
(2002) 05 DEL CK 0109
In the Delhi High Court
Case No : C.W.P. No. 1581 of 2001

Ex-Sgt. P.S. Chouhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Citation : (2002) 05 DEL CK 0109

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : V.P. Sharma, for the Appellant; Rekha Palli and Babita, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This writ petition is directed against an order dated 27th February passed by the respondent herein, whereby and whereunder, the petitioner's representation dated 18th December 2000 was rejected. The petitioner in this writ petition has further prayed for a declaration that an order of discharge from service dated 31st July 2000 thereby note extending the same was illegal, discriminatory and against the principles of natural justice and, thus, is liable to be quashed.

2. The petitioner was employed as a Airman in the year 1980. He was promoted to the rank of Sergeant in the year 1990. He appeared and passed the Junior Warrant officer Promotion Examinations held in the year 1993. He on or about 9th July 1999 submitted his unwillingness for further extension of service beyond a period of 20 years. Pursuant to or in furtherance of such request, an order of discharge was published on 9th July 1999 w.e.f. 31st July 2000. Prior to expiry of the said period, however, he filed an application for grant of extension of service beyond 31st July 2000. The Adjutant of the Unit, however, did not recommend Therefore but listed the representation before he Commanding Officer. The application ultimately was sent to the A.F.R.O. for necessary action. The petitioner contends that although he had not been allowed to serve beyond the

period i.e. from 31st July 2000 his juniors who had been similarly situated were promoted on 1st August 2000. He as noticed hereinbefore filed a representation on 18th December 2000 which has been rejected by reason of the impugned order.

3. The respondents, however, in their counter have inter alias contended that the petitioner is not entitled to grant of extension of service and has no legal right therefore. It has been stated that his change of option from unwillingness to willingness was considered at appropriate level and the impugned order had been passed as he did not meet the requisite criteria for grant of extension of the engagement.

4. Mr. V.P. Sharma, learned counsel appearing on behalf of the petitioner would contend that having regard to the Circular No. 11/99 and policy decision laid down in this behalf by the respondents, the application for extension of engagement should have been considered on its own merit. Drawing our attention to the following Rules, learned counsel would contend that, matter was required to be considered by the A.F.R.O. and not by the Commandant of the Unit:

"(b) By the Unit: The SMO/UMO is to ensure that airmen are medically examined and their fitness for performing the trade duties for grant of extension of engagement is rendered on part II of the prescribed form, as applicable. The Unit Adjutant is to verify and complete part III of the form from the service documents. All applications for extension of engagement or change of option (i.e. suitable/not suitable, recommended/not recommended, medically fit/unit etc.) will invariably be forwarded to AFRO through Command HQs with the Justification Report where required. They are not to be disposed off at Command HQs/Unit level. The unit must maintain RE Registers as per Appendix "F" to this AFO so as to monitor engagement information. Unit copy of Sheet Roll IAFF(P) 17 will be updated on the receipt of approval from AFRO for grant of extension of engagement quoting their letter as authority.

5. It was submitted that although an undertaking had been given by the petitioner to the effect that he would not seek any extension, keeping in view the fact that he was entitled to make an option the same would not come in the way of the petitioner in changing his option. Learned counsel would contend that his request to the effect that he would not continue in his service beyond a period of 20 years could not have been accepted before expiry of the said period. Reliance, in this connection, has been placed upon a decision of the Apex Court in Union of India and Anr. v. Wing Commander. T. Parthasarathy reported in JT 2000 Suppl 2 SC 490.

6. Learned counsel appearing on behalf of the respondent on the other hand, would contend that the petitioner was not entitled to extension of service as a matter of rule. According to the learned counsel the petitioner did not fulfill the requisite consideration, inasmuch as, he applied for the change of option only

three months prior and not twelve months prior to the date of expiry of his period. Matter relating to extension of engagement is covered by Circular No. 11/99. Relevant provisions whereof are as follows:-

"(b) Willingness to. Extend:.....Willingness/Unwillingness Certificate must reach AFRO 18 months before expiry of Regular Engagement(RE). It shall be mandatory for all airmen to submit their willingness or unwillingness within the stipulated time schedule. An option once exercised will be treated as final and requests for change of option will not be entertained except under very exceptional and extreme compassionate grounds. Those airmen who do not submit any option will be deemed to be unwilling for further extension of engagement and no request for grant of extension will be subsequently entertained by AFRO. Accordingly AOIC AF Records will authorise discharges of airmen who do not submit any option within the stipulated time Along with those who have submitted unwillingness (Appendix "B") as per expiry of their engagement. No reminders will be issued by AFRO and it will be the responsibility of the airman concerned to exercise his willingness/unwillingness by the (SIC) date and of the Unit Adjutant to forward it to AFRO (OIC Recording Wing) through the concerned Command HQs./ (g) Suitability for Extension:

(i)

(ii)

(iii) Justification Report: Justification report, in a narrative form, is invariably required in the following cases to reach AFRO 12 months before expiry of Regular Engagement (RE):-

(aa) Change of option by the airmen.

(ab) Where applications for extension of engagement are not likely to arch AFRO within 18 months due to various factors such as non-receipt of documents on posting, hospitalization, long leave, etc.

(ac) Cases where an airman fulfills all the conditions mentioned in sub paras (a) to (g) of para 4 above but the specialist officer or AOC/OC has not recommended extension of engagement.

Note: AOCs/COs are to satisfy themselves that the personnel have not deliberately attempted to exercise the change of option for the purpose of cancellation of posting or prolonging their stay at a particular place."

5.(a)

(b) By the Unit: The SMO/UMO is to ensure that airmen are medically examined and their fitness for performing the trade duties for grant of extension of engagement is rendered on part II of the prescribed form, as applicable. The Unit Adjutant is to verify and complete part III of the form from the service documents. All applicants for extension of engagement or change of option (i.e. suitable/not suitable, recommended/not recommended, medically fit/unit etc.)

will invariably be forwarded to AFRO through Command HQs with the Justification Report where required. They are not to be disposed off at Command HQs/unit level. The unit must maintain RE Registers as per Appendix "F to this AFO so as to monitor engagement information. Unit copy of Sheet Roll IAFF(P) 17 will be updated on the receipt of approval from AFRO for grant of extension of engagement quoting their letter as authority.

7. Pre-Release Courses: The request for extension of engagement from the airmen detailed to undergo pre-release and pre-cum-post release course will not be entertained. A certificate (Appendix "G") is to be obtained by the Unit from the individuals seeking PRC that change of option or extension of engagement under any circumstances shall not be admissible. However, in exceptional cases extension may be granted at the discretion of Air HQ on the merit of each case.

7. In Wing Commander T. Parthasarathy (supra), the fact of the matter was completely different. Therein the concerned Officer submitted his application on 21st July 1985 praying for premature retirement from service w.e.f. 31st August 1986. When the matter was under process by the competent authorities the respondent moved an amendment to the effect that his earlier application stating that the actual date of release could be decided having regard to various recommendations made by the 4th Pay Commission the date of retirement sought was w.e.f. 31st August 1986 stood altered before any decision was taken or communicated. On 19th February 1986 he submitted an application seeking to withdraw the application earlier submitted for premature retirement from service. Only thereafter i.e. on 7th March 1986 he received a communication that he would be prematurely retired at his own request w.e.f. 31st August 1986. The Apex Court in the afore-mentioned situation held:

"8. So far as the case in hand is concerned, nothing in the form of any statutory rule or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the Headquarters the appropriate authority was said to have been made only on 20.2.86, a day after the respondent withdrew his request for premature retirement but even such acceptance in this case was to be effective from a future date; namely, 31.8.86. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31.8.86. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.

8. The fact of the matter, in the instant case, as noticed hereinafter is completely different. The petitioner exercised his option twelve months before his actual cessation of employment. The same was accepted immediately. In terms of the aforementioned policy decision the unwillingness could be altered to willingness only in an exceptional situation. The matter had been considered in great detail by the appropriate authority. A perusal of the impugned order dated 27th

February 2001 shows that all relevant facts have been taken into consideration including the following:-

"11. AND WHEREAS, you had submitted your "Unwillingness" on 08 Dec 99 for further extension of your initial term of engagement beyond 31 Jul 99 in accordance with the prescribed procedure and Air Force Record Office issued your discharge order on 09 Jul 99 discharging you from service wef 31 Jul 99 i.e. after completion of your initial term of engagement because of your "Unwillingness" to extend your engagement further;

14. AND WHEREAS, three months prior to your actual date of discharge, when you had already completed all administrative/audit formalities and clearance preparatory to your discharge, you submitted a personal application dated 24th Apr 2000 addressed to your Commanding Officer requesting him to consider your case for change of option from "Unwillingness" to "Willingness;"

9. From the said order it has been found that the reasons for change of the option from unwillingness to willingness when not found to be satisfactory the petitioner had been given a personal interview. It was made clear to him that in his case there does not exist any ground and if he wants consideration of the matter he should file documentary proof in support thereof but despite the same no such proof was furnished.

10. Keeping in view the fact that the petitioner had no legal right for extension of service and further having regard to the fact that discretion has been properly exercised by the respondents no case for judicial review has been made.

11. In Nottinghamshire Country Council v. Secretary of State for the Environment and Anr. Appeal reported in (1986) All ER 199 the law has been stated in the following terms:-

"If a minister exercises a power conferred on him by the legislation, the courts can investigate whether he has abused his power. But if, as in this case, effect cannot be given to the Secretary of State's determination without the consent of the House of Commons and the House of Commons has consented, it is not open to the courts to intervene unless the minister and the House must have misconstrued the statute or the minister has, to put it bluntly, deceived the House. The courts can properly rule that a minister has acted unlawfully if he has erred in law as to the limits of his power even when his action has the approval of the House of Commons, itself action and legislatively but within the limits set by a statute. But, if a statute, as in this case, requires the House of Commons to approve a minister's decision before he can lawfully enforce it, and if the action proposed complies with the terms of the statute (as your Lordships, I understand, are convinced that it does in the present case), it is not for the judges to say that the action has such unreasonable consequences that the guidance on which the action is based and of which the House of Commons had notice was perverse and must be set aside. For that is a question of policy for the minister and the Commons, unless there has been bad faith or misconduct by the

minister. Where Parliament has legislated that the action to be taken by the Secretary of State must, before it is taken, be approved by the house of Commons, it is no part of the judges' role to declare that the action proposed is unfair, unless it constitutes an abuse of power in the sense which I have explained; for Parliament has enacted that one of its houses is responsible. Judicial review is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system on their exercise of this beneficent power."

12. Power of judicial review as is well known can be exercised only in the event it is found that any illegality, irrationality or procedural impropriety has been committed in the decision making process. This Court is not concerned with the merit of the decision.

For the reason aforementioned, we do not want to interfere with the impugned judgment. The writ petition being devoid of any merit is dismissed but in the facts and circumstances of this case there shall be no order as to costs.