

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 336 of 2018**

Thursday, this the 16<sup>th</sup> day of December 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ram Harsh No. 4473292H Hav/Chef Com), S/o of Suraj Bali,  
Permanent resident of village – Pure Barjor, Post Office –  
Betora, District –Raebareli (Uttar Pradesh)  
Presently Posted at 1 Sikh Light Infantry, PIN -912301, C/O 56  
APO.

..... Applicant

Learned counsel for the : **Shri Yashpal Singh**, Advocate.  
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,  
South Block, New Delhi.
2. Additional Director General of Personnel Service,  
Adjutant General's Branch, Integrated Headquarters of  
Ministry of Defence (Army), New Delhi-110011.
3. Officer –in-Charge Records, The Sikh Light Infantry,  
PIN -900927, C/O 56 APO.
4. Commanding Officer, 1 Sikh Light Infantry, PIN -912301,  
C/O 56 APO.

.....Respondents

Learned counsel for the :**Shri Yogesh Kesarwani**,  
Respondents. **Central Govt. Counsel**

## ORDER

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (a) *Issuing / passing of an order setting aside the letter / order dated 03.05.2018 issued on behalf of the Officer-in-Charge Records. The Sikh Light Infantry, PIN -900927, C/O 56 APO rejecting/ returning ‘unactioned’ the application for extension of two years of service with effect from 01.11.2018*
- (b) *Issuing /passing of an order directing the respondents to consider the case of the applicant for extension of two years of service with effect from 01.11.2018, and grant the same with all consequential service benefits.*
- (c) *Issuing / passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allowing this Application with cost.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the army on 22.10.1994. In the year 2016, applicant was asked to opt for willingness for two years of extension of service beyond the normal tenure. The applicant gave his ‘unwillingness’ for extension of service due to family problem. Applicant submitted an application for changing his option from unwilling to willing for two years of extension of service. His application for willingness was

returned unactioned and applicant was not granted extension of service. Being aggrieved, the applicant has filed instant application for setting aside Record Office letter dated 03.05.2018 under which willingness application for extension of two years of service was returned and to grant him extension of two years of service with effect from 01.11.2018.

3. Learned counsel for the applicant submitted that applicant was enrolled in the army on 22.10.1994. During service he was posted to various units. Applicant was asked to opt for willingness for two years of extension of service. The applicant opted for unwillingness for extension of service due to prevailing family situation. After few months situation of the family of applicant was changed and applicant submitted application dated 20.04.2018 through proper channel for changing his option from 'unwilling' to 'willing' for two years of extension of service. His application was recommended and forwarded to record office. Record Office vide letter dated 03.05.2018 returned the application unactioned giving the reason that the application for willingness was required to reach the Record Office by 31.01.2018. Learned counsel for the applicant submitted that discharge of a person, validly sanctioned by a competent authority, may with the consent of

the individual, be cancelled by any superior authority with or without any condition in terms of Rule 11 (2) and Rule 16 B of the Army Rules, 1954. Learned counsel for the applicant contended that the Hon'ble Supreme Court in the case of ***Balram Gupta Versus Union of India and another*** reported in 1987 (Supp) SCC 228 inter alia has held that in the modern and uncertain age it is very difficult to arrange one's future with any certainty; a certain amount of flexibility is required to be given to the employees, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the person to withdraw his letter of retirement. Learned counsel for the applicant pleaded that impugned order dated 03.05.2018 returning unactioned application for change of option for extension of service is illegal, unfair and arbitrary exercise of power and liable to be dismissed and prayed that service of the applicant be extended for two years.

4. On the other hand, learned counsel for the respondents submitted that applicant was due for discharge from service w.e.f. 31.10.2018 under the provisions of Army Rule 13 (3) item III (i) on completion of terms of engagement. The applicant

gave his unwillingness for grant of extension of two years of service and his discharge order was issued. The applicant approached Records Office for cancellation of discharge order and extension of service for two years. Learned counsel for the respondent submitted that as per Integrated Headquarters of Min of Def letter dated 11.12.2017, individuals have right to change their option from 'unwilling' to 'willing' once at any time from the date of screening till eight months prior to date of commencement of extension period. After this time, no change in option earlier exercised would be accepted. Learned counsel for the respondents further submitted that as per Para 3 of Additional Directorate General of Personnel Services, Adjutant General's Branch, IHQ of MoD letter dated 11.12.2017, as one time measure, all personnel who are completing their terms of engagement in present rank till 31.08.2018 and want to change their option for extension of service, shall be given a chance to revise their option by 31.01.2018 and if the individuals do not apply for change of option by 31.01.2018, their previous option would be deemed as final and irrevocable. Keeping in view the above terms and conditions, application for change of option from 'unwilling to willing' for extension of service by two years was returned unactioned vide letter dated 03.05.2018. The

applicant filed instant O.A. for extension of two years of service wef 01.11.2018. Since request of the applicant for change of option has been denied by Records Office, the O.A. lacks merit and substance and is liable to be dismissed.

5. We have given our anxious consideration to submissions of both the parties as also perused guide lines and rules and regulations on the subject.

6. The question that remains to be answered is whether the applicant is eligible for grant of extension of two years service under the relevant rules and instructions?

7. In the instant case, the applicant was due for retirement on 31.10.2018. He was asked to opt for willingness for extension of service for two years. Due to his domestic problem, he opted for 'unwilling' for extension of service in the year 2016. The situation of his family changed and he submitted application for change of option from 'unwilling' to 'willing' on 20.04.2018. Respondents returned his application of 'willingness' unactioned on 03.05.2018. The applicant filed instant Original Application against impugned order dated 03.05.2018 passed by the respondents returning unactioned application for extension of two years of service. The O.A. was

admitted on 23.07.2018. Then the applicant filed application for interim relief. On 08.10.2018 application of interim relief was disposed of with the direction that the retirement of the applicant will be subject to the final outcome of this Original Application but in the meantime applicant was discharged from service on 31.10.2018. On perusal of service record and as per policy for grant of extension of service for two years in addition to willingness, applicant was fulfilling all other criteria i.e. (a) Medical Classification. (b) Physical Fitness (c) ACRs/Character Rolls Criteria and (d) Discipline. His application for willingness was returned unactioned only because it reached in Record Office late. In the army there should not be lack of trust between soldiers and the officers. The officers of the army must deal with subordinates or soldiers in a just and fair manner to strengthen their trust into them so that during time of war, the officers may be their hero to fight with enemies. Keeping in view that applicant meets all other prescribed criteria for extension of service as well as order passed by this Tribunal in interim relief application, we find that denial of extension of service to the applicant is against the rules & regulations of the service and liable to be quashed and applicant requires to be notionally reinstated in service.

8. Consequently, Original Application is partly **allowed**. The respondents are directed to re-instate the applicant notionally in service in the same capacity in which he was discharged only for the purpose of pensionary benefits which shall deem the petitioner to have superannuated two years after 01.11.2018. We refrain from awarding back wages or other benefit for the period applicant was out of service on the principle of 'no work no pay'. Pensionary benefits on account of this extension shall follow and arrears in this regard be calculated and paid to the applicant within four months from the date of production of a certified copy of this order, failing which, the amount shall carry interest @ 8% per annum from the due date, till actual payment.

9. No order as to costs.

10. The Registry is directed to provide a copy of this order to learned counsel for the parties for its onwards transmission and necessary compliance.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 16 December, 2021

Ukt/-