

RESERVED
Court No 2
 (Ser No. 41)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 321 of 2019

Wednesday, this the 29th day of March, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

No. JC-820359K Nb Sub (MP) Visarjan Singh Yadav, S/O Late Ramlagan Singh Yadav, R/o Vill & Post-Rasulpur Pachrashi, Distt-Ghazipur, Pin-233306 (U.P.), Presently posted in 101 Area Provost Unit, C/o 99 APO.

.....Applicant

Ld. Counsel for the: **Shri KP Datta**, Advocate
 Applicant **Shri Om Prakash Kusahwaha**, Advocate

Versus

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. The Chief of Army Staff, South Block, New Delhi.
3. Commandant, 101 Area Provost Unit, PIN-908101, C/O 99 APO.
4. Officer-in-Charge Records CMP, Bangalore, PIN-900493.

.....Respondents

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

ORDER

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby the applicant has sought following reliefs:-

(i) To issue/pass an order or direction to quash/set aside Records CMP Bangalore Discharge Order letter No. 422/NE (R&D) dated 07 Jan 2019.

(ii) To issue/pass an order or direction to the respondents to consider the applicant for extension of service by two years w.e.f. Sep 2019 with all consequential benefits.

(iii) To issue/pass an order or direction to re-instate the applicant in Army Service w.e.f. 01 September 2019 and grant him seniority and promotion to the rank of Subedar, Sub Major and Hony Lt/Capt as per his seniority similar to his batchmates with all consequential benefits and pay & allowance alongwith arrears and interest @ 18% p.a. from 01 September 2019.

2. The factual matrix on record is that the applicant was enrolled in the Corps of Military Police of the Indian Army on 27.08.1993. During the course of his service he rose to the rank of Naib Subedar w.e.f. 01.09.2017. While posted with 101 Area Provost Unit, screening board for extension of service by two years was held as per which he was granted two years service extension. He submitted unwillingness certificate dated 14.03.2018 for further extension of service, therefore his discharge order was issued vide letter dated 08.06.2018. On receipt of discharge order, applicant submitted willingness certificate dated 01.12.2018 for extension of service by two years which was turned down vide letter dated

15.01.2019 in view of policy letter dated 11.12.2017, hence this O.A.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Army on 27.08.1993 and he was posted with 101 Area Provost Unit w.e.f. 04.11.2017. He further submitted that applicant was promoted to the rank of Naib Subedar w.e.f. 01.09.2017 and occurrence to this effect was notified vide Part II Order No 1/396/05/17. It was further submitted that as per Govt of India, Min of Def letter dated 03.09.1998, service tenure of a Naib Subedar is 26 years extendable by 02 years by screening board. It was further submitted that keeping in view aforesaid policy, in normal course, he was due to retire from service w.e.f. 31.08.2019 after completion of 26 years of pensionable service, if his service was not extended by 02 years by the screening board.

4. Learned counsel for the applicant further submitted that since no certificate for extension of service was submitted within the stipulated period, his tenure was extended by 02 years. He further submitted that initially due to ignorance he submitted his unwillingness certificate dated 14.03.2018 but when he came to know of the mistake, he submitted willingness certificate dated 01.12.2018 which being not accepted by the Records, discharge order was issued which is under challenge. He pleaded for grant of 02 years extension of service and promotion to the next rank alongwith consequential benefits.

5. On the other hand, learned counsel for the respondents submitted that the applicant was promoted to the rank of Naib

Subedar w.e.f. 01.09.2017. It was further submitted that as per Govt of India, MoD (Army) letter dated 03.09.1998, terms of service/age/tenure for retirement for the rank of Naib Subedar has been laid down for 26 years of pensionable service extendable by 02 years by screening board or 52 years of age, whichever is earlier. It was further submitted that in accordance with aforesaid policy the applicant was required to be discharged from service on 31.08.2019 after completion of 26 years of pensionable service if service of the applicant was not extended by 02 years by screening board.

6. Learned counsel for the respondents further submitted that applicant's willingness/unwillingness certificate was to be received by Record Office up to 31.10.2017 but the same being not received within the stipulated period, service extension of two years was granted in terms of Para 8 (a) of policy letter for extension of service. It was further submitted that on receipt of unwillingness certificate dated 14.03.2018 his two years extension was cancelled and discharge order dated 08.06.2018 was issued with instructions to be discharged from service w.e.f. 31.08.2019. It was further submitted that applicant's willingness certificate dated 01.12.2018 was received by Record Office on 12.01.2019 through AWAN but ink signed copy was received on 22.01.2019 which implies that the willingness certificate was signed back dated to circumvent the gap.

7. Learned counsel for the respondents further submitted that the aforesaid willingness certificate received belatedly was not considered in terms of policy letter dated 11.12.2017 stating that *'as per para 2 (ii) (ac) of ibid policy letter the application of the*

applicant for change of option 'unwilling to willing' should reach Record Office eight months prior to the date of completion of original terms of engagement in current rank. However, application and willingness certificate signed by the applicant on 01 Dec 2018 and recommended/countersigned by Commanding officer on same day i.e. 01 Dec 2018, have been submitted to this establishment on 12 Jan 2019 vide your AWAN Sig No Pro/00059/A dt 12 Jan 2019, which has been delayed by one month and 12 days. It means the JCO has signed his application and countersigned by Commanding Officer unit back dated to circumvent the clause of submission of documents eight months prior to date of completion of terms of engagement. Thus, the application of the applicant has not been received by this establishment within the stipulated period which is against the policy. Please clarify the same. Application in respect of JC-820359K Nb Sub (MP) Visarjan Singh Yadav of your unit to change the previous option from 'Unwilling to Willing' for extension of service by two years cannot be accepted due to non receipt of the application of the applicant within stipulated period. Therefore, statement of case is returned herewith unactioned.'

8. Concluding his arguments, learned counsel for the respondents pleaded for dismissal of O.A. on two grounds viz. (i) applicant's discharge order was issued based on submission of applicant's unwillingness certificate and (ii) willingness certificate was received by the Record Office after expiry of stipulated period.

9. Heard Shri KP Datta, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

10. It is not disputed that applicant was enrolled in the Army on 27.08.1993 and he was promoted to the rank of Naib Subedar w.e.f. 01.09.2017. In normal course of service a Naib Subedar can serve up to 26 years which is extendable by 02 years subject to discipline, acceptable medical criteria and willingness from the applicant.

11. Procedure and criteria for screening of personnel below officer rank (PBOR) for grant of extension of service by two years has been laid down in Integrated Headquarters of Ministry of Defence (Army) letter dated 20.09.2010 and 02.03.2012. Para 4 of policy letter dated 02.03.2012 stipulates as under:-

"All JCOs and NCOs shall be screened 2 years in advance of the date of superannuation by a screening board to be held at Unit/Regiment/Corps basis as applicable to assess their suitability for retention. Such JCOs/NCOs, who are not found suitable for retention as a result of screening, shall be retired as per rules".

12. Para 8 of the ibid policy letter further stipulates as under:-

"An individual will be deemed to be willing for 2 years extension in age/service unless he submits his unwillingness certificate two years before his retirement, duly countersigned by OC Unit."

13. Physical fitness certificate and unwillingness certificate in respect of persons due for discharge for the period 01.07.2019 to 31.12.2019 was asked by Record Office vide letter dated 11.10.2017 for conducting screening board to be conducted for

extension of two years service during December, 2017. It is worthwhile to mention that name of the applicant was mentioned at serial number 40 of the list. Due to non receipt of unwilling certificate in respect of the applicant in stipulated time i.e. by 31.10.2017, his extension of 02 years service was recommended by board of officers as deemed willing subject to receipt of unwilling certificate. Record Office issued letter on 05.02.2018 asking willing/unwilling certificate in respect of the applicant. Thereafter, in pursuance to letter dated 05.02.2018 applicant submitted his unwillingness certificate dated 14.03.2018 which was received by Record Office on 22.03.2018 and discharge order dated 08.06.2018 was issued in respect of the applicant to be discharged from service w.e.f. 31.08.2019.

14. Para 2 (ii) (ac) of Policy letter dated 11.12.2017 further stipulates as under:-

"(i) If an individual was previously 'unwilling' for extension, his discharge drill shall be put into effect and he shall not be allowed to change his option from 'unwilling' to 'willing' for extension of service.

(ii) In case an individual was previously 'willing' for extension, he would not be permitted to change his option to 'unwilling' for extension. In case he wants to proceed on pension before completion of his extended tenure, he can apply for 'premature discharge on compassionate grounds' and his case would be processed as per rules governing the same."

15. Facts on record clearly envisage that applicant first submitted his unwillingness certificate for extension of service but later he submitted his willingness for two years extension which, being received late by the Record Office, was returned unactioned and he

was discharged from service w.e.f. 31.08.2019. Applicant's version in regard to submission of unwillingness certificate is that due to ignorance he submitted that certificate as in the covering letter willingness word was mentioned and later willingness certificate was forwarded to Record Office but it was received late by the Record Office due to Covid-19 Pandemic as at that time all official work was hampered due to adverse conditions in the country.

16. We have bestowed our best of considerations. We find that in the first instance the applicant submitted his unwillingness certificate and later he signed willingness certificate dated 01.12.2018 which was received by the Record Office on 12.01.2019 due to delay in transit. We find that once the willingness certificate was signed by the applicant on 01.12.2018 for his extension of tenure by two years it was the responsibility of the Commanding Officer to pursue the matter by fastest means to enable the Record Office to process the matter.

17. The fact of the matter is that the applicant had signed his willingness certificate on 01.12.2018 i.e. eight months prior to his date of impending discharge which is permissible in terms of Para 2 (ii) (ac) of policy letter dated 11.12.2017, which for convenience sake, is reproduced as under:-

"2 (ii) (ac). The application for change of option should reach Record Office eight months prior to the date of completion of original terms of engagement in current rank. After this time, no change in option earlier exercised would be accepted and the following procedure would be adopted:-

(aaa) If the indl was previously 'unwilling' for extn, his discharge drill shall be put into effect and he shall not be allowed to change his option from 'unwilling' to 'willing' for extn of service.

(aab) In case the indl was previously willing for exten, he would not be permitted to change his option to unwilling for extn in

case he wants to proceed on pension before completion of his extended tenure he can apply for premature discharge on compassionate grounds and his case would be processed as per rules governing the same."

18. In view of the above an inference may be drawn that the applicant's willingness certificate was signed within the permissible period but due to delay in transit it reached late at Record Office for which applicant is not held responsible. He deserves to be granted two years extension in view of his willingness certificate dated 01.12.2018, but since the applicant has already retired, he is eligible for two notional increments.

19. Apropos above the O.A. is **allowed**. The respondents are directed to grant two increments to the applicant notionally and issue fresh PPO by adding two increments within a period of four months from today. Default will invite interest @ 8% p.a.

20. No order as to costs.

21. Miscellaneous application(s), if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 29.03.2023

rathore

(Justice Anil Kumar)
Member (J)