

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 617 of 2020**Tuesday, this the 02nd day of August, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 711012-S Ex. Sergeant Rajesh Kumar Tiwari, S/o Shri Tejshankar Tiwari, R/o Achalganj, Po-Achalganj District- Unnao (U.P) Pin-209860.

..... Applicant

Ld. Counsel for the : **Shri Keshav Sharma**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters (Vayu Bhawan) New Delhi-110011.
3. Air Officer-in –Charge Personnel, Air Headquarters (Vayu Bhawan) New Delhi-110011.
4. Air Officer Commanding, Air Force Record Office, Subroto Park, New Delhi-110010.
5. Director, Directorate of Air Veterans, Air Headquarters, SMC Building, Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the : **Shri Shyam Singh**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(i) To issue/pass an order or directions to set aside/ quash the impugned Discharge Orders dated 23.02.2018 (DO List No. 30/2018) and amendment to Discharge Order dated 18.01.2019 (DO List No. 803/2019) passed by the Respondents.

(ii) To issue/pass an order or directions to the respondents to extend the period of Applicant's regular engagement by three years for the period from 25.01.2019 to 24.01.2022.

(iii) To issue/pass an order or directions to the respondents to reinstate the Applicant in service.

(iv) To issue/pass an order or appropriate directions as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the Applicant.

(v) To allow this original application with costs.

2. Briefly stated, applicant was enrolled in the Indian Air Force (IAF) on 25.01.1990 as medical assistant. During the course of his service while on extended period up to 24.01.2019, he forwarded an application for further extension of tenure from 25.01.2019 to 24.01.2022 which being not granted, a discharge order dated 23.02.2018 was issued with directions to be discharged from service w.e.f. 31.01.2019. Prior to discharge applicant on 12.03.2018 submitted an application for cancellation of his

discharge order and grant further extension of service which was turned down by the Competent Authority vide order dated 15.01.2019 and this fact was communicated to applicant vide signal dated 18.01.2019. Accordingly, he was discharged from service w.e.f. 31.01.2019. This application has been filed to quash discharge order dated 23.02.2018 which was clarified/informed on 18.01.2019 and grant him extension of service from 25.01.2019 to 24.01.2019.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the IAF on 25.01.1990 and he has 29 years and 07 days unblemished service at his credit. He further submitted that during the course of his service he was promoted to the rank of sergeant and qualified NCOs course from 29.06.1998 to 17.10.1998. He was granted first extension of 06 years from 25.01.2010 to 24.01.2016. It was further submitted that keeping in view of his flawless service record, a 03 years further extension was also granted from 25.01.2016 to 24.01.2019. His submission is that the applicant applied for further extension of service for a period of 03 years i.e. from 25.01.2019 to 24.01.2022 but this was not granted arbitrarily and his discharge order was issued on 23.02.2018 and this fact was intimated to him on 18.01.2019 when he submitted an application dated 31.12.2018. It was further submitted by learned counsel for the applicant that the discharge order was issued without giving any cogent reasons or grounds as

to why extension of service was denied. He submitted that after receipt of discharge order dated 23.02.2018 when a query was made, it was communicated that *'applicant's case for grant of further extension is under process and disposal awaited. Disposal will be notified as and when it is received from competent authority'*.

4. Learned counsel for the applicant further submitted that the applicant was fulfilling all requisite conditions such as willingness for extension, passing of promotion examinations/training courses, no adverse reports for the last seven years, no punishment during the entire service and being in A4G1 medical category but even then he was not granted extension of tenure unjustly without application of mind. He pleaded for grant of extension by reinstating the applicant in service.

5. On the other hand, learned counsel for the respondents submitted that the applicant being enrolled in the IAF on 25.01.1990 was granted service extension of three years for the period from 25.01.2016 to 24.01.2019. While serving under extension period he applied for a further extension of 03 years for the period from 25.01.2019 to 24.01.2022. On receipt of his request it was processed and forwarded to AFRO vide letter dated 11.04.2017. He further submitted that while his application was under process, his discharge order dated 23.02.2018 was received and on its receipt the applicant submitted application for

cancellation of discharge order which was denied and this was apprised him on 18.01.2019. It was also submitted that applicant's application for extension of tenure was examined at appropriate level but it was not approved by the competent authority. He pleaded for dismissal of O.A.

6. Heard Shri Keshav Sharma, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents and perused the record.

7. No. 711012 Sergeant Rajesh Kumar Tiwari was enrolled in the IAF on 25.01.1990 for a term of 20 years. During the course of his service he was promoted to the rank of Sergeant. After completion of 20 years he was granted 06 years extension of tenure and further 03 years tenure was also granted. His last extended tenure was up to 24.01.2019. He applied for further 03 years extension which was denied, with the result discharge order dated 23.02.2018 was issued and he was discharged from service w.e.f. 31.01.2019 after having served for more than 29 years.

8. On receipt of his application for cancellation of discharge order, his case was viewed in light of his previous record and following emerged:-

(i) The Airman had a habit of shirking duties and has been found rude on numerous occasions for which he was been counselled in writing. He was also found to be demanding money from candidates coming to SMC, 23 ED for review medical board.

(ii) His application for further extension of service was processed through various departments. During the processing

of his application, Commanding Officer MTTI observed that though there were some complaints against the applicant yet his overall performance was satisfactory as confirmed by Specialist Officer in his recommendation.

(iii) On the basis of intelligence reports SMO noticed some adverse behaviour and integrity traits and took measures to reform the applicant and in the process he was deployed at various sections at different intervals. The applicant was not able to perform in any of the sections wherever he was deployed. The applicant also exhibited inter personnel issues which are detrimental for the smooth functioning of an agency providing health care services.

(iv) Para 7 (c) of AFO 21/2014 stipulates that cases for extension of engagement of airmen against whom observation(s) has/have been made by Dte of Intelligence shall be referred to Air HQ by AFRO for final decision.

(v) In a similar case pertaining to MWO Baksa Ram Firoda, there were some intelligence inputs against him and therefore, his further extension of tenure was denied.

9. MWO Baksa Ram Firoda was having 30 years of service and was also granted extension of service on previous occasions but after due deliberations, grant of extension was denied to the MWO considering not only the authenticity of the reports but also the detrimental effects on the organisation by retaining such individual.

10. We have also gone through the records produced in Court and we find that on 14.01.2019 some higher authority on noting sheet with respect to the applicant has endorsed following remarks:-

“3. As indicated in para 10 & 11, no relief has been given to the airmen who were observed to have committed offence/conduct relating to moral turpitude, financial irregularities or had adverse aspect about their conduct as an airmen.

4. Extension of engagement to 711028 Sgt RK Tiwari, Med Asst of MTTI AF is not recommended.”

11. It is further observed that on 15.01.2019 some Air Vice Marshal of Indian Air Force has endorsed the following remarks

when applicant's file related to his further extension of service was placed before him:-

"Extension of engagement is denied to the airman based on staff comments as well as inputs from AOC, 23 ED".

12. Thus, from the aforesaid a conclusion may be drawn that applicant's further extension was denied based on his complete service profile and recommendations received through various agencies which we decline to interfere.

13. In view of the above, the O.A. being devoid of merit is hereby dismissed.

14. No order as to costs.

15. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 02.08.2022

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