

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Transferred Application No. 785 of 2010**

Tuesday, this the 03rd day of November 2015

Hon'ble Mr. Justice D.P. Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

Sgt. Jageshwar Chaubey (296477), Clk/Gd. Unit 11 Base Repair Depot, Air Force Station, Ojhar, Nasik.

.....Petitioner

Ld. Counsel for the : **Shri V.P. Pandey, Advocate**
Petitioner

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Air Staff, Vayu Bhawan, New Delhi-11.
3. Air Officer Commanding-in-Chief, Eastern Air Command, I.A.F. C/O 99 A.P.O.
4. Air Officer Commanding-in-Chief, Western Air Command, I.A.F., Subroto Park, New Delhi-10.
5. Air Officer, Commanding, Air Force Record Office, Subroto Park, New Delhi-10.
6. Wing Commander, S.S. Ahluwalia, (10531) F(P), (then O.C. T.T.F., Air Force), C/O 99 APO.
7. Squadron leader M.S. Mehta (14695) F(P) (then O.C., T.T.F., Air Force) C/O 99 A.P.O.
8. Air Commodore K. Khanna F(P) (then AOC, 5 Wing, AF C/O 99 APO.
9. Group Captain Harish Singh Ji F(P) (then Station Commander, 5 Wing, AF C/O 99 APO.
10. Group Captain E. Mathulla (8365) F(P) (then Station Commander, 46 Wing, AF C/O 56 APO.
11. Flt Lt G. Joseph (18336) Adm (then Station Adjutant, 46 Wing, AF C/O 56 APO.
12. Group Captain KS Mandala F (P) (then Station Commander, 46 Wing, AF C/O 56 APO

...Respondents

Ld. Counsel for the :
Respondents.

**Shri A.K. Singh, Central
Govt Counsel assisted by
Lt Col Subodh Verma, OIC, Legal Cell.**

ORDER (ORAL)

1. Heard Ld. Counsel for the parties and perused the record.
2. The petitioner being aggrieved with discharge order and non extension of service tenure preferred Writ Petition No 34906 of 1993 in the High Court of Judicature at Allahabad. After creation of Armed Forces Tribunal, the writ petition has been transferred to this Tribunal in pursuance to provisions contained under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 785 of 2010.
3. The petitioner was enrolled in the Indian Air Force on 24.12.1967 as Clerk GD from recruiting centre, Guwahati. Later on he he retired from Air Force as Sergeant. The tenure of service in Air Force is 15 years which according to Ld. Counsel for the petitioner has come to an end on 24.12.1982. Thereafter his service was extended for 5 years and continued upto 23.12.1987. Again an extension of 6 years was granted and continued upto 24.12.1993. The petitioner was due for retirement from service on 25.02.1994. Ld. Counsel for the petitioner submits that on account of interim order passed by the High Court, Allahabad, he was retired on Nov 1994. Thereafter the petitioner was not granted extension of service on account of 4 red ink and 2 black ink entries.
4. Ld. Counsel for the Applicant submitted that as per policy on extension of tenure, a person cannot be retained in service for extended period, if he has drop in performance or has a red ink entry. It has been submitted by Ld. Counsel for the petitioner that out of four red ink entries, his three red ink entries were expunged. Ld. Counsel

for the Respondent submitted that for expunged entries, he has been given benefit. Ld. Counsel for the respondents submits that under the air force order dated 21.06.1989, a person who has drop in performance and is habitual offender cannot avail the extension of service.

5. We have perused the record. Air Force order dated 23.04.1989 deals with extension of service which is reproduced as under:-

"Telephone 301231/1671

*Vayu Sena Mukhyalaya
Vayu Bhawan
New Delhi-110011*

Air HQ/C-40811/297/PA-III

21 Jun 89

HQ Western Air Command, IAF

HQ Eastern Air Command, IAF

HQ Central Air Command, IAF

HQ Southern Western Air Command, IAF

HQ Southern Air Command, IAF

HQ Maintenance Command, IAF

HQ Training Command, IAF

----- (for AOsC/OsC)

Units directly under Air Headquarters

Air Force Record Office (for AOC)

EXTENSION OF SERVICE : AIRMEN

1. *In accordance with the existing policy on extension of service, options for willingness/unwillingness for extension of service are called from the airmen by AFRO two years prior to the date of completion of their term of engagement. Those airmen who do not submit any option are deemed to be unwilling for further extension of service. Accordingly, discharge orders in respect of such airmen are issued 12-14 months in advance. This system was introduced with a view to ensure finalization of pensionary and other non-effective benefits in time. At present, two changes of option throughout the*

service career of an airman are normally considered by AFRO. Extension of service is considered on the basis of recommendations of the unit commanders provided concerned airmen are found medically fit, recommended suitable and do not fall in the category of habitual offenders.

2. The issue was discussed at the commanders conference held during Apr 89. It was felt that two years period for deciding willingness/unwillingness was too long and fairly early for an airman to think about his future resettlement/continuation in the service. It was also observed that more than 10% of airmen have been changing their options. It will be appreciated that this change in change of option retards the progress made by AFRO for sanction of pensions which are in the process of being finalized and thus efforts made for timely sanction of pension become infructuous.

3. It has, therefore, been decided that :-

(a) Henceforth option for willingness/unwillingness from airmen for extension of service will be called for 18 months prior to completion of their RE and option for willingness/unwillingness of extension once exercised will not be permitted to be changed.

(b) Extension of service will be granted on more selective basis with emphasis on assessment, airmen-like qualities, medical category & sportsmanship etc.

(c) Unit commanders are to be more careful while recommending airman for extension of service. Those falling under the category of habitual offender will invariably be not recommended for extension of service.

4. The contents of this letter be brought to the notice of all units under your command.

5. Following letters are cancelled :-

(a) Air HQ/40811/297/PA-III dated 15 Feb 85.

(b) Air HQ/C-40811/297/PA-III dated 21 Jul 87.

Sd/- x x x x x
(MK Anand)
Air Vice Marshal
Director of Personnel (Airmen)
For Air Officer I/C Personnel

Internal
All Directors”

6. The plain reading of para 3 (c) shows that those falling under the category of habitual offender will invariably be not recommended for extension of service. It provides that extension of service will be granted on more selective basis with emphasis of assessment, airmen like qualities, medical category and sportsmanship etc.

7. From the Air Force Order it appears that extension of service is not a routine matter, but is subject to consideration of airmen service profile on merit and unblemished record. In case an airman service record is not upto the mark, then ofcourse, the airman shall not be granted any extended period.

8. Ld. Counsel for the applicant submits that it was open for the respondents to proceed for retrial of the applicant after three red entries awarded to the applicant were expunged. The argument advanced by Ld. Counsel for the applicant carries weight. But the fact remains that under the Air Force Order dated 21.06.1989, a person whose service record is not unblemished, may not be entitled for extension of service. Even if we ignore three red ink entries, the continuance of one red ink entry along with three black ink entries will be sufficient to reject the prayer of extension of service. The applicant had filed Writ Petition before the High Court which shows that he has claimed relief for quashing of the discharge order. Nowhere the petitioner has made prayer to set aside punishment awarded to him in the form of severe reprimand or the remaining one red ink entry and three black ink entries.

9. While deciding the case with regard to red ink entries vide order dated 23.09.2015 passed in O.A. No. 168 of 2013 Nk. Abhilash Singh

Kushwah vs. Union of India we have held that once a person is awarded red ink entry, then unless the entry is set aside by superior authority or by judicial review, it shall remain in the service record and shall be basis for the armed force to proceed further with regard to service matter. Since the entries remain operative and are in the service record without being challenged by the applicant, there was no option on the part of the respondents except to reject the payer of the applicant for continuance in service. Needless to say that in case applicant was aggrieved, he should have preferred statutory before the air force authorities and should have prayed for setting aside one red ink entry and three black ink entries, which seems to not have been done by the petitioner. There appears to be no option except to rely upon the material on record and scrutinize the controversy placed before us.

10. Keeping the factual matrix on record, since the red and black ink entries and entry of severe reprimand has been treated as instance of habitual offender, the applicant is not entitled to be retained in service. The decision taken by the respondents does not suffer from any illegality or irregularity.

11. One of the argument advanced by the Ld. Counsel for the respondent that some person was given extension, though he was awarded red ink entries and entry of severe reprimand, the quality clause of the Constitutional provision does not equalize wrong with right. Fundamental right of a person is covered by statutory mandate.

Even if some person had been given extension, that would be a wrong order on the part of the air force and no parity can be extended on the ground that some illegality has been committed by the respondents.

12. In view of above observations, the T.A. has no force and is rejected.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

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(Justice D.P. Singh)
Member (J)