
(2001) 02 KAR CK 0021
In the Karnataka High Court
Case No : Writ Petition No. 5307 of 1999

Singh S.K.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-02-2001

Acts Referred:

Citation : (2001) 2 KCCR 1374

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : P and v. Associates, for the Appellant; Rajashekar B. Kanavi, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mohamed Anwar, J.—Heard the arguments of the learned Counsel on both sides.

2. Petitioner was "enrolled" as an "Airman" in the Indian Air Force on 11.8.1973 for a period of 15 years. On expiry of this initial period of 15 years of his appointment, he was granted extension of service for 6 years and it was followed by another extension of 5 years. Admittedly, the period of final extension of service so granted to him expired on 1.9.1999. In the meantime, he was served with the memo dated 5.8.1998, vide Annexure-C, from his Respondents-superior authority informing him, interalia, that:

1. Air Force Record Office vide their letter No. RO/2504/2/RW (DIS), dated 22nd July, 1998 has accorded authority for discharge in respect of the above named airman. He is to be discharged from service WITH EFFECT FROM 31.8.1999. He is required to report to AFRO for FINAL CLEARANCE on 22.2.1999. Hence he is directed to report this HQ (O/Room (SNCO IC P3/NCO i/c Discharge) on 29th December 1998 for necessary guidance and completion of pension papers and discharge formalities.

It is the case of the Petitioner that he had given his representation in the prescribed form dated 11.2.1997, vide Annexure-B, to his superior authority

requesting him to grant further extension of service for a further period of three years and that instead of granting him the extension of service as requested, the aforesaid memo dated 5.8.1998 was surprisingly served on him stating that he is going to be discharged from service with effect from 31.8.1999 on expiry of the tenure of his second extension. Hence, aggrieved by this discharge notice at Annexure-C, he has filed the present writ petition against Respondents with a prayer to issue a writ of certiorari quashing the same viz., Annexure-C, and a writ of mandamus directing them to grant him further extension of service for a period of three years from 1.9.1999.

3. Respondents have filed their statement of objections supporting the impugned order at Annexure-C and explaining the circumstances justifying issuance thereof.

4. No any express statutory provision under the Air Force Act, 1950 ("the Act of 1950" for short) or the Rules framed thereunder governing the conditions of service of the Air Force Personnel by which any right to claim extension of service was conferred on the Petitioner so as to entitle him to claim extension of service as a matter of right is brought to my notice by the learned Counsel for Petitioner.

5. As indicated above, Petitioner was enrolled as an "Airman" on the staff of Respondent-Air Force. An "Airman" is defined under Sub-clause (viii) of Section 4 of the Act of 1950 as any person subject to the Act other than an "Officer". As to who is an "Officer" for the purpose of the Act is also defined under Sub-clause (xxiii) of Section 4. Section 13 deals with the "Procedure before Enrolling Officer". This provision relates to the procedure to be followed for the purpose of enrolment of a person on the staff of Air Force for a post other than an Officer. Then Section 14 contemplates mode of enrolment of such a person, after the procedure stated in Section 13 has been complied with. Chapter II of the Air Force Rules, 1969 ("the Rules of 1969" for short) pertains to the manner of "Enrolment and Attestation". Rule 7 thereof spells out as to who are the officers who could act as Enrolment Officers for the purpose of Sections 13 and 14 of the Act. Sub-rule (2) of Rule 7 provides for the Forms of enrolment which reads:

(2) The Form of enrolment set forth in the First Schedule is prescribed for the purposes of Sections 13 and 14.

Rule 10 is the significant relevant Rule which deals with discharge of a person enrolled on the staff of Air Force. It reads:

10. Discharge not to be delayed.-Every person enrolled under the Act shall when entitled under the conditions of his enrolment to be discharged be so discharged with all convenient speed.

"Section 1" in Part II of the First Schedule deals with conditions of service of persons enrolled for regular and reserve service. Paragraph Nos. (1), (4) and (5) of this "Section 1" are relevant for our purpose. The material portions of these provisions are as extracted below:

1. For persons enrolled for service involving Apprentice Training.

(a)

Or

For Persons enrolled for Service not involving Apprentice Training.

You will serve in the Air Force for a period of not less than...years of regular service. On completion of this period you may extend your regular service, if permitted to do so, by such specified period or periods as may be fixed.

2. xxx xxx xxx

3. xxx xxx xxx

4. If on completion of the initial period of regular service and of the extensions if any as have been granted to you, you are still in regular service and continue thus to serve, you will be either transferred to the Regular Air Force Reserve or discharged from the Air Force Service within three months from the date of your applying that you do not wish to continue in Air Force Service; but you will be liable for such transfer or discharge on the completion of the aforesaid initial period of regular service or the further extension or any time thereafter at the discretion of the competent authority.

5. You will be entitled to receive your discharge from the Air Force with all convenient speed if:

(a) on completion of the initial period of regular service or of such extension or extensions, if any, of regular service as have been granted to you, you are not transferred to the Regular Air Force Reserve, and are not permitted to extend or further extend your regular service; or

(b) xxx xxx xxx

Provided, that you will not be entitled to discharge if war is imminent or existent, or if the strength of the trade in which you are mustered is 10 per cent below authorised establishment.

(underlining supplied)

6. As indicated, initially the Petitioner had been enrolled as an Airman in accordance with the provisions of Sections 13 and 14 of the Act and Rule 7 of the Rules of 1969. Rule 10 contemplates and enjoins a duty on the concerned authority that every person enrolled under the Act shall have to be discharged with all convenient speed when he becomes liable to be discharged under the conditions of his enrolment. Conditions or Paragraphs Nos. 1 and 4 in Section 1 of Part II of the First Schedule read conjointly makes it clear that continuation of regular service of an Airman is subject to the permission to be granted by the competent authority unless otherwise transferred to the "Regular Air Force Reserve". In other words, the grant of the permission or transfer to the "Regular Air Force Reserve" by the Competent Authority is a condition precedent for an Airman to continue in service after the expiry of the particular term of his

service. If no such further extension is granted to him, then Condition No. 5 of Section 1 of Part II of the First Schedule comes into play, which, in consonance with Rule 10 of the Rules of 1969 direct that any enrolled person or Airman shall have to be discharged immediately.

7. Besides, the above legal position, it is an undisputed fact that for an Airman to get eligibility to seek any such extension, he is required to fulfill the condition prescribed at Clause (d) of Circular instructions dated 6.11.1995 issued by the Head Office of the Air Force Station, New Delhi, vide Annexure-R1, which relates to passing of the prescribed examination. It reads:

(d) Passing of Examinations-Extension of Engagement will be granted to only those Airmen who have passed all parts of their promotion Examinations which make them eligible for Promotion to their next higher rank. These examinations must be cleared by the Airmen before submission of their applications for grant of Extension of their Regular Engagement which expires on or after 1st July, 1998. Airmen who do not attain the rank of Cpl. within 12 years will be discharged by AOIC AF Records subject to AFI 12/S/48 being amended.

Admittedly, Petitioner has not passed this prescribed examination to become eligible to seek further extension of service as "Airman". On this score also, he will have no right to claim extension of service. This apart, by Clause (a) of Annexure-R1, it is made clear that grant or refusal of further extension of service to an enrolled person shall be the discretion of the Air HQ or such other authority specified by Air HQ.

8. Therefore, the contention of Respondents taken in their statement of objections to the effect that in exercise of its discretion, the competent authority has passed the impugned order at Annexure-C effecting discharge of Petitioner from service declining to grant any further extension to him because he did not acquire eligibility for extension of service in terms of Clause (d) of Annexure-R1, is fully justified and no fault could be found with it. Hence, the petition is devoid of merit.

9. Therefore, the petition is dismissed. Rule discharged.