

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

OA 2624/2022

MWO Prasanna Kr Mohapatra (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Rajeev Kumar, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has challenged the tenability of the impugned discharge order, Annexure A1 dated 17.10.2022, which denies the applicant an extension of service after the expiry of the period of engagement.

2. The applicant was enrolled in the Indian Air Force (IAF) on 07.10.1987, with his regular term of engagement set to expire on 31.10.2022. According to AFO 21/2014, the applicant was required to submit his willingness for an extension of service at least 16 months before the expiry of his regular engagement period, i.e. 16 months before 31.10.2022. The applicant, however, did not submit any application indicating his willingness or unwillingness within the stipulated 16-month period, leading to the processing of his case as one where he was unwilling to seek an extension.

3. However, just two months before the expiration of his service period, the applicant submitted an application on 26.08.2022, seeking to change his option from unwillingness to willingness and requested an extension of service up to 31.05.2025 on compassionate grounds. This application for a change of option was forwarded to the competent authority and was examined in terms of Para 4(g) of AFO 21/2014. The request was subsequently rejected, leading the applicant to challenge this rejection before this Tribunal.

4. Shri Gupta, learned counsel for the applicant argued that though the respondents have rejected the applicant's claim in accordance with the requirements of AFO 21/2014, the extension should be granted on compassionate grounds. He contended that the applicant had faced various difficulties that prevented him from submitting his application for willingness or unwillingness 16 months prior to the conclusion of his term of engagement. However, the respondents did not consider these circumstances sympathetically. Seeking a reconsideration on compassionate grounds, the applicant has filed this application.

5. The respondents have filed a detailed reply, contending that the applicant's claim was considered in accordance with the applicable AFO rules and was rejected as it was not approved by the competent authority. The matter was subsequently

reconsidered upon resubmission by the applicant, but the claim was again rejected.

6. The respondents have asserted that, according to Air Force instructions AFO 12/48, the initial engagement period for an airman in the Air Force is 20 years. Any further service extension is granted to eligible airmen based on their willingness and the needs of the service, but it cannot be claimed as a matter of right. The authority to grant or deny such an extension lies at the discretion of Air HQs or other competent authorities. Relying on AFO 21/2014 (Annexure A6), the respondents argue that extensions are granted in accordance with the general principles contained in Paragraphs 4 and 5 of the AFO. These principles state that an extension of regular engagement may be granted for a period of three years at a time, subject to the discretion of the competent authority. Referring specifically to Paragraph 4(a) of AFO 21/2014, the respondents emphasize that the AFO clearly stipulates that an extension of service beyond the initial term of engagement cannot be claimed as a matter of right. It remains at the discretion of Air HQs or the relevant competent authority and is contingent upon the fulfilment of the minimum criteria detailed in Paragraph 3 of the AFO. Paragraph 3 of the AFO reads as under:

“3. This policy has been formulated to ensure that only those airmen who meet the criteria are allowed to extend their

engagement. An airman who is consistent in his overall performance and willing for extension of engagement may be granted extension of engagement, which is governed by the following principles:

- (a) Service Requirement (As per guidelines formulated from time to time with the approval of ACAS (PA&C).*
- (b) Willingness for Extension of Engagement.*
- (c) Passing of Promotion Examinations/ Training Courses.*
- (d) Appraisal Reports for the last seven years.*
- (e) Medical Fitness.*
- (f) Conduct Records*
- (g) Suitability for Extension*
- (h) Certificate of Undertaking (CoU).”*

7. The respondents further argue that airmen who do not wish to extend their engagement are required to submit a willingness certificate as per Appendix B of the said AFO. This certificate must be submitted to the Air Force competent authority at least 16 months before the expiry of the regular engagement. If no certificate is submitted, it is presumed that the airman is not willing to seek an extension. The respondents draw attention to the judgment of this Tribunal in *Ex Sgt Om Prakash v. Union of India* and others (OA No. 24/2009 decided on 19.01.2010), to support their contention that an extension of service is not a matter of right and must be done in accordance with the stipulations of the AFO. They further cite the order passed by the Delhi High Court in WP(C) No. 1918/2010 *Om Prakash Vs. Union of India and Ors.*, wherein the judgment in the case of *Ex*

Sgt Om Prakash was upheld by the Hon'ble High Court. Additionally, the respondents rely on an order passed in *JWO Ravi Ranjan Kumar v. Union of India and others* (OA No. 1075/2022), wherein a Bench of this Tribunal observed as follows:

“..... We are of the considered view that the power of granting of further extension of service to the applicant vests with the competent authority and authority is fully entitled to exercise their discretion either in granting or rejecting extension beyond mandated terms of engagement. This extension cannot be demanded as a matter of right and if accepted would be detrimental to the overall interests of the Indian Air Force. The applicant's plea for further extension to service for 3 years keeping in mind his financial requirement towards his children education, on humanitarian grounds cannot be taken as a valid ground for extension as this consideration would be applicable to all similarly placed personnel.”

Accordingly, the respondents contend that the grant of an extension is not a right. The applicant's case was duly considered and rejected, and therefore, no further indulgence into the matter is warranted.

8. We have heard the learned counsel for both parties at length.

9. It is undisputed that the applicant did not submit his willingness to seek an extension within the stipulated period as per the AFO 21/2014. Consequently, his case was processed for discharge without granting any extension. It was only two months

before the expiration of his regular engagement that the applicant sought an extension. This request was processed by the competent authority at Air HQ and, after due consideration, was rejected.

10. Having considered the arguments presented by the learned counsel for both parties, the following question arises for our consideration:

“Whether this Tribunal can direct the respondents to reconsider the applicant's request and grant him an extension merely on sympathetic grounds?”

11. A perusal of the relevant policy provisions clearly stipulates that willingness or unwillingness must be submitted 16 months before the expiry of the regular engagement. This requirement is mandatory for all airmen. The AFO 21/2014 further stipulates that once an option is exercised, it will be considered final, and a change in option will not be entertained except in cases of exceptional and extreme compassionate grounds. Additionally, the said AFO provides that if an airman does not submit any option it will be presumed that he is unwilling to seek further extension of engagement and no subsequent request for extension will be entertained.

12. From the above it is evident that the respondents evaluated the applicant's claim strictly in accordance with the AFO 21/2014 requirements. Coordinate Benches of this Tribunal, in the cases of *Ex Sgt Om Prakash* (supra) and *JWO Ravi Ranjan*

Kumar (supra) have clearly held that the grant of an extension is not a matter of right. It is subject to the discretion of Air HQ or the competent authority and the non-submission of willingness within the stipulated period will be deemed as an expression of unwillingness, leading to the case being processed accordingly. In the present case, the applicant admittedly did not submit his willingness within the stipulated period i.e. 16 months before the conclusion of his regular engagement and submitted his application only two months before the end of his engagement.

13. During the hearing, the applicant's counsel conceded that the AFO 21/2014 requirements were not fulfilled but still sought sympathetic consideration and the granting of an extension due to a shortage of manpower in the Force. In our considered view, once the provisions of the said AFO which constitute the rules and regulations governing the contract of engagement are not met and the respondents had the discretion to deny the extension which was not submitted within the stipulated period no discretionary relief can be granted to the applicant in derogation of the policy and applicable provisions for granting extensions.

14. In the facts and circumstances of the case, we find that the applicant has failed to follow the required procedure and process for seeking an extension. The respondents have decided the applicant's claim based on the relevant policy and no grounds are established for any further indulgence in the matter especially

when the Coordinate Benches of this Tribunal have consistently held that the grant of an extension after the conclusion of regular engagement is not a right but is at the discretion of Air HQ or the competent authority. Since this discretion has been exercised by the respondents without any arbitrariness, unreasonableness or bias or in violation of rules or regulation there is no basis for interference in the matter.

15. Accordingly, the application is dismissed. No costs.

Pronounced in open Court on this 2 day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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