

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

OA 2195/2019 WITH MA 3093/2019

Ex CHAA Mohammed Zulkarnain ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Dr. V.S. Mahndiyan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking following reliefs:

(a) *Quash and set aside the Impugned Order ADM/0101/550032-Z/A dated 24.06.2015 and Impugned order no. ADM/0101/50032K dated 18.12.2014.*

(b) *Direct respondents to Reintstate the applicant with all consequential benefits and grant him 05 years of re-engagement w.e.f. date of discharge.*

OR

Direct respondents to grant service pension after addition of 05 years of notional service to the period of 10 years which the applicant has already served w.e.f. Date of discharge.

(c) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant.*

2. The soldier was enrolled in the Indian Navy on 06.08.2006 as Direct Entry Diploma Holder (DEDH) Entry with initial engagement of 10 years, scheduled to expire on

05.08.2016. During his service, he was selected for deputation abroad on board INS Vikramaditya, for which he rendered his unwillingness dated 02.07.2012. Admittedly, applicant requested for re-engagement and revocation of unwillingness, which was not approved vide Commodore Bureau of Soldiers (CABS) letter dated ADM/0101/550032-Z/A dated 24.01.2015. Aggrieved by aforesaid rejection, the applicant has approached this Tribunal.

3. It is the case of the applicant that the applicant gave unwilling from deputation and not from further service due to his domestic issues, and that the applicant worked hard for resolving his personal issues and ultimately his domestic issues were resolved, and therefore, the applicant sought to revoke his unwillingness.

4. Ld. Counsel for the applicant submits that the Commanding Officer of the applicant vide letter No. 255/158/1 dated 15.10.2014 and vide Fax message 255/156/1 dated 22.10.2014 appreciated the professional knowledge and skills of the applicant while recommending for revocation of unwillingness from service.

5. It is further the contention of the applicant that the HQ, Goa Naval Area examined the case of applicant and strongly

recommended the revocation of unwillingness of the applicant vide Fax message 21/228/31/2 dated 28.10.2014 and vide letter dated 37/253/1 dated 03.11.2014 while forwarding it to HQ, Western Naval Command.

6. Elaborating further, Ld. Counsel submits that the HQ, Western Naval Command examined the case of the applicant for revocation of willingness and recommended for revocation of unwillingness and forwarded it to Commodore Bureau of Sailors (CABS) vide letter no. AP/9871 dated 02.12.2014, but the CABS rejected the applicant's case ignoring all the recommendations vide letter no. ADM/0101/50032K dated 18.12.2014.

7. Ld. Counsel further submits that even the Commanding Officer has opined that the applicant is asset to the department and is the only qualified HP ground runner currently in the stream, and that the continuation in service of the applicant would bolster Sea Harrier fleet operations till the proposed draw down, and will benefit future inductions.

8. Drawing our attention to the Policy letter no. RP/0805/Policy dated 17.07.2014, Ld. Counsel submits that the intention of the aforesaid policy was to retain skilled and motivated manpower, but the applicant could not apply for

the waiver during the short promulgated period due to high tempo of operations and no availability of latest policy letter in force, vide which, rejecting the applicant's request for revocation of unwillingness for re-engagement would defeat the entire purpose of the policy.

9. Relying on the Navy Order 02/2007, Ld. Counsel submits that the re-engagement of the sailors is governed by Navy Order 02/2007, which repealed the earlier Navy Order 17/94 in this regard, and the non-obstante clause in Para 9(c) of the aforesaid Navy Order 02/2007 provides that notwithstanding the above, the sailors of Artificer Cadre and Submarine Branch will be governed by separate re-engagement norms in force time to time, but with no separate norms for Artificer cadre as contemplated in Para 9(c), his re-engagement ought to have been governed by the aforesaid Navy Order, and in line with the same, he is entitled for re-engagement of further five years, in light of the policy dated 21.11.2006.

10. At the outset, it is vehemently argued by the Respondents that the instant OA is barred by limitation under Section 22 of the AFT Act, 2007, as while the impugned order dates back to 24.06.2015, the OA was filed on 25.11.2019,

almost five years after the cause of action arose, and therefore, this OA deserves to be dismissed on the ground of delay and laches alone.

11. With respect to submissions on merits, per contra, it is submitted by the Respondents that admittedly, the applicant submitted the certificate with effect to his willing/unwillingness for further extension, and that one time waiver to apply for re-engagement was accorded to all sailors who have submitted their unwillingness for further service previously except those who have been considered for/granted Honorary Commission.

12. Ld. Counsel further submits that this one-time waiver arrived with a clear mandatory guideline that such applications for re-engagement was required to reach Bureau of Sailors (CABS) by 31.07.2014 vide Para 3 and 4 of RP/0805/Policy dated 17.07.2014, but the applicant did not comply with the same, and that he is not entitled for the benefit granted vide the aforesaid waiver.

13. Responding to the arguments of the applicant with respect to Navy Order 02/07 and relying upon the judgment of a Coord Bench of Armed forces Tribunal in case of **MMK Pasha vs UOI & Ors in OA No 11/2012**. Ld. Counsel submits

that the Para 4 of the Navy Order stipulates that the grant of re-engagement is subject to service requirement, and is not to be construed as a matter of right of the employee.

14. We have heard the arguments of either of the parties at length and have perused the material placed on record, including policies and letters. The only short question that is to be adjudicated in the instant case is whether the applicant is entitled for revocation of unwillingness for extension and resultantly reinstatement in service as prayed for by him ?

15. Before we proceed to adjudicate, it is pertinent to refer to relevant Paragraphs of Navy Order 02/2007. Navy Order 02/07 governs the re-engagement of Sailors. The initial period of enrolment of a Direct Entry Diploma Holder is 10 years and he can be re-engaged if he fulfils the conditions as per para 4 of the Navy Order which are as under:

“(a) Out of three annual assessments immediately preceding. Re-engagement he must have at least two assessments of character and efficiency not below “VG” and “SAT” respectively.

“(b) Must have been recommended by the Commanding Officer as suitable in all respects. (c) Must have been declared medically fit for satisfactorily carrying out the duties required of him. (d) The manpower requirements of the service/cadre must warrant his re-engagement.”

16. Para 5 provides to the effect that a final decision regarding the re-engagement will be taken on the basis of the

overall performance of the Sailor during his entire service as reflected by the factors mentioned therein. The Commodore, Bureau of Sailors is the authority to grant re-engagement. According to para 9 (a) and (b), the re-engagement shall not be less than 2 years and not exceed 5 years. Para 9 (c) of the Navy Order is as under:

“Notwithstanding the above the sailors of Artificer Cadre and Submarine Branch will be governed by separate re-engagement norms in force from time to time. Sailors of Submarine Branch, on expiry of initial engagement, will be further re-engagement in the Submarine Cadre subject to availability of vacancies in the cadre. Otherwise, if re-engaged, they will be reverted to general service. Therefore, at the time of requesting re-engagement, they are to give an undertaking as per Appendix ‘B’ to this order that in case of Submarine Cadre becoming overborne they are liable to be reverted to general service.”

17. It is clear from para 9 (c) of the Navy Order 02/07 that the Sailors of Artificer Cadre, to which the Appellant belongs, will be governed by separate re-engagement norms in force from time to time. On being asked to show the norms applicable to Sailors of Artificer Cadre, counsel appearing for both sides submitted that there are no such norms. The non obstante clause in para 9 (c) suggests that the conditions prescribed for re-engagement will not be applicable to Sailors of Artificer Cadre. As no norms as contemplated in para 9 (c) have been framed, the re-engagement of Sailors of Artificer

Cadre will have to be necessarily governed by the Policy dated 21.11.2006.

18. At this moment, we find it pertinent to refer to the policy dated 21.11.2006 which provides as under:

"1. The DEDH Sailors have been recruited with an initial period of engagement of 10 years. DEDH Sailors will be eligible for re-engagement in accordance with NO (STR) 17/94 as amended from time to time.

2. The re-engagement is to be granted for 5 years till 15 years' of service and thereafter in accordance with NO (STR) ibid."

19. A perusal of aforesaid policy clarifies that it does not deal with the issue of unwillingness, or revocation of unwillingness, and while the central issue pertains to unwillingness, it would not be appropriate to presume anything from the aforesaid policy letter, specifically when Para 9(c) of the Navy Order provided non-obstante clause, with respect to period of re-engagement, not the issue of willingness or unwillingness for re-engagement, and therefore, we find it appropriate to refer to Navy Order 02/2007 for the same, which vide Para 13 specifies as under:

13. Unwillingness for Re-engagement

(a) On publication of Expiry of Engagement Serial if a sailor does not wish to re-engage for further service a certificate of unwillingness as per Appendix 'D' to this Order is obtained from him. A copy of this certificate is to be retained with sailor's Service Documents and another forwarded to the Bureau of Sailors, Mumbai.

(b) Requests for signing for further service from sailors who have once expressed unwillingness, are not to be entertained under any circumstances, eg. changed domestic circumstances, loss of prospective employment opportunity etc. as this upsets manpower planning, recruitment and progress of pension papers.

(c) However, sailors who have once expressed their unwillingness to sign for further service and subsequently wish to re-engage on promotion, will be considered for re-engagement only if they are willing to sign for a minimum period of two years. In such cases, the request is to be put up atleast nine months prior to the date of release.

20. Para 13(b) of the Navy Order 02/2007, clarifies to the effect that once a sailor has expressed unwillingness, revocation or signing for further service cannot be entertained under any circumstances, including changed domestic circumstances, which is the case of the applicant, as he has rendered his unwillingness for deputation, due to domestic circumstances, as specified by him.

21. Furthermore, it is important to emphasise that irrespective of the Navy Order 02/2007, the competent authority has granted one time waiver to revoke the unwillingness, vide its RP/0805/Policy dated 17.07.2014 within specified time frame, was to be received at CABS by 31.07.2014, which has admittedly not been acted upon by the applicant; it is also important to take note of certain relevant provisions of Navy Order 02/2007 which reads :

3. *Artificers.* Under the provisions of Regulation 269 of Regs Navy Part III as amended vide RO 363 dated 28 Dec 1988 all Artificer Apprentices (from batch A-91/88 onwards), Navy Entry Artificers and Mechanics are enrolled for an initial period of 20 years, including their training period calculated from the date of their enrolment. Direct Entry Diploma Holders (DEDH) may be enrolled for a period of 10 years.

Re-engagement

4. *Principles of Re-engagement.* Grant of re-engagement is subject to service requirement, and is not to be construed as a matter of right. Depending upon the requirement of service, sailor and be re-engaged only if he fulfills the following conditions :-

(a) to (d) xxx xxx xxx

5. *Criteria for Re-engagement*

(a) *Sailors fulfilling the conditions laid down in Para 1 above, are considered for re-engagement. However, a final decision regarding grant or otherwise of re-engagement in a particular case is taken based on the overall performance of the sailor during his entire service as reflected by the following factors :-*

(i) to (ix) xxx xxx xxx

(b) *The sailors will not be re-engaged if they have :-*

(i) xxx xxx xxx

(ii) *Expressed unwillingness for further re-engagement.*

(iii) to (v) xxx xxx xxx

6. *Occasion for Re-engagement.* A sailor is required to exercise his option for re-engagement for further service on the following occasions:-

(a) to (b) xxx xxx xxx

(c) *On selection for Deputation abroad for new acquisitions/refits/courses and postings etc.*

(d) xxx xxx xxx"

22. With respect to the argument of the applicant that he and the Commanding Officer were not aware of the one time waiver policy, we find that the argument is a frivolous one, noting the fact that the copy of the aforesaid policy letter was marked to all the Commands including Goa Naval Area,

thereby, specifying that the unawareness of law is not an acceptable excuse.

23. It is also relevant to take note of observations of Hon'ble Apex Court in the case of **Union of India vs. RP Yadav, 2005(5) SCC 325** who while looking into factom of re-engagement, cancellation of re-engagement and release of service have examined the provision of Navy Order (Str) 17/94 and held that :

"16. Reliance has been placed on Navy Order No. (Str) 17 of 1994 by learned Additional Solicitor General in which are contained the provisions regarding re- engagement of sailors. In introduction of this Navy Order it is stated inter alia that the period of enrolment in respect of non Artificer/Artificer sailor and terms and conditions governing their further re-engagement of service have been laid down in this Navy Order. In clause (4) it is declared grant of re- engagement is subject to service requirement, and is not to be construed as a matter of right. Depending upon the requirement of service a sailor can be re- engaged only if he fulfills the conditions set out in clause (4). The criteria for re-engagement are provided in clause (5) of the Order.

.....
"21. The provisions of Navy Order (Str.) 17, leave no manner of doubt that re- engagement of sailors can neither be claimed by a sailor as a matter of right nor can cancellation of re-engagement and release from the force be claimed by a sailor as a matter of right. It is to be decided by the competent authority keeping in view the relevant factors, the most important one being the service requirements."

13. Navy Order (Str) 17/94 which was superseded by Navy Order (Str) 02/2017 (annexure A1) also states at Para 4 with effect to "the period of enrolment in respect of Non-Artificer/Artificer sailors and terms and conditions governing their further re-engagement of service that :

"Re-engagement

4. Principles of Re-engagement. Grant of re-engagement is subject to service requirement, and is

*not to be construed as a matter of right. Depending upon the requirement of service, a sailor can be re-engaged only if he fulfills the following condition:
.....”*

24. It is pertinent to note that this application has been filed after an inordinate delay of about 1000 days as per MA 3093/2019 from the date of rise of cause of action, and that the claim of the applicant not being of continuing nature, nor giving rise to continuing cause of action is barred by the limitation as enshrined under Section 21 of the AFT Act, 2007. It becomes relevant to refer to the observations of the **Hon’ble Apex Court** in the case of ***Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai [(2012) 5 SCC 157]***, on the issue of delay and laches, wherein Hon’ble Supreme Court has held that:

“No doubt, sufficient cause should be construed liberally on facts without any hard and fast rule and substantive rights of parties cannot be ignored on account of delay, but a distinction must be made between delay of a few days and inordinate delay causing prejudice to the other side.”

25. While dismissing the petition, the **Hon’ble Supreme Court** in the judgement passed in ***C. Jacob v. Director Geology & Mining & Anr reported in (2008 (10) SCC 115)*** had held as under:

“a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence”

26. We have also carefully perused the judgment of Hon’ble Apex Court in the case of ***Ved Prakash Vs UoI in Civil***

Appeal No 11933 of 2016 as relied upon by Ld Counsel for Applicant and find that the facts of both cases are quite distinct from each as in the case before Hon'ble Supreme Court was related to completion of mandatory sea service requirement which is not provided for the No 02/2007, whereas the instant case is clearly covered by the provisions of Letter No RP/0805/Policy dated 23.02.2015 wherein the relevant Para 3 covering the case under consideration reads as follows :

"3. Sailors who have rendered unwillingness/LPC in response to publication to Expiry of Engagement only, would have the option to revoke the same, prior publication of Release Serial, provided that such sailors have not :-

(a) XXX XXX XXX

(b) Rendered unwillingness earlier for Specialist Higher Rank/Professional/Non-Professional / Promoted Linked course.

(c) *Rendered unwillingness for further service or being nominated for deputations/courses/posting abroad.*

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) xxx xxx xxx"

27. In view of the aforesaid discussion, we are of the opinion that the present OA is liable to be dismissed on delay as well as on merits.

28. Consequently, the instant OA 2195/2019 is dismissed.

29. No order as to costs.

30. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 22 day of April, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

Akc