

(2004) 08 DEL CK 0136

In the Delhi High Court

Case No : Writ Petition (C) 6586 and 2003

Ex. Sgt. P.S. Chauhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 113 DLT 351 : (2004) 76 DRJ 675

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : K.C. Mittal, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—Being aggrieved by the orders passed by the respondents in not extending the service of the petitioner on compassionate grounds in accordance with the relevant rules, the present petition is filed by the petitioner.

2. The petitioner was appointed as an Airman in the year 1980. Thereafter he was promoted to the rank of Sergeant in the year 1990. He also appeared and passed the J.W.O. Promotion examination in the year 1993.

3. The aforesaid enrolment of the petitioner in the IAF was for an initial term of 20 years as per the provisions of AFI 12/S/48 (as amended), which lays down the terms and conditions of the services of the Airmen. Subsequently, the aforesaid AFI 12/S/48 came to be amended. Under the aforesaid amended provision, it was laid down that on completion of 20 years regular service, the competent authority at his discretion may extend the period of regular service for another period of six years at the first instance and subsequently for another period of three years at a time or such shorter period, as deemed fit, up to the age of superannuating. In terms of the amendment and prescribed procedure, an Airman has to submit his willingness or unwillingness 18 months prior to expiry

of his regular engagement for further extension of engagement. Such option once exercised is, however, treated as final and any request for change of the option is generally not entertained except under exceptional and extreme compassionate grounds. A copy of the aforesaid AFI 12/S/48 (as amended) is placed on record.

4. The provisions for giving extension of engagement in certain specific cases is provided for under Clause 8, which is extracted below as it has relevance in deciding the present petition:

""8. Extension of Engagement in Certain Specific Cases: Cases for extension of engagement in the following specific cases will be referred to Air HQ by AFRO for a final decision with the specific recommendations of AOIC AF Records, along with brief facts of the cases in duplicate, application on the airman and extract of conduct sheet.

(a) Airmen who have either undergone or are undergoing pre-cum-post release course.

(b) Airman whose discharges have duly been authorised but subsequently submit willingness to extend their service due to compelling compassionate grounds.

xx xx xx ""

5. The petitioner submitted his unwillingness for further extension of his initial term of engagement beyond 31.7.1999 in accordance with the prescribed procedure. Accordingly the respondents issued the discharge order on 9.7.1999 discharging the petitioner from service with effect from 31.7.1999 i.e. after completion of the initial terms of engagement of the petitioner. Subsequent thereto the petitioner submitted two more undertaking certificates on two occasions i.e. on 12.8.1999 and 4.2.1999 respectively, certifying that he would not ask for change of option from ""unwillingness"" to ""willingness"" provided the petitioner is detailed on a Pre-Release Course which is meant for re-settlement of retiring service personnel.

6. Pursuant to the aforesaid undertaking, the petitioner also had undergone a Pre-Release Course in Tourism/Travels Agency Management in Chennai from 3.5.1999 to 2.8.1999. However, on 24.4.2000, the petitioner submitted an application addressed to the Commanding Officer requesting him to consider his case for change of option from ""unwillingness"" to ""willingness"". The aforesaid personal application of the petitioner could be considered, decided and disposed of by the Commanding Officer himself as he is the competent authority to decide and dispose of such personal application of Airman serving under him. The application was filed by the petitioner on 24.4.2000 and was considered by the Commanding Officer. Being unconvinced with the grounds advanced by the petitioner for changing the option from ""unwillingness"" to ""willingness"", he called the petitioner for interview, which was held on 2.5.2000. In this interview the Commanding Officer explained to the petitioner that his request for changing

""unwillingness"" to ""willingness"" cannot be considered on extreme compassionate grounds as claimed unless he could submit some documentary proof to substantiate his case. The petitioner, however, could not submit any documentary proof despite the aforesaid opportunity. The application was ultimately sent to AFRO for necessary action and the said request was finally rejected.

7. Being aggrieved by the aforesaid order, the petitioner submitted a representation on 18.12.2000, which, however, was not disposed of by the respondents and accordingly the petitioner filed a writ petition in this Court which was registered as CWP No.66/2001. By way of this writ petition, the petitioner challenged the action of the respondents in discharging him from service with effect from 31.7.2000 and also for not disposing the representation filed by him.

The aforesaid writ petition was listed before this Court on 5.2.2001 when an order was passed disposing of the writ petition with a direction to the respondents to deal with and consider the representation filed by the petitioner and to dispose of the same within the time frame as fixed in the said order. Pursuant to the said order, the representation of the petitioner dated 18.12.2000 was considered by the Air Headquarters and by a speaking order dated 27.2.2001, the said representation was rejected a devoid of merit.

8. After the aforesaid disposal of the representation, the petitioner again filed a writ petition in this Court, which was registered as CWP No.1581/2001. The order dated 27.2.2001 passed by the respondents disposing of the representation of the petitioner dated 18.12.2000 as also the order of discharge from service on 31.7.2000 were under challenge in this writ petition. This writ petition came up for hearing before the Division Bench of this Court and by a judgment dated 31.5.2002 the writ petition was dismissed holding the same to be devoid of any merit. It was held by the Division Bench of this Court that the petitioner exercised his option 12 months before his actual cessation of employment, which was accepted immediately and that in terms of the policy decision of the respondents the ""unwillingness"" could be altered only in exceptional situation, which was considered in great detail by the appropriate authority and that a perusal of the impugned order dated 27.2.2001 would indicate that all relevant facts were taken into consideration. It was further held by this Court that a reading of the order dated 27.2.2001 would indicate that reasons for change of the option from ""unwillingness"" to ""willingness"" were not found to be satisfactory and that discretion was properly exercised by the respondents and, Therefore, it was held that no case for judicial review was made out.

9. The petitioner thereafter filed a review application which was registered as RA No.10019/2002. The review application was disposed of on 1.10.2002 when a statement was made that the matter relating to extension of service could have been considered even on compassionate ground. In that context it was held by the Division Bench of this Court that the aforesaid plea being raised in the review petition could not be entertained as no such plea was raised before the Court. In

that context the Division Bench held that if the petitioner has any other cause of action for grant of extension of his services, he may take recourse to such remedy in accordance with law.

10. Thereafter the petitioner filed a writ petition in this Court being CWP No.7586/2002, which was, however, withdrawn by the petitioner after taking a liberty to file an appropriate representation.

After disposal of CWP No.7586/2002, the petitioner filed a fresh representation before the Chief of Air Staff on 24.2.2002. The said representation was also considered by the respondents and by an order dated 20.2.2004, the aforesaid representation of the petitioner was disposed of holding that no new facts have been brought out in the said representation and, Therefore, the same also stood rejected being devoid of merit on the grounds as mentioned in the order dated 27.2.2001.

11. Being so positioned, the present writ petition has been filed in this Court.

12. Mr. Mittal, learned counsel appearing for the petitioner, drew our attention to the aforesaid clause 8 of the policy decision of the respondents and relying on the same it was submitted that the cases of extension of engagement of those airmen whose discharges have duly been authorised but who subsequently submit willingness to extend their service due to compelling compassionate grounds should be referred to Air Headquarter by AFRO for a final decision. It was submitted that since a request of the petitioner for extension of engagement was not considered by Air Headquarter but by a subordinate authority, Therefore, the said decision is required to be set aside and quashed.

13. The aforesaid contentions of the counsel appearing for the petitioner received due attention from us. We have also perused the records available before us. According to the policy of the respondents, as laid down in AFI 12/S/48 the engagement of the petitioner on his enrolment in the Indian Air Force was for an initial term of 20 years but due to subsequent amendment, the petitioner became entitled for getting an extension of regular service for a further period of six years in the first instance and thereafter for another period of three years at a time or such shorter period, as deemed fit, up to the age of superannuating. However, it is also clear and apparent from the aforesaid amended provisions that on completion of 20 years of regular service, a request could be made by the concerned Airman for extension of regular service for a further period of six years in the first place and thereafter for a further period of three years up to the age of superannuating but such request for extension is to be considered by the competent authority and could be so extended at the discretion of the competent authority. Clause 8 of the amended policy decision of the respondents provides that such extension of engagement of Airmen whose discharges have duly been authorised but who subsequently submit willingness to extend their services due to compelling compassionate grounds would be considered by the AOIC AF Records and the final decision thereof shall be passed by the Air Headquarter.

14. In the present case, the petitioner has submitted an application for change of his ""unwillingness"" to ""willingness"" on the ground of compelling compassionate reasons, which was rejected. The request which was turned down was the subject matter of the writ petition in CWP No.1581/2001. Even this request of the petitioner for changing his ""unwillingness"" to ""willingness"" on compassionate ground was again considered by the Air Headquarter subsequent to the order passed by this Court on 5.2.2001. Reason for rejecting his prayer have been categorically stated in the order dated 27.2.2001. The matter was reconsidered third time and the earlier reasons were again reiterated in the order dated 20.2.2004. This Court considered the validity of the reasons in its order dated 31.5.2002 passed in CWP No.1581/2001. After considering the said grounds it was held by this Court that the petitioner had no legal right for extension of service and that discretion vested on the respondents was properly exercised by the respondent. In the present proceedings this Court cannot sit as an appellate court over the decision of the competent authority and the discretion exercised by it. The discretion is vested on the competent authority to consider as to whether or not the services could be extended. Request of the petitioner was considered by the competent authority and a decision was taken by applying the discretion for which reasons have also been given.

15. The petitioner having taken the benefit of undergoing the pre-release course, apparently to equip him for a post discharge engagement, and having repeatedly asserted his unwillingness to continue in service prior thereto, would be in any case preclude from asking for change of the option as in the present case. We would also like to comment on the manner in which non-statutory representations have been made and each time the authority has taken a decision thereon, the petitioner has impugned the same on grounds raised in earlier petitions. Despite adjudication by this Court, the representation has been repeated and a fresh petition initiated thereafter. Merely because a representation is repeated and an earlier order made thereon reiterated does not justify repeated invocation of the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India on the same ground.

16. It could not be shown by the petitioner that the aforesaid discretion exercised by the competent authority is in any manner arbitrary or in vengeance. Request of the petitioner for changing ""unwillingness"" to ""willingness"" was also considered by the Headquarter and, Therefore, we find no reason to interfere with the impugned decision. We find no merit in this petition. The petition stands dismissed.