

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.144 of 2014

Friday, the 13th day of March 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Rank-Sgt. Name-P.K.Singh
Service No.701295-T
S/o Sri Chhatradhari Singh
aged about 49 years
Posted in-Air Force Station
Tambaram, Chennai-600 046
SMQ No.169/02, Air Force Residential Quarter
Madambakkam, Selaiyur, Chennai-600 073. .. Applicant

By Legal Practitioners:
M/s. M.K.Sikdar & S.Biju

vs.

1. Union of India
Rep. by The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Chief of the Air Staff
Air Headquarters, Vayu Bhavan
New Delhi-110 011.

3. The Air Officer Commanding
Air Force Records Office
Subroto Park, New Delhi-110 011.

4. The Air Officer Commanding
Air Force Station, Tambaram
Chennai-600 046.

... Respondents

By Mr. K. Ravindranath, SCGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiyah, Member (Judicial))

1. The applicant filed this application seeking a direction to call upon the respondents to produce the records in respect of the Impugned Order No. Air HQ/40821/1 PA-I, dated 24.10.2014 passed by the 2nd respondent and quash the same and direct the respondents to grant extension of engagement of service of the applicant for a period of six (6) years with effect from 30th November 2014 to 29th November 2020 with all consequential benefits.

2. The case of the applicant in brief would be as follows:

The applicant was enrolled in Indian Air Force on 23.11.1985 as Catering Assistant, promoted to the rank of Sgt, served in various Units/Stations of the Indian Air Force and then posted at Air Force Station, Tambaram, Chennai-600046, the 4th respondent. The applicant submits that his application for extension of service was rejected by the 3rd respondent. Challenging the same, the applicant filed O.A.No.43 of 2014 before this Tribunal and by an order dated 25.07.2014, this Tribunal permitted the applicant to plead before the

competent authority for extension of service on compassionate grounds. Accordingly, the applicant represented before the respondents for re-consideration, but it was rejected by 2nd respondent in its order dated 24.10.2014 and the applicant was ordered to be discharged from service with effect from 30.11.2014. The applicant maintained excellent service records except only one Red Ink Entry in his 29 years of long service. He further submits that his earlier request for extension of service was not approved by 3rd respondent in an order dated 21.02.2013 and also by an order of 4th respondent dated 28.02.2013. He submits that Indian Air Force is the only means and shelter to look after his family consisting of his wife, one marriageable daughter aged about 23 years and two sons aged about 26 and 17 years who are unemployed. The applicant submits that the impugned order passed by the 2nd respondent may be set aside as biased, arbitrary and unlawful. He has given his valuable youth in Indian Air Force and now he is in need of the job to support his family. He submits that the respondents have violated Articles 14 and 16 of the Constitution of India in the case of the applicant. He submits that he maintained excellent ACR, medical fitness, passed JWO promotion examination, strongly willing to serve further in IAF , except having only one adverse Red Ink Entry in his 29 years of service. He fulfilled all criteria for the extension of his further service. He submits that his

representation dated 01.08.2014 was also strongly recommended by the 4th respondent. He further submits that he has no other alternative remedy except to file this application and therefore this application may be allowed.

3. The respondents filed a reply statement which would be briefly as follows:

The applicant enrolled in the IAF on 23.11.1985 and was discharged from service on 30.11.2014. On 03.03.2004, the applicant applied for first spell of extension of service for six (6) years from 23.11.2005 to 22.11.2011 and the same was approved by the competent authority. Again on 30.06.2009, he applied for second spell of extension of service for three (3) years from 23.11.2011 to November 2014 and the same was approved by the competent authority. The respondents submit that the applicant was tried by District Court Martial on 09.09.2010 at 14 Wing AF "for using criminal force, threatening and using insubordinate language against superior officer" and he was awarded punishments (i) to be reduced to the rank and (ii) to be severely reprimanded and the punishments were inflicted with effect from 16.09.2010. On 30.06.2012, the applicant applied for third spell of extension of service for six (6) years from 23.11.2014 to 22.11.2020, but his case was forwarded as "not recommended" to Air HQ since he has rendered a red ink entry in the preceding five (5)

years from the date of RE (Re-engagement). As per Para 4(f) of AFO 16/2010, for considering the extension of service wherein an Air Warrior rendered any red ink entry in the preceding five (5) years from the date of RE, the matter has to be forwarded to the competent authority at Air HQ for decision. Therefore, the applicant's representation was not approved by the competent authority and the same was intimated to 14 BRD & AFS, Tambaram vide RRD/46, dated 21.02.2013. The respondents have also considered the directions issued to the respondents in O.A.No.43 of 2014 regarding the case of the applicant. The applicant's application dated 01.08.2014 for re-consideration of extension of service on compassionate grounds for a period of six (6) years from 23.11.2014 to 22.11.2020 was forwarded as "not recommended" to Air HQ vide RO/PF-701295/RW (Extn), dated 11.09.2014 as he has rendered a red ink entry in the preceding five (5) years from the date of RE. The same was "not approved" by the competent authority and it was intimated to the applicant by an order vide Air HQ/C 40821/1/PA-I, dated 24.10.2014. The disposal regarding denial of extension of service was intimated to AFS Tambaram vide RRD/255, dated 28.10.2014 and the applicant was discharged on 30.11.2014. The respondents submit that they have not violated Articles 14 and 16 of the Constitution of India with regard to the applicant. The application submitted by the applicant was examined

by the Competent Authority (Air HQ) in the light of the guidelines for grant of extension and the same was not approved as he has incurred one Red Ink entry in his conduct sheet for the alleged offences involving serious insubordination and use of criminal force to a superior officer during the preceding five years to RE. As a senior Air Warrior, he should have been fully aware of the indisciplined acts of using criminal force against a superior officer. Therefore, his application dated 01.08.2014 for extension of service was rejected by the competent authority by issuing 'Reasoned Speaking Order' dated 24.10.2014 whereby the applicant was ordered to be discharged from IAF from 30.11.2014.

4. On the above pleadings, the following points were framed for decision in this application.

(1) Whether the impugned order No .Air HQ/40821/1PA-I dated 24th October 2014 passed by the 2nd respondent is liable to be quashed and the respondents be directed to grant extension of service to the applicant for a period of six years with effect from 30th November 2014 ?

(2) To what relief the applicant is entitled for?

5. We heard the arguments of Mr. M.K.Sikdar, learned counsel for the applicant and Mr. K. Ravindranath, learned SCGSC assisted by JWO M.Tiwari, Legal Cell, Air Force, Chennai appearing for the respondents. We have also perused the records and documents produced on either side.

6. We have given our anxious consideration to the submissions made on either side.

7. **Point No.1:** The facts regarding applicant's terms of engagement in Air Force have not been disputed by the respondents. Similarly, the fact that applicant had served in the Air Force for 29 years from 1985 onwards and his tenure of service was extended periodically and he had submitted his willingness to extend the period of his service for another six years from 30.11.2014 are also not disputed. Since his willingness was not considered and was rejected by the respondents, he submitted an application for re-consideration. Though it was recommended by the Officer Commanding and others, it was rejected by the second respondent. Against the order of rejection he preferred an application before this Tribunal in O.A.No.43 of 2014 in which the order of rejection passed by the second respondent dated 30.07.2013 was upheld and the application was dismissed on 25.07.2014. However, this Tribunal permitted the applicant to plead before the competent authority in writing for extension of service on

compassionate grounds and on filing of the said application, the respondents were directed to process the same with recommendations of Air Officer Commanding in Chief. The competent authority was asked to pass orders on the said speaking order on the application as per the guidelines envisaged in AFO 16/2010 and on compassionate grounds, if any, within a period of two months after the filing of the application by the applicant.

8. As per the direction issued by this Tribunal, the applicant had preferred an application for re-consideration of extension of service on compassionate grounds on 01.08.2014 and the competent authority considered the said application and passed a "Reasoned Speaking Order" dated 24.10.2014 in which the request of the applicant was rejected. Against the said impugned order passed by the competent authority, the present application has been filed by the applicant.

9. Even though the impugned order rejecting the extension of service for six years on compassionate grounds was passed on 24.10.2014, the applicant has filed the present application before this Tribunal on 24.11.2014 despite the fact that he was scheduled to retire by 30.11.2014. However, the application was taken on file and notice before admission was ordered to the respondents. No doubt, the claim of the applicant for grant of extension of service as per his willingness certificate for extension of service given earlier for a period

of six years was rejected as per the provisions of Para 4(f) of AFO 16 of 2014. In the said rejection order, a red ink entry caused due to application of criminal force against a superior officer was taken note of and the plea of the applicant for extension of service was rejected. The said original order of rejection dated 24.10.2014 was confirmed by this Tribunal. Admittedly, there was no appeal preferred by the applicant against the said order of this Tribunal which became final. Therefore, objections regarding the findings of the order, dated 24.10.2014 cannot be raised in this application. The permission granted by this Tribunal to the applicant was to raise compassionate grounds before the respondents in order to get extension of six years as asked for by the applicant. We find that the applicant has raised compassionate ground in his application dated 01.08.2014. The said application has been forwarded with recommendations for re-considering the grant of extension of service, to the competent authority. The said requisition was considered by the competent authority but was not approved by the competent authority in its impugned order dated 24.10.2014.

10. According to the learned counsel for the applicant, the "Reasoned Speaking Order" stated to have been passed by the competent authority did not discuss the family background and other compassionate ground raised by the applicant for the purpose of

disposing the application whereas the merits of which were already considered and discussed and therefore, the said impugned order should be interfered with and set aside and consequently, the applicant be granted extension of service for six years.

11. On a careful perusal of the entire records, we find that the applicant had submitted an application on 01.07.2013 for re-consideration of service when his application for extension of service submitted during 2012 within the scheduled time was not approved by the competent authority. The applicant had already explained about his family members and his future liability to look after two sons and one marriageable daughter with his entire earnings in the said application. It was recommended by the Officer Commanding and forwarded to the competent authority. However, the same was not accepted in the impugned order issued against the said earlier application. When the reasons submitted in the present application had already been considered and rejected, how the present impugned order passed on the application containing the compassionate grounds for extension of service could be with different reasons?. No other compassionate grounds were listed in the present application disposed by the impugned order. We find that there was one red ink entry involving a serious insubordination and use of criminal force against the superior officer was a stumbling block for his application on

compassionate grounds to go through. The reasons put forth by the competent authority that the grounds contained in the earlier application were raised in the application on compassionate grounds, are sound. The applicant did not say any other reason for the competent authority to come to a different conclusion. Furthermore, the discretion is vested on the competent authority to pass any order on an application filed on compassionate grounds. The facts and circumstances of each case is different and the competent authority is the right person to decide in respect of exercising the discretion against the Air Warriors who serve under him. Therefore, we do not find any reasons to interfere with the discretion exercised by the competent authority in rejecting the claim of the extension of service of the applicant as sought for by him. Apart from that, the applicant was not granted any interim relief to continue in service till the final order is passed in this application and the applicant was discharged from service w.e.f. 01.12.2014. Therefore, we are of the considered view that the application seeking for the quashment of the impugned order and for the grant of extension of service for a period of six years with effect from 01.12.2014 are not grantable. Accordingly, this point is decided against the applicant.

12. **Point No.2**: In view of our findings in Point No.1 that the applicant is not entitled for the reliefs as sought for by him either for quashment of the impugned order or for the grant of extension of service, the application filed for that purpose is liable to be dismissed.

13. In fine, the application is dismissed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

13.03.2015
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

vs

To:

1. The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.
2. The Chief of the Air Staff
Air Headquarters, Vayu Bhavan
New Delhi-110 011.
3. The Air Officer Commanding
Air Force Records Office
Subroto Park, New Delhi-110 011.
4. The Air Officer Commanding
Air Force Station Tambaram
Chennai-600 046.
5. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.
6. Mr. K. Ravindranath, SCGSC
For respondents.
7. OIC, Legal Cell,
Air Force, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.144 of 2014

Dt:13-03-2015