

Court No. 1
(Reserved)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 356 of 2022

Tuesday, this the 19th day of March, 2024

“Hon’ble Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

JC 245387K Risaldar Ramvir Singh Jurel son of late Hukum Singh,
resident of village & Post-Pentkhera, District-Agra, U.P.-282006.

..... Applicant

Ld. Counsel for the : **Shri Veer Raghav Chaubey**, Advocate.
Applicant

Versus

1. The Union of India, Ministry of Defence, through Chief of the Army Staff, Army Headquarters, New Delhi.
2. A.D.G. of Manpower (Policy & Planning) M.), 5 (B) Adjutant General’s Branch, IHQ of MoD (Army), Wing No 3, Ground Floor, West Block-III, RK Puram, New Delhi-110066.
3. Commandant, 62 Cavalry, C/o 56 APO, PIN-912662.
4. Colonel of Records, Armed Corps Records, 900476, C/o 56 APO.
5. Office of the PCDAP, Drowpadi Ghat, Allahabad.

.....Respondents

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

ORDER

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

- (i) *This Hon'ble Tribunal may kindly be pleased to direct the respondents to quash the premature retirement of applicant dated 31.08.2021 or give all benefits of 2 years service as being paid to a Risaldar of 30 years of service.*
- (ii) *Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*
- (iii) *To award the cost of the O.A. in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 28.08.1993. During the course of his service, he was promoted to the rank of Naib Risaldar w.e.f. 19.01.2012 and he was granted seniority w.e.f. 01.10.2011. In the year 2017, he submitted his 'willingness certificate' for extension of service by two years in Naib Risaldar rank i.e. from 29.08.2019 to 27.08.2021 and during this extension period he was promoted to the rank of Risaldar w.e.f. 01.04.2021. Since the applicant submitted his 'unwillingness certificate' for extension of service by two years in the rank of Risaldar on 28.04.2021, his release order was issued on 29.06.2021 and he was discharged from service w.e.f. 31.08.2021 (AN) after completion of terms of engagement under Rule 13 (3) I (i) (a) of the Army Rules, 1954. Applicant has filed this O.A. to quash his premature retirement dated 31.08.2021 or give all benefits of 02 years service as being paid to a Risaldar of 30 years of service.

3. Learned counsel for the applicant submitted that the applicant was willing to serve further by granting extension of two years but he was made to retire just to give benefit to promote someone else, who

was close to the Commanding Officer. He further submitted that the applicant, being in medical category SHAPE-I and also willing for service extension of two years, was discharged from service after completion of 28 years forcefully without providing service extension of two years. In this regard, he wrote two letters dated 04.08.2021 and 05.09.2021 to the respondents but there being no response from the respondents, this O.A. has been filed for grant of substantial justice.

4. Learned counsel for the applicant further submitted that applicant had submitted willingness certificate for extension of tenure by two years (Annexure No 2 to O.A.) but even then he was not granted service extension just to provide benefit to close person of the Commanding Officer, which is unlawful. He pleaded for grant of financial benefits of two years service.

5. On the other hand, respondents have submitted that in terms of policy letter dated 20.09.2010 all personnel below officer rank are screened for extension of two years tenure by a Screening Board which is held 24 months prior to their reaching the current laid down service limit. It was further submitted that prior to conduct of Screening Board 'willingness/unwillingness' is asked from the eligible candidates and unless an individual explicitly gives 'unwillingness' for extension, he is deemed as 'willing'.

6. Learned counsel for the respondents further submitted that in terms of policy letter dated 11.12.2017 individuals have right to change their option from 'unwilling' to 'willing' only once and the change can be sought by the individual any time from the date of screening till eight

months prior to the date of commencement of extension period. It was further submitted that since the applicant had himself submitted his 'unwillingness' certificate for extension of service by two years in the rank of Risaldar, therefore, he was not granted service extension of two years and he was rightly discharged from service w.e.f. 31.08.2021 on completion of terms of engagements. He pleaded for dismissal of O.A.

7. Heard learned counsel for the parties and perused the record.

8. 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".

9. 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."

10. 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."

11. It is undisputed fact of the parties that the applicant was enrolled in the Army on 28.08.1993 and he was discharged from service w.e.f. 31.08.2021 (AN) after completion of 28 years service under Rule 13 (3) I (i) (a) of Army Rules, 1954.

12. During the course of his service, the applicant was promoted to the rank of Naib Risaldar on 19.01.2012. He was granted two years service extension in Naib Risaldar rank and during the extension period he was promoted to the rank of Risaldar w.e.f. 01.04.2021, meaning thereby that his tenure was up to 31.08.2021 had he not granted service extension of two years. The respondents have filed 'unwillingness certificate' tendered by the applicant and this certificate is placed at Annexure R-II. The record shows that applicant had submitted his 'unwillingness certificate' for further extension of service in April, 2021 which was duly countersigned by the Commandant, 62 Cavalry and on the basis of this unwillingness certificate, he was discharged from service on completion of 28 years service. For convenience sake, unwillingness certificate is reproduced as under:-

✓
"WILLINGNESS/UNWILLINGNESS CERTIFICATE"

I, No JC-245387K Rank Ris Name Ramvir Singh Jurel Unit 62 Cavalry am willing/unwilling for enhance of my service by two years in terms of Govt of India, Min of Def letter No F-14(3)/98/D (AG) dt 03 Sep 1998.

Dated: 2021

Sd/- x x x x x
(Signature of the individual)

CERTIFICATE BY THE OC UNIT

Certified that the indl meets all existing criteria as laid down in Appx 'A' to IHQ of MoD (Army) letter No B/33098/AG/PS-2 (c) dt 20 Sep 2010. The indl is also qualified as per specific std laid down for physical fitness vide IHQ of MoD (Army) letter No A/00520/Extn/Gen/MF (Pers) dt 11 Jan 11:-

(a)	<i>Medical Category</i>	: <i>SHAPE-I</i>
(b)	<i>Physical Std (BPET and PPT Test)</i>	
	(i) <i>Pass/Fail</i>	: <i>Pass</i>
	(ii) <i>Dt of Passing</i>	: <i>31 Aug 2020</i>
(c)	<i>Details of punishment</i>	: <i>Nil</i>

Station : C/o 56 APO

Dated : 28 Apr 2021

sd/- x x x x
(Arneesh Mohan Saini)
Colonel
Commandant
62 Cavalry

13. In letter dated 04.08.2021 addressed to the Commandant, 62 Cavalry, the applicant has stated that he was not aware as to when this unwillingness certificate was got signed from him. In regard to this, it is worthwhile to mention that getting signature on unwillingness certificate forcefully from a Junior Commissioned Officer (JCO) in the Army is unbelievable. Further, in the unwillingness certificate produced by the respondents, applicant has not denied his signature on the certificate.

14. Learned counsel for the applicant has filed a copy of complaint of the applicant (Annexure No 2 to O.A.) stating that the applicant was not granted service extension even after giving 'willingness' certificate. The respondents have also filed 'unwillingness' certificate (Annexure R-2). There are two version on record i.e. one filed by the applicant and the other filed on behalf of the respondents. Having perused both the documents, we find that version of the applicant seems to be incorrect and it cannot be relied upon. The fact is that the applicant had given his 'unwillingness' certificate and based on this certificate he was rightly discharged from service after completion of terms of engagement in the rank of Risaldar. There seems to be no illegality on the part of the respondents.

15. In view of the the above, prayer made by the applicant deserves to be dismissed, hence O.A. is **dismissed**.

16. No order as to costs.

17. Miscellaneous application (s), pending if any, stand dismissed.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 19.03.2024
rathore

(Justice Anil Kumar)
Member (J)