
(2012) 10 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) 6315 of 2012

Naib Risaldar L.M. Pandey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0154

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : K. Ramesh, with Ms. Archana Ramesh, for the Appellant; Ankur Chibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The writ petition challenges the decision dated July 20, 2012 passed by the Armed Forces Tribunal dismissing OA

No. 194/2012 in which the challenge by the writ petitioner was to the decision taken by the Army authorities to not permit petitioner to withdraw

his unwillingness to serve for two more years and as a consequence the writ petitioner prays that he be granted extension in service by two years

upto October 30, 2014. The undisputed position is that the petitioner was enrolled in the Remount and Veterinary Corps of the Indian Army on

October 18, 1986 and was promoted as a Naib Risaldar on January 1, 2011. He would have completed 26 years service by October 18, 2012

and would be liable to be superannuated on October 30, 2012.

2. But, admittedly there exists a policy as per which the petitioner could have opted to serve for another two years or opt not to serve for another

two years, and only if he had opted to serve for another two years were the

Army authorities obliged to consider the fitness of the petitioner to serve for two more years and if he achieved the fitness, the petitioner had a right to serve for another two years i.e. upto October 30, 2014.

3. The petitioner claims that he submitted his willingness certificate on January 1, 2011, i.e. well in time but pleads that there being a death in his family which disturbed him, he submitted an unwillingness to serve for another two years on February 26, 2011, but when he told said fact to his wife she advised him to serve for another two years and that on March 4, 2011 he withdrew his unwillingness indicated and reaffirmed his earlier willingness to serve.

4. The grievance raised in the writ petition is that the Tribunal has not taken note that the petitioner had initially submitted his willingness to serve.

The petitioner urges that as per the respondents, once an option is exercised it cannot be withdrawn and this is the justification given to ignore the willingness resubmitted by the petitioner on March 4, 2011. Thus, in a nut shell the petitioner states that binding the respondents to their stand it must be held that petitioner's unwillingness to serve submitted on February 26, 2011 which was withdrawing his earlier willingness to serve had to be ignored.

5. We find that this aspect of the matter has not been considered properly by the Tribunal.

6. As per the respondents, the petitioner had never submitted any willingness to serve on January 1, 2011 as claimed by the petitioner.

7. We find that on September 30, 2011 the petitioner had submitted a representation in which he simply stated that he was mentally unstable due to death in the family and on account of which he submitted an unwillingness to serve for another two years, but having spoken to his wife and advice received from her he changed his option. In the representation in question we do not find any reference made to he having earlier submitted a willingness.

8. We further find that it was only on February 15, 2011 that a letter was sent to the Commanding Officer of the Remount and Veterinary Corps

by the concerned branch to obtain and thereafter forward the willingness/unwillingness certificate from such force personnel who were required to

furnish the same, and thus it would be difficult to hold that the petitioner

submitted his willingness, as claimed by him on January 1, 2011.

9. Now the main issue. The petitioner urges that the view taken by the Tribunal that the petitioner could not be permitted to change his option

because the Board of Officers had finalized the list and forwarded the same is incorrect for the reason after the petitioner submitted his

unwillingness on February 26, 2011 nothing happened till March 4, 2011 when he withdrew his unwillingness to serve and opted to give his

willingness to serve.

10. Even this stand is incorrect for the reason we find that on February 26, 2011, in response to the letter dated February 15, 2011, the

Commanding Officer, Lt. Col. Manoj Batra, forwarded to the concerned office the willingness/unwillingness certificate received by him from three

persons, one of whom is the petitioner. He forwarded the unwillingness certificate submitted by the petitioner.

11. Suffice would it be to state that that the Remount and Veterinary Corps has to know well in advance as to which officers are willing to serve

for two more years so that they can arrange their affairs knowing in advance the persons whose services would be available in the future.

12. It may be true that by March 4, 2011 the Board had not finalized the list, but the fact of the matter would remain that as regards the Remount

and Veterinary Corps the necessary list had been sent on February 26, 2011.

13. We agree with learned Counsel for the respondents that since large number of force personnel have to be considered it would create

administrative chaos if people are allowed to change their options. Lists have to be prepared, integrated and then the relevance service record has

to be tabulated to suitability determined for further retention. The exercise is initiated in February each year and is completed thereafter and once

the process is initiated, permitting mid stream tinkering would certainly create problems.

14. We would highlight that the instant situation is not akin to a person seeking voluntary retirement from a future date. A department would

normally believe, and arrange its affairs accordingly, that a person would serve till the age of superannuation and it is in this context that an

application seeking voluntary retirement being withdrawn before acceptance would not cause any administrative inconvenience. But, where a

person has to superannuate on a particular date, a fact which would be known to the department, and the person having a right to opt to serve for two more years but only upon fitness and suitability being determined would be a part of a situation where the department knows that the person concerned may not be available unless he opts for availability and the department would accordingly plan its affairs. In such situation we see nothing wrong in the policy to prohibit change of option after the same has been submitted. We find no infirmity in the view taken by the Tribunal and thus dismissed the writ petition but without order as to costs.