

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

OA 1857/2020

In the matter of:

Chief Petty Officer Medical Narayan Prasad ... Applicant

Versus

Union of India and others ... Respondents

For Applicant : Ms. Archana Ramesh, Advocate

For Respondents: Dr. Vijendra Singh Mahndiyan,
Advocate
Cdr Shantanu Kr. Srivastava, Deptt.
Reptt.

CORAM:

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

ORDER

OA 1857/2020

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

A. Issue directions to the Respondents to quash and set aside the Bureau of Sailors Cheetah Camp, Mumbai Letter dated 24 June 2020 placed herein as Annexure A - 1 being arbitrary and without application of mind and rejection based

on the Naval Order of the year 2019 which cannot be made applicable retrospectively for an incident way back in the year 2002 in the instant case;

B. Issue directions for grant of two years engagement from 01 Jan 2021 till 31 Dec 2022 purely based on promotions achieved, Certificates of Proficiency, coveted Commendation Card by Flag officer Commanding in Chief Western Naval Command and re-engagement of service for four times in the year 2009, 2014, 2017 and 2018 and hence based on 'Promissory Estoppel' the Applicant deserved to be granted further re-engagement of service to meet the ends of equity, justice and fair play,

C. Pass such other and further orders or directions to the Respondents by way of adequate exemplary compensation for the harassment, agony and humiliation in the attendant genuine circumstances of the case, to meet the ends of justice."

2. The facts of the case in brief are that the applicant was enrolled in the Indian Navy on 04.08.1995 and has completed 25 years 04 months and 28 days of service as on 31.12.2020, i.e. the date of the expiry of his present engagement. During his tenure, the applicant was awarded punishment number 9 (deprivation of 1st Good Conduct Badge) and punishment number 12 (stoppage of leave for 30 days) *vide* INHS Asvini Punishment Warrant No.

02/2002 dated 23.05.2002 for his act of committing an offence punishable under Section 74 of the Navy Act, 1957, specifically for doing malpractice by possessing pre-written answer sheet during final examination of Medical Store Second Class qualifying course on 29.04.2002.

3. Even after being awarded the aforementioned warrant punishment, the applicant has been recommended for re-engagement on four separate occasions, i.e. in 2009, 2014, 2017 and 2018. However, the applicant's prayer for re-engagement in service for a period of 2 years from 01.01.2021 to 31.12.2022 has been denied by the Naval Headquarters, New Delhi *vide* letter dated 23.07.2019 on account of Para 5(b) of the Navy Order (Str) 01/2019 which specifically states that the grant of warrant punishment would be considered as a criterion for re-engagement.
4. Being aggrieved by the denial of re-engagement in service from 2021 to 2022, the applicant has filed the present OA. In the interest of justice, we take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant was enrolled as a Sailor in the Indian Navy in

04.08.1995; and during his tenure in the Indian Navy, the applicant was punished for a small demeanour and was awarded the punishment of removal of 'Good Conduct Badge' in 2002. The learned counsel for the applicant, however, argued that the applicant has subsequently worked with sheer hard work, sincerity and dedication to rise up to the rank of Chief Medical Officer. Moreover, it is also emphasised by the learned counsel for the applicant that the applicant has been awarded a series of Proficiency Certificates along with Commendation Card by the Flag Officer Commanding in Chief, Western Naval Command, and has been recommended by the respective Commanding Officer.

6. The learned counsel for the applicant also highlights that even after the grant of the aforementioned punishment, the applicant had been given re-engagement of service in the years 2009, 2014, 2017 and 2018; however, the same was denied to him for the period from 2021 to 2022. While the learned counsel for the applicant acknowledges that the said denial of re-engagement was due to the application of Navy Order dated 01.04.2019, she submits that the said

order cannot be made retrospectively applicable for a warrant punishment given way back in 2002.

7. For substantiating the same, the learned counsel for the applicant relies on the case of *Badrinath v Government of Tamil Nadu and Others* [2000 (8) SCC 395] wherein the Hon'ble Supreme Court has held that when someone gets re-engaged or promoted subsequently due to their exemplary service, then the punishment awarded in the early years of their service gets automatically subdued / pales into insignificance.
8. In this backdrop, the learned counsel for the applicant further highlights that the Navy Order dated 18.04.2011, which governed the rules for re-engagement of Naval service, did not have any embargo of past punishment for granting re-engagement; as such, the applicant ought to have been granted re-engagement similar to the previous instances – as per the principles of *Promissory Estoppel*.
9. *Per contra*, the learned counsel for the respondents submit that the applicant is not eligible for re-engagement as per Para 5(b) of the Naval Order (Str) 01/2019 due to the punishments that were awarded to the applicant, namely 'deprivation of 1st Good Conduct Badge' and 'stoppage of

leave for 30 days', *vide* INHS Asvini Punishment Warrant No. 02/2002 dated 23.05.2002 for his action of doing malpractice in 2002.

10. In this backdrop, the learned counsel for the respondents emphasised that while there existed provision for a non-warrant punishment (granted for minor offences), the applicant was awarded a warrant punishment due to the gravity of the offence committed by the applicant.
11. The learned counsel for the respondents further submit that the re-engagement for applicant for further service for 2 years from the period of 01.01.2021 to 31.12.2022 was received at the Commodore Bureau of Sailors (CABS) *vide* INS Virbahu letter 253/1, but it was not granted by CABS and the same was intimated to INS Virbahu *vide* letter ADM/0101/11783-R/B dated 23.07.2019. While the case of applicant's re-engagement was subsequently forwarded for re-consideration to Integrated Headquarters Ministry of Defence (Navy) *vide* Commodore Bureau of Sailors (CABS) letter ADM/0101/117783R dated 13.11.2019, it was not approved by Competent Authority *vide* RP/0802/Re-eng/20 (PC - 14) dated 08.06.2020 in accordance with Para 5(b) of the Naval Order (Str) 01/2019. In this backdrop, it

is submitted that the rule is applied uniformly to all sailors who were granted warrant punishment in cases involving moral turpitude / poor integrity.

12. Lastly, with respect to the grant of re-engagement on earlier four occasions, the learned counsel for the respondents submit that the applicant's case for re-engagement in 2009 was not recommended by Commodore Bureau of Sailors (CABS) on grounds of warrant punishment and poor records, and it was only after several requests for reconsideration and shortage in Submarine Specialisation that the competent authority had approved the re-engagement of the applicant for five years.

ANALYSIS

13. We have heard the learned counsel for the parties and have perused the record.
14. At the outset, we find it pertinent to refer to Paragraphs 4 and 5 of the Navy Order (Str) 01/2019, the bare text of which reads as under:

*“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 conditions:-*

(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.

5. Criteria for Re-engagement

(a) Sailors fulfilling the conditions laid down in Para 4 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) Efficiency gradings.

(ii) Performance in professional courses including CPO(M) / PO(L) courses.

(iii) Report on Performance Evaluation Sheet, ACRS and recommendations for accelerated promotion.

(iv) Awards and commendations.

(v) Warrant Punishments.

(vi) Adverse comments in ACRs/ Performance Evaluation Sheet.

(vii) Requests for deletion of name from professional/higher rank courses, etc.

(viii) Supersession/ low merit in Master Chief Selection Boards.

(ix) Repeated requests for transfer on resettlement or compassionate grounds.

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

- (i) Unsatisfactory record of service.
- (ii) Expressed unwillingness for further re-engagement.
- (iii) Submitted willingness for re-engagement only for a lesser period.
- (iv) Undergone resettlement courses / availed resettlement transfer.
- (v) Been granted Honorary Commission.
- (vi) Expressed unwillingness for professional/promotion linked courses.
- (vii) Expressed unwillingness on being selected for deputation abroad i.e. for training/ course, FATs and DATs, refits/ MLU of ships/ submarines/ aircraft, new acquisitions, foreign postings as NA/ DA/ WOT staff.
- (viii) Awarded Warrant punishment for being involved in moral turpitude cases such as theft, robbery, smuggling, forgery, misappropriation of Public Funds, loss to Government property, stealing of Naval Store items, involved in plural marriage, involved in molestation of women including harassing and teasing, any other act bringing discredit to the service, etc.
- (ix) Awarded Warrant punishment for striking a Superior Officer.
- (x) Downgraded to a medical category lower than S2A2 (Pmt) or in temporary medical category.”

[emphasis supplied]

15. Paragraph 5 of the aforesaid order lays out the criteria for re-engagement, wherein 5(b)(viii) specifically state that re-

engagement will not be granted to a sailor who has been awarded warrant punishment for being involved in moral turpitude cases and for acts bringing discredit to the service.

16. It is undisputed that the applicant has been granted warrant punishment No. 9 (deprivation of 1st Good Conduct Batch) as well as No. 12 (stoppage of leave for 30 days) on 23.05.2002 for some of his actions in April, 2002. While we are not denying that the applicant might have displayed sheer hard work and dedication while serving in the Indian Navy, and has also been given numerous accolades and commendations till the entirety of his period of engagement, even after the grant of the aforementioned warrant punishments, the said recognitions / achievements cannot have an eclipsing effect on the extant policy and the criteria therein. The mere presence of efforts and dedication on part of a sailor does not make him immune to the policy conditions of the service he is bound to obey. While both the aspects are present in the instant case, the law would not apply any differently to a sailor who has received punishment as opposed to a sailor who has received accolades.

17. Coming to the relevant provisions at play in the instant case, Paragraph 5(a) of the Navy Order (Str) 01/2019 clarifies that the final decision regarding grant 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” which includes warrant punishment in Paragraph 5(a)(v). Furthermore, Paragraph 5(b)(viii) specifically excludes such category of sailors who have been awarded warrant punishment for being involved in moral turpitude cases and for acts bringing discredit to the service.
18. In this backdrop, while the award of warrant punishment in the case of applicant happened more than two decades ago, i.e. in 2002, the same still forms a part of the applicant’s service record. As such, it directly hinders / questions / targets the eligibility of the applicant at the very outset. In such circumstances, considering the applicant’s case for re-engagement keeping aside his warrant punishments would not only set an unjust precedence but would also call into question all cases where re-engagement has been denied on the basis of the Paragraph 5 of the Navy Order (Str) 01/2019.

19. Even if the non-eligibility *qua* the warrant punishment of the applicant is disregarded, and the applicant is hypothetically considered eligible for re-engagement for the time being, the same would still be contingent upon the service requirements of the respective position in question. In this backdrop, it is essential to peruse Paragraph 4 of the of the Navy Order (Str) 01/2019 that lays out the principles of re-engagement. The said paragraph categorically states that the grant of re-engagement is “subject to Service requirement” and the same “is not to be construed as a matter of right”.
20. It is undisputed that the applicant has been granted re-engagement in 2009, 2014, 2017 and 2018. However, merely because the applicant has been granted re-engagement in four prior occasions, the same does not accrue a right in favor of the applicant to be re-engaged again. Moreover, we are not aware of the reasoning behind which the applicant was accorded the said previous re-engagements. The same could be because of applicant’s professional standards, but at the same time it could also be because of sheer necessity of manpower / service compulsion in the force. In the aforesaid circumstances, the

principles of *Promissory Estoppel* also falls apart, since there was no 'promise' or assurance on part of the respondents to necessarily re-engage the applicant in service even beyond the completion of his tenure.

21. The legal position *vis-à-vis* the (absence of) right of the employee to seek extension in service is also well-settled. The Principal Bench of this Tribunal, *vide* order dated 06.08.2018 in the case of ***Lt Cdr Puneet Pal Kaur v Union of India & Others*** [OA No. 1017 of 2018], has re-affirmed the settled legal position that the decision regarding the extension of service lies within the purview of the competent authority and the same cannot be claimed as a matter of right. The relevant paragraph from the said order is reproduced as under:

"20. It is also a settled legal position that the extension of service cannot be claimed as a matter of right and it is within the purview of the competent authority to decide whether to grant or not-to-grant extension of service."

22. Furthermore, the Hon'ble High Court of Delhi, *vide* order dated 10.11.2014 in the case of ***RP Dubey v Chief of Air Staff and Others*** [WP (C) No. 3742 of 2011], has also held that the grant of extension in service is "not a right vested in the petitioner" and the same has to be done "in

consonance with” the policy *vis-à-vis* the “service record of the applicant”. The relevant paragraph from the said order is reproduced as under:

“5. The contentions raised by the counsel for the petitioner have been convincingly dealt with by the learned AFT and we find no infirmity, illegality or perversity in the reasoning given by the learned AFT. The grant of further extension in service is not a right vested in the petitioner. The benefit of extension may accrue to a person in service, on the discretion of the employer in consonance with its policy and depending on the service record of the applicant. This legal principle has been explained in a catena of judgments and we may usefully refer to one of the judgments of the Division Bench in the case of Sgt. Ranbir Singh v. UOI and Others W.P. (C) 24786/2005 decided on 27.7.2006 wherein dealing with the issue of grant of extension to a Sergeant in Indian Air Force it was held as under...”

The same stance has again been reaffirmed by the Principal Bench of this Tribunal in the case of ***Hav GD Deenesh v Union of India & Ors.*** [OA No. 1636 of 2020].


23. As such, the respondents are well within their powers to lay out their criteria *vis-à-vis* the grant of re-engagement for further service, as long as the same is not *ultra vires* any constitutional mandate or any parent statute in force.
24. We, therefore, are of the opinion that the extant policy, i.e. Navy Order (Str) 01/2019, would be applicable in the

instant case; and accordingly, the applicant is not entitled to the grant of re-engagement in service for the said period as per the Navy Order (Str) 01/2019.

CONCLUSION

25. In view of the aforesaid analysis, the OA 1857/2020 is dismissed.
26. Consequently, Miscellaneous Application(s), if any, stand disposed off accordingly.
27. There is no order as to costs.

Pronounced in the open Court on the ¹⁴26th day of November, 2025.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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