

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 2071/2018

CDR SM AHMED

... Applicant

Versus

Union of India and Others

... Respondents

For Applicant : Mr. Inder Sen Singh and Mr. Shakti Jaidwal, Advocates

For Respondents : Mr. Tarunvir Singh Khehar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The case pertains to the rejection of the Applicant's request for further extension of re-employment till permissible age of 58 years vide order bearing No. RS/0867/REL/2018 dated 06.09.2018 passed by the Respondents. The applicant was prematurely terminated w.e.f. 18.01.2019. Hence the applicant has filed this OA and the reliefs claimed in Para 8 read as under: -

a) Call for the records leading to passing of the Impugned Order dated 05.12.2018 by the Respondents, thereby, rejecting Applicant's representation, and after perusal thereof, set aside said Impugned Order dated 05.12.2018 passed by the Respondents, denying further extension of re-employment in service to the Applicant till legally permissible age of 58 years;

b) Call for the records leading the decision of the Respondent No.2 to restrict re-employment in Navy up to 57 years of age, and after perusal thereof set aside the said decision of the Respondent No.2;

c) Set aside the Release Order dated 06.09.2018, whereby, the Applicant has been ordered to be released from the Re-employed service in the Indian Navy w.e.f. 18.01.2019 on reaching 57 years of age;

d) Direct the Respondents to consider the Applicant's case for grant of extension of re-employment in the Indian Navy till legally permissible age of 58 years, on merits/ his overall service profile vis-à-vis laid down eligibility conditions and grant him re-employment up to 58 years of age, if, he is found fit in said consideration; and/or

e) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

BRIEF FACTS OF THE CASE

1. The Applicant was enrolled in the Indian Navy on 26.12.1980 and thereafter got commissioned on 01.10.1994. The applicant had served a total of 36 years of regular service in the Indian Navy.

2. The applicant retired on 31.05.2016 and was re-employed in the Indian Navy for one year from 01.06.2016 to 30.06.2017 vide IHQ, MOD (Navy) letter No. RS/0867/RE/2016 dated 29.04.2016 and his re-employment was further extended till 19.05.2018 vide IHQ, MOD (N) letter No. RS/0867/RE/B-55/2017 dated 19.04.2017. It was further extended again till 19.05.2019 i.e., up to the age of 57 years vide IHQ, MOD (Navy) letter No. RS/0867/RE/B-56/2018 dated 02.02.2018. Vide an order was passed on

06.09.2018 by the respondents, the applicant's re-employment was terminated pre-maturely, denying him the benefit of serving as a re-employed officer till the age of 58 years as permitted by law. The applicant submitted his willingness for re-employment to the respondents and subsequently wrote two letters to the IHQ. MOD (Navy) on 03.10.2018 and 05.10 2018, respectively to extend his re-employment. The case of the applicant for further extension of re-employment was rejected by the respondent vide order dated 13.11.2018, which the applicant submits was so done without any cogent reasons.

3. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the Aft Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Navy on 26.12.1980, and was subsequently commissioned as an officer on 01.10.1994, and retired from active service on 31.01.2016 after serving the country for 36 years.

5. The learned counsel for the applicant submitted that in 1958, the government had promulgated a policy through Navy Instruction (NI) NI 5/S/58, which had allowed Navy officers to be re-employed after retirement

until the age of 56 years, contingent upon service requirements and adherence to specified terms and conditions.

6. The learned counsel for the applicant, submits that on the simple reading of the provisions of NI 5/5/58, it is evident that services of a re-employed officer can be terminated with a three months' notice, i.e., prematurely, by the government or the Chief of the Naval Staff on the ground that the services are no longer required. The counsel contended that since the benefit of increase in age for re-employment (i.e., up to 58 years of age) by two years has been extended by other two Services, and restricts the same by the Indian Navy to one year by releasing the officers from re-employment prematurely at the age of 57 years is not only arbitrary and discriminatory but also violative of Articles 14 and 16 of the Constitution of India.

7. The learned counsel, further invited our attention towards a judgment of the Hon'ble High Court of Delhi in the case of *Lt. Col. S.P.S. Rekhi Versus Union of India & Ors. 99(2002) DLT 238* to contend that vide the said judgment dated 23.01.2002 the petitioners therein were held entitled to serve as re-employed officers up to the age of 58 years. An extract of Para 12 of the judgment is as under: -

"12. In view of the aforesaid position and the development taking place subsequent to filing of the writ petition fortifying the plea raised in the present petition, I see no reason why the

petitioners should be deprived from the benefit of as is being available to other two wings of the armed forces. There cannot be any discrimination between similarly situated persons and the benefits given to one have to be given to the similarly situated person..."

8. Furthermore, the learned counsel for the applicant submitted that the action of the Indian Navy to restrict the age of re-employment to officers to 57 years is ultra vires the "Statutory Provision" of extension of re-employment till the age of 58 years, which was promulgated by the Government of India by issuing an amendment to Navy Instruction i.e., NI/5/S/58 vide order bearing No. RS /0867 /99 /NHQ /2288/US(P)/ D (N-1I)/2000 dated 12.01.2001.

9. Learned counsel for the applicant further submitted that the applicant having fulfilled the eligibility conditions specified in NI 5/S/58 for re-employment for three years was given extension till 17.01.2019 up to the age of 57 years. Further the learned counsel submitted that as per his knowledge the sanctioned strength of officers in cadre of the applicant i.e., SDS Cadre was 38, whereas, as on the date only 26 officers including the applicant were borne in the cadre and thus, the denial of extension for re-employment is not only arbitrary but also without any reason.

10. Per Contra, the learned counsel for the respondent submitted that the Navy Instruction 5/S/58 contains the provisions governing grant of re-

employment after retirement in the Indian Navy and Para 1 of the Navy Instruction reads to the effect:

"Permanent Commission and Short Service Commission officers of the Indian Navy of the substantive rank of Cdr and below, on or after retirement /release, may be re- employed, at the discretion of the Chief of Naval Staff up to the age of 55 years (subsequently amended to 56 years in 1974) depending upon service requirement".

11. The learned counsel further submitted that the maximum age up to which re-employment can be granted was increased to 58 years vide Ministry of Defence letter dated 12.01.2001. The learned counsel further submitted that the Government of India, Ministry of Defence vide its letter dated 17.08.2001 has delegated the power of re-employment of officers up to the rank of Cmde to the Chief of Personnel at Integrated HQ of MoD (Navy). The learned counsel contended that it is the discretion of the Chief of the Naval Staff to take a final view on the re-employment of officers based on manpower requirements and other factors necessary for consideration for re-employment. Further, the Indian Air Force though, is governed by similar policy, does not grant any re-employment.

12. The learned counsel for the respondents further submitted that the applicant's contention of premature termination of his re-employment and prayer for re-employment up to the age of 58 years is not maintainable as there is no premature termination of his re-employment. The learned counsel

submitted that the applicant completed his full tenure for which re-employment was granted to him. Further, the learned counsel submitted that as per the provisions of NI 5/S/58 read with MoD letter dated 17.08.2001, the Chief of the Naval Staff has complete authority to grant/reject re-employment to an officer and the decision to curtail re-employment up to 57 years has been taken after having factored prospective manpower planning into consideration.

13. The learned counsel further submitted that re-employment is a contractual engagement and can be terminated by the employer, thus it is not a right of the applicant to force the employer to consider the eligibility for one year and the grant of re-employment to officers after retirement depend on the manpower required for the job, unless and until there is any requirement, the Armed Forces cannot re-employ on the whims and fancies of the officer seeking re-employment on the basis of any provision available for it and contended that, it is a discretion of the respective services and the appropriate authority to decide about availing such a provision for re-employment of the retired personnel based on manpower requirements and other factors necessary for consideration for re-employment.

14. The respondents further submit that it is apposite to mention herein that the present application is barred by estoppel, as the applicant cannot challenge the process of him not been granted extension once he has

taken part, been considered and his service not been extended, and reliance in relation thereto was placed by the learned counsel for the respondent on the verdict of the Hon'ble Supreme Court of India in the case of *Ashok Kumar & Anr. Vs. State of Bihar, (2017) 4 SCC 357* wherein it was held that a person who consciously takes part in the selection process cannot thereafter turn around and challenge the method of selection and its outcome.

ANALYSIS

15. After perusal of the documents produced and arguments advanced, we are of the considered view that the Navy Instruction 5/S/58 encompasses the provision governing the grant of re-employment after retirement in the Indian Navy. Para 1 of the said Navy Instruction stipulates that "Permanent commission and Short Service Commission officers of the Indian Navy of the substantive ranks of Cdr and below, on or after retirement/release, may be re-employed at the discretion of the Chief Of Naval Staff up to the age of 55 years (subsequently amended to 56 years in 1974) depending upon service requirement", and the maximum age up to which re-employment can be granted was further increased to 58 years vide Ministry of Defence letter dated 12.01.2001. Thereafter, the power for re-employment, of officers up to the rank of Commodore was delegated by the MoD to IHQ of MoD (Navy) to take the final view in the matter on re-

employment based on manpower requirements. After perusal of the documents and policies, it can be made out that from 2014 onwards no re-employment has been granted till date up to the age of 57 to any eligible officers. Hence, the contention of the applicant that he has been discriminated in violation of Articles 14 and 16 of the Constitution of India holds no ground. The reliance placed by the applicant on the verdict of the Hon'ble High Court of Delhi in *Lt. Col S.P.S. Rekhi (supra)* is wholly misplaced in as much as para 3 of the said verdict makes it expressly clear that there was a considerable deficiency of regular officers in the Army since long. In the instant case, the respondents have categorically stated through the counter affidavit dated 11.01.2019 submitted on their behalf that the decision of the Indian Navy to grant re-employment since 2014 is as per manpower requirements.

16. Furthermore, in view of the verdict of the Hon'ble Supreme Court of India in *Ashok Kumar & Anr. Vs. State of Bihar (supra)*, the applicant having consciously taken part in the selection process cannot thereafter turn around and challenge the method of selection and its outcome.

17. We are of the considered view that the applicant has no right incumbent upon him to be re-employed up to the age of 58 years, since it is the prerogative/ discretion of the Chief of Naval Staff, as per Para 1 of NI 5/S/58; to take a final and concluding view in terms of re-employment based

on manpower requirements and appointments available for consideration in re-employment. Thus, we are not inclined to grant any relief in the said O.A.

The present O.A. stands dismissed, being devoid of merit.

Pronounced in the open Court on this 7th day of October, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)