

RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 148 of 2017

Wednesday this the 18th day of July, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

S. No.624480-L Ex. Warrant Officer (WO)
Virendra Pratap Singh
Son of late S.P. Singh
Resident of C/o C.P. Singh,
House No. 533, Naveen Gauri,
Sarojani Naar, Lucknow, U.P. – 226008

.....Applicant

Ld. Counsel for : **Shri A.K. Singh, Advocate**
the Applicant

Versus

1. Chief of Air Staff, Air. Hqs (Vayu Bhawan) Rafi Marg, New Delhi.
2. Air Officer Commanding (AOC), Air Force Record Officer (AFRO), Subroto Park, New Delhi-10.
3. AOC, A.F. Station Tugalakabad, New Delhi – 110062.
4. ACAS (PA & C) Air Hqs. New Delhi.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs :-

- “(a) issue/pass an order to quash/set aside the discharge of the applicant authorized vide AF letter No. RO (2504)/2/RW(Dis) dated 13 June, 13 with Annexure DO list No. 182/2013 as contained in annexure No. 1 to this O.A.*
- (b) issue/pass an order or direction to the Respondents, to grant 6th extension of engagement w.e.f. 01 Oct, 2014 to 14 Jan. 2018 i.e. till the age of superannuation in the rank of Warrant Officer with all the consequential benefits.*
- (c) issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) allow the application with cost.”*

2. The delay in filing this O.A. was condoned vide order of the Coordinate Bench dated 04.05.2017.

3. The facts giving rise to the instant O.A. may be summarised as under :

The Applicant Ex Warrant Officer Virendra Pratap Singh was enrolled in Indian Air Force on 04th September 1979 in the Trade of Radar Fitter in medical category A4G1. His initial engagement was for a period of 15 years, followed by periodical extensions. The age of superannuation in the rank Warrant Officer is 57 years. In the year 2013, the applicant gave his unwillingness application for 6th and last extension i.e. from 04.09.2014 to 14.01.2018. Prior to it, he had given his willingness and he was accordingly granted extension of service for five times. On the basis of the said unwillingness, discharge letter dated

13th June 2013 with Annexure DO list was issued by AFRO Delhi for discharge of applicant w.e.f. 30th September 2014. Because of certain changed circumstances of the applicant, the applicant sent an application dated 20th August 2014 to AO C, A.F. Station Tudalakbad, New Delhi for change of option from unwillingness to willingness. The communication was received from AFRO that extension of service is not granted and the date of registry of the application was shown as 30th September 2014. The applicant made a request for supply of the said letter under the RTI Act, but no response was received. On subsequent application of the applicant for extension of his service dated 20th August 2014, his medical examination was conducted on 05th September 2014 and thereafter the applicant was discharged w.e.f. 30th September 2014. A representation dated 12th December 2015 against the denial of extension was made under Para 633 of Regulation for Air Force.

4. The submission of the learned counsel for the applicant is that the action of the respondents in not granting the extension, inspite of specific application of the applicant for giving the wiliness and recalling the unwillingness, is arbitrary and therefore, the respondents were required under law to give extension of servie to the applicant. In the O.A., learned counsel for the applicant has also mentioned the pronouncement of the Hon'ble Apex Court in the case of **Union of India vs. Wing Commander T. Parthasarthy** (2001) 1 Service Cases 282).

5. It is pleaded in the counter affidavit that on 20 August 14, the applicant had applied for change of option from unwillingness to willingness and the same was received by the specialist section of Air Force Record Office on 17 September 14. Since the medical category of the applicant was A4G3(P) at the time of processing his case for extension of engagement, his case had not been processed through Medical Condonation Board as per Para 4(e) (i)of Air Force Order 16/2010. His application was processed as per para 4 (g) (iii) (aa) of Air Force Order 16/10 and the same was not approved by the Competent

Authority on 27 Sep 14 as per Para 4(g) (i) & Para 4 (g) (iii). The decision thereon on the application of the applicant was intimated to his Parent Unit vide Air Force Record Office Signal No. RRD/232 dated 29 September 14 for communicating the same to the applicant.

It is also pleaded in the counter affidavit that after his discharge w.e.f. 30.09.2014, the applicant preferred a representation on 12th December 2015, which was examined at appropriate level by the competent authority and a reply vide letter dated 11th May 2016 was forwarded to the last known address of the applicant. However, the same could not be delivered and received back to the respondent office with the remarks that the applicant was not traceable at the address. The applicant was granted 5th extension of service upto 05th September 2014. He has given unwillingness for further extension of service and accordingly, he was released vide order dated 12th June 2013. The applicant also submitted Ist set of discharge/option papers in August 2013 and thereafter IInd set in November 2013. After getting the application for change of option, his prayer was considered by the appropriate level and the same was not considered by the appropriate authority. Since the sanction was not granted, therefore, the applicant was discharged from service w.e.f. 30th September 2014. The applicant had service of 35 years and 26 days to his credit. It has been argued by the learned counsel for the respondents that as per Policy, whereunder the option of extension of service was granted under Air Force Personnel, which is AFO 16 of 2010 dated 17th September 2010, the applicant was not entitled for withdrawal of unwillingness after such a long gap. It is submitted that the Policy provides that such option has to be exercised about 12 months prior to the due date of discharge and the said Policy also says that in a very rare circumstances, such change of option shall be entertained.

6. Learned counsel for the applicant has vehemently argued that his case is fully covered by the pronouncement of **Wing Commander T. Parthasarthy** (supra) and the action of the respondents was prejudicial

to the interest of the applicant and there was no valid reason not to grant the extension of service to the applicant, therefore, the order of the applicant denying the extension of service to the applicant cannot be sustained.

7. Before proceeding further, we would like to mention the period of 6th extension of service the applicant has already expired on 04.01.2018

8. So far as the case law of **Wing Commander T. Parthasarthy** (supra) is concerned, that was entirely a different case. The facts of that case were different. In that case, Wing Commander T. Parthasarthy had 23 years of service to his credit, but before completion of his service, he tendered his resignation, but before resignation could be acted upon, he moved an application for withdrawal of the same. When the respondents refused to act upon the application of the withdrawal of resignation, then the matter went up to the Hon'ble Supreme Court, where it was allowed and the Hon'ble Supreme Court in Para 9 observed as under :

“9.The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for pre-mature retirement cannot, in our view, be destructive of the right of the respondent, in law, to withdraw his request for pre-mature retirement before it ever became operative and effective and effected termination of his status and relation with the Department. When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the Department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot be countenanced in our hands. Even that apart, the reasoning of the High Court that the case of the respondent will not be covered by the type or nature of the mischief sought to be curbed by the so-called policy decision also cannot be said to suffer any conformity in law, to warrant our interference.”

9. But in the instant case, the applicant had availed extension of service on five occasions. Completion of term of engagement is a substantive right that cannot be compared with the extension of service, which is only discretionary. As per the last extension of service, the

applicant was due to be discharged w.e.f. 30.09.2014 when he did not give extension of service, the aforesaid discharge order was passed on 13th June 2013, meaning thereby that the unwillingness given for the extension of service was duly acted upon. Since the applicant was in service till 30th September 2014, in view of his 5th extension of service, therefore, the extension of service could not be granted to the applicant as the order of discharge had already been passed. It has also been argued on behalf of the respondents that in the AFO's policy, the posting and promotion matters are finalised several years prior to the actual date of their implementation and, therefore, a period of two years is required to give an application to give consent or not to give consent for extension of his service, so that if he is not given the consent for extension of service, then in his place, other person may be posted and promotion may be given after the date of discharge. It is also argued that in case a person does not exercise his option to give consent, then under the Policy, it is to be presumed that he is not interested to give consent. We would like to quote some of the part of the aforementioned Policy AFO No.16 of 2010 dated 17th September 2010.

10. Para 4(b) of the said Policy deals with the willingness to extend regular engagement which says that an option once exercised will be treated as final and requests for change of option will not be entertained except under very exceptional and extreme compassionate grounds. Those airmen who do not submit any option will be deemed to be unwilling for further extension of engagement and no request for grant of extension will be subsequently entertained by AFRO.

Sub-clause (g) (iii) deals with the change of option by the airmen which reads as under :

“(iii) Justification Report by the AOC/Stn Cdr/CO:

Justification report, in a narrative form, is invariably required in the following cases to reach AFRO at least 12 months before expiry of Regular Engagement (RE):-

(aa) Change of option by the airmen.”

11. Admittedly, in this case the applicant had moved an application for recall of his option declining the extension of service approximately one month prior to his actual date of discharge. While as per own pleadings of the applicant and also admitted by the learned counsel for the respondents in the counter affidavit, that on the basis of his unwillingness for extension, the applicant's order for discharge was passed on 13th June 2013. The said order has been filed as Annexure A-1 to the O.A., which makes it clear that since the applicant has not given his willingness for extension of service, therefore, vide order dated 13th June 2013, he was placed in the list of the persons to be discharged from service in the afternoon of the last day in the month, in which their RE expires. Thus, in the instant case, it is clear from the aforesaid order that the applicant moved his application for giving consent of his extension only about a month before extension of service i.e. on 20th August 2014, while he was to be discharged w.e.f. 30.09.2014, therefore, in the instant case, we do not find any illegality, irregularity or procedural infirmity in the order under challenge.

12. In view of the discussions, made herein above, the O.A. lacks merits, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: July , 2018.
PKG