not similar to that of the judgment cited by learned counsel for the Petitioner as the law laid down in that case cannot have a guiding effect in the instant case. Therefore once an unwillingness is given unfettered, the Respondents have acted upon it. Subsequent withdrawal will not be available to Petitioner as number of formalities are required to be done. Consequently, there is no merit in this petition and same is dismissed with no order as to costs

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 20, 2012
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