

(2011) 07 DEL CK 0094

In the Delhi High Court

Case No : Writ Petition (C) 1918 of 2010 & Writ Petition (C) 4586 of 1997

Om Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0094

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : J.S. Mann and K.K. Prasad, for the Appellant; Ashish Mohan, for Gaurav Liberhan, Atul Batra and Nirmal Pandit for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner challenges the judgment and order dated 19.1.2010 dismissing OA No. 24/2009 filed before the Armed Forces Tribunal.

2. Relevant facts to be noted are that vide para 12 of Air Force Order No. 12/S/48, as amended from time to time, initial term of engagement for Airman is 20 years. Vide Air Force Order dated 13.8.1999, vide para 2, it is stipulated that the initial term of engagement may be extended till 26 years, but the same shall be at the discretion of such officer to whom the power is delegated.

3. Vide para 4(b) of the said Air Force Order it is stipulated that the option to extend the engagement, and the converse, unwillingness for service to be extended must reach the concerned officer at least 18 months prior to the expiry of the term of the regular engagement. It is also stipulated therein that option once exercised would be treated as final except under very exceptional and extreme compassionate grounds could be withdrawn.

4. Suffice would it be to state that extension in service is not a matter of right, but is a matter of discretion of the department and secondly, option once exercised cannot be withdrawn save and except under exceptional circumstances.

5. The Petitioner exercised an option not to continue in service and later on sought to resile from the same which has been denied.

6. The Petitioner has not been permitted to withdraw his option not to seek extension of service on twin reasoning; firstly that no extreme or compassionate ground was made out by the Petitioner entitling him to withdraw the option, and second, which we find more relevant with reference to the record that the Commanding Officer wrote, while recommending rejection of Petitioner's request to change his option, that the Petitioner has been unable to perform his trade to the satisfaction of the superior officers due to his physical condition.

7. From the medical record of the Petitioner, which he himself has filed, it would be apparent that although the Petitioner has been found to be otherwise physically fit, it has been opined by the doctor concerned that the Petitioner suffers from arthritis which hampers the movement of his joints.

8. Impugned decision passed by the Tribunal would reveal that aforesaid reasoning has been adopted by the Tribunal and since we have independently looked into the issue and have reached the same conclusion as has been reached by the Tribunal, we see no reason to interfere with the impugned decision dated 19.1.2010.

9. We highlight that even if any one of the two reasons, given by the department are accepted, the petition would fail. The second reason of the department being Petitioner's work being found not up to the mark, is good reason not to grant extension in service; we highlight that extension in service is not a matter of right but is a matter of discretion of the Competent Authority.

10. The writ petition is dismissed.

11. No costs.