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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 12.09.2024*

+ W.P.(C) 12837/2024

EX CHAA MOHAMMED ZULKARNAIN, 550032-ZPetitioner
Through: Ms. Pallavi Awasthi, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Neeraj, SPC with Mr. Vedansh
Anand, GP, Mr. Akarshan Agarwal,
and Mr. Soumyadip Chakraborty,
Advocates for R-1 to R-4.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****REKHA PALLI, J (ORAL)****CM APPL. 53536/2024 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. By way of the present writ petition under Article 226 of the Constitution of India, the petitioner, who was released from the Indian Navy after completing his contractual period of 10 years service on 31.08.2016, has approached this Court assailing the order dated 02.04.2024 passed by the learned Armed Forces Tribunal (learned AFT), Principal Bench, New Delhi.
4. Vide the impugned order, the learned AFT has rejected the OA



preferred by the petitioner, wherein he had sought quashing of orders dated 18.12.2014 and 24.06.2015, whereunder his prayer for withdrawal of the unwillingness submitted by him on 02.07.2012, for serving on INS Vikramaditya, was rejected. In his OA preferred before the learned AFT, the petitioner had also prayed that he be granted re-engagement of 5 years from the date of his discharge, or in the alternative, be sanctioned service pension by adding 5 years of notional service, to the 10 years of service, which he had already rendered.

5. The brief factual matrix as emerging from the record shows that the petitioner was enrolled in the Indian Navy as a Direct Entry Diploma Holder on 06.08.2006 for a period of 10 years. This initial period of engagement of 10 years was extendable by 05 years, with this re-engagement for 05 years being subject to fulfilment of conditions laid down in Navy Order (STR) 02 of 2007 and 08 of 2011, which conditions included submission of willingness by the Sailor. In 2012, while he was still serving his initial tenure of 10 years, the petitioner was selected for Project 11430 (Vikramaditya) requiring him to serve on the Indian Naval Ship (INS) Vikramaditya. The petitioner, however, submitted his unwillingness on 02.07.2012 and gave a specific declaration that he was aware that on account of this unwillingness submitted by him, he would not be considered for re-engagement at any stage.

6. On 17.07.2014, the respondents took a policy decision to grant an opportunity to those Sailors, who had earlier submitted their unwillingness for extension, to now again apply for extension. As this opportunity was by way of a onetime waiver, the eligible Sailors were required to submit their applications for re-engagement by 31.07.2014. It is the petitioner's claim



that based on this policy, he submitted his willingness for further service, which was recommended by his Commanding Officer and therefore, his case for revocation of the unwillingness submitted by him was forwarded not only by his Commanding Officer, but also by the Headquarter of Goa Naval area. The petitioner's request was, however, rejected by the respondent no. 3 on 18.12.2014.

7. On 23.02.2015, another opportunity was granted to the Sailors to revoke their unwillingness for extension. The petitioner's case for revocation of the unwillingness submitted by him on 02.07.2012 was again recommended by his Commanding Officer as also the Flag Officer, Naval Aviation but was again not approved by respondent no. 3 and vide order dated 24.06.2015, it was directed that the petitioner be released on the due date in accordance with the instructions issued in Navy Order 71/03. Consequently, in pursuance to the aforesaid order, the petitioner was released from service on 31.08.2016. After more than one year of his being released from service, the petitioner submitted a representation on 17.10.2017 with a request that his unwillingness dated 02.07.2012 be treated as withdrawn and that he be reinstated in service or may be given pensionary benefits. In his representation, he also stated that he was not informed about the policy decision dated 14.07.2014 and could, therefore, not submit his application for revocation of the earlier unwillingness in time.

8. It is the petitioner's claim that as the representation was not decided, he sent reminders on 24.04.2018, 22.10.2018 and 24.04.2019, which remained unanswered, compelling him to approach the learned AFT on 25.11.2019 by way of OA No. 2195/2019 seeking quashing of the orders dated 18.12.2014 and 24.06.2015 and directions to the respondents to re-



engage him for a period of 5 years in terms of the policy for extension and grant him service pension by taking into account those five years of service, which he could have rendered, if his unwillingness had been treated as withdrawn in time.

9. Before the learned AFT, the respondents filed a detailed counter-affidavit, stating therein that the OA as filed by the petitioner, was barred by limitation under Section 22 of the AFT Act, 2007; it was urged that though the impugned orders were passed in December, 2014 and June, 2015, the petitioner had approached the learned AFT only on 25.11.2019 and therefore, the OA was liable to be dismissed on the ground of delay and laches alone. Further, it was urged that the policy on which reliance was sought to be placed by the petitioner was not even applicable to him as it was not a case of simpliciter unwillingness submitted for extension in service, but was an unwillingness submitted for working on project INS Vikramaditya, for which he was required. The learned AFT found merit in both submissions of the respondents and consequently, vide its impugned order, dismissed the OA on the ground of delay as well on merits.

10. Before us, learned counsel for the petitioner reiterates the submissions made before the learned AFT and has vehemently urged that his claim could not be stated to be impacted by delay and laches. Ms. Awasthi submits that taking into account the professional skills of the petitioner, his case for revocation of the unwillingness earlier submitted by him on 02.07.2012 was forwarded by the HQ, Western Naval Command with recommendations to accept the same. The respondent no. 3, however, rejected the same without appreciating the circumstances in which the petitioner had submitted his unwillingness in July, 2012 as also the fact that neither he nor his



Commanding Officer were made aware about the policy dated 17.07.2014 in time and consequently, the petitioner could not be faulted for not submitting his fresh application before the cut-off date of 31.07.2014.

11. She further submits that the learned AFT has also erred in holding that the OA was barred by delay and laches. The petitioner, she contends, had made a representation as way back as on 17.10.2017 and it is only because, despite reminders, the said representation remained unactioned, that the petitioner kept waiting under a bonafide belief that his request would be favourably considered. The delay in approaching the learned AFT was, therefore, not on account of the petitioner's fault but only because of the respondents' inaction in answering his representation dated 17.10.2017. She, therefore, prays that the impugned order be set aside and the respondents be directed to re-engage the petitioner for a period of 05 years, based on his exemplary service record during the 10 years of his initial engagement.

12. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned order as contained in paragraphs 18 to 22 wherein the learned AFT has rejected the petitioner's claim on merits:

“18. At this moment, we find it pertinent to refer to the policy dated 21. 11.2006 which provides as under:

“1. The DEDH Sailors have been recruited with an initial period of engagement of 10 years. DEDH Sailors will be eligible for re-engagement in accordance with NO (STR) 17/94 as amended from time to time.

2. The re-engagement is to be granted for 5 years till 15 years' of service and thereafter in accordance with NO (STR) ibid.”

19. A perusal of aforesaid policy clarifies that it does not deal with the issue of unwillingness, or revocation of unwillingness,



and while the central issue pertains to unwillingness, it would not be appropriate to presume anything from the aforesaid policy letter, specifically when Para 9(c) of the Navy Order provided non-obstante clause, with respect to period of re-engagement, not the issue of willingness or unwillingness for re-engagement, and therefore, we find it appropriate to refer to Navy Order 02/2007 for the same, which vide Para 13 specifies as under:

13. Unwillingness for Re-engagement

(a) On publication of Expiry of Engagement Serial if a sailor does not wish to re-engage for further service a certificate of unwillingness as per Appendix 'D' to this Order is obtained from him. A copy of this certificate is to be retained with sailor's Service Documents and another forwarded to the Bureau of Sailors, Mumbai.

(b) Requests for signing for further service from sailors who have once expressed unwillingness, are not to be entertained under any circumstances, eg. changed domestic circumstances, loss of prospective employment opportunity etc. as this upsets manpower planning, recruitment and progress of pension papers.

(c) However, sailors who have once expressed their unwillingness to sign for further service and subsequently wish to re-engage on promotion, will be considered for re- engagement only if they are willing to sign for a minimum period of two years. In such cases, the request is to be put up atleast nine months prior to the date of release.

20. Para 13(b) of the Navy Order 02/2007, clarifies to the effect that once a sailor has expressed unwillingness, revocation or signing for further service cannot be entertained under any circumstances, including changed domestic circumstances, which is the case of the applicant, as he has rendered his



unwillingness for deputation, due to domestic circumstances, as specified by him.

21. Furthermore, it is important to emphasise that irrespective of the Navy Order 02/2007, the competent authority has granted one time waiver to revoke the unwillingness, vide its RP/0805/Policy dated 17.07.2014 within specified time frame, was to be received at CABS by 31.07.2014, which has admittedly not been acted upon by the applicant; it is also important to take note of certain relevant provisions of Navy Order 02/2007 which reads:

3. Artificers. Under the provisions of Regulation 269 of Regs Navy Part III as amended vide RO 363 dated 28 Dec 1988 all Artificer Apprentices (from batch A-91/88 onwards), Navy Entry Artificers and Mechanics are enrolled for an initial period of 20 years, including their training period calculated from the date of their enrolment. Direct Entry Diploma Holders (DEDH) may be enrolled for a period of 10 years.

Re-engagement

4. Principles of Re-engagement. Grant of re-engagement is subject to service requirement, and is not to be construed as a matter of right. Depending upon the requirement of service, sailor and be re-engaged only if he fulfills the following conditions:-

(a) to (d) XXX XXX XXX

5. Criteria for Re-engagement

(a) Sailors fulfilling the conditions laid down in Para 1 above, are considered for re-engagement. However, a final decision regarding grant or otherwise of re-engagement in a particular case is taken based on the overall performance of the sailor during his entire service as reflected by the following factors:-



(1) to (ix) XXX XXX XXX

(b) *The sailors will not be re-engaged if they have:-*

(i) XXX XXX XXX

(ii) *Expressed unwillingness for further re-engagement.*

(iii) to (v) XXX XXX XXX

6. Occasion for Re-engagement. A sailor is required to exercise his option for re-engagement for further service on the following occasions:-

(a) to (b) XXX XXX XXX

(c) *On selection for Deputation abroad for new acquisitions/refits/courses and postings etc.*

(d) XXX XXX XXX

22. *With respect to the argument of the applicant that he and the Commanding Officer were not aware of the one time waiver policy, we find that the argument is a frivolous one, noting the fact that the copy of the aforesaid policy letter was marked to all the Commands including Goa Naval Area, thereby specifying that the unawareness of law is not an acceptable excuse.”*

13. We may now also refer to paragraphs 24 to 27 wherein the learned AFT has assigned reasons for holding that the OA was liable to be dismissed on the ground of delay:

*“24. It is pertinent to note that this application has been filed after an inordinate delay of about 1000 days as per MA 3093/2019 from the date of rise of cause of action; and that the claim of the applicant not being of continuing nature, nor giving rise to continuing cause of action is barred by the limitation as enshrined under Section 21 of the AFT Act, 2007. It becomes relevant to refer to the observations of the **Hon'ble Apex Court in the case of Maniben Devraj Shah Versus Municipal Corporation of Brihan Mumbai [(2012) 5 SCC 157]** on the issue of delay and laches, wherein the Hon'ble Supreme Court has held that “*



"No doubt, sufficient cause should be construed liberally on facts without any hard and fast rule and substantive rights of parties cannot be ignored on account of delay, but a distinction must be made between delay of a few days and inordinate delay causing prejudice to the other side."

25. While dismissing the petition, the Hon'ble Supreme Court in the judgement passed in ***C. Jacob v. Director Geology & Mining & Anr*** report in (2008 (10) SCC 115) had held as under:

"a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence"

26. We have also carefully perused the judgment of Hon'ble Apex Court in the case of ***Ved Prakash Vs UOI in Civil Appeal No 11933 of 2016*** as relied upon by Ld. Counsel for Applicant and find that the facts of both cases are quite distinct from each as in the case before Hon'ble Supreme Court was related to completion of mandatory sea service requirement which is not provided for the No 02/2007, whereas the instant case is clearly covered by the provisions of Letter No RP I 0805/Policy dated 23.02.2015 wherein the relevant Para 3 covering the case under consideration reads as follows:

"3. Sailors who have rendered unwillingness/LPC in response to publication to Expiry of Engagement only, would have the option to revoke the same, prior publication of Release Serial, provided that such sailors have not:-

(a) xxx xxx xxx xxx

(b) Rendered unwillingness earlier for Specialist Higher Rank/Professional/Non-Professional / Promoted Linked course.

(c) Rendered unwillingness for further service o being nominated for deputation/courses/posting abroad

(d) xxx xxx xxx xxx

(e) xxx xxx xxx xxx



(f) xxx xxx xxx xxx

27. *In view of the aforesaid discussion, we are of the opinion that the present OA is liable to be dismissed on delay as well as on merits.*”

14. From a bare perusal of the aforesaid extract of the impugned order, it is evident that the learned AFT found no merit in the petitioner’s plea that he was not made aware about the policy decision dated 17.07.2014 and could, therefore, not submit his application in time. The learned AFT further held that re-engagement was not a matter of right and therefore, the petitioner having tendered his unwillingness while being asked to join INS Vikramaditya by way of deputation, could not now complain that he had been deprived of the opportunity to serve for another 05 years, which would have entitled him to receive pension.

15. Even though, we find absolutely no reason to differ with the view taken by the learned AFT, having perused the policy dated 17.07.2014, we are of the opinion that the petitioner having rendered his unwillingness for a project assigned to him, for which he had been selected, was even otherwise not covered under the ambit of this policy, which was only meant to grant another opportunity to those Sailors who had expressed their unwillingness for further service. The petitioner had admittedly refused to accept the deputation on an Indian Naval ship, for which he was selected and had, therefore, submitted a categoric undertaking at that stage itself that he was aware that he would not be considered for re-engagement. The relevant extract of the said undertaking reads as under:-

“APPENDIX ‘D’
(Refers to NO (STR) 02/07)



**CERTIFICATE OF UNWILLINESS FOR
PROJECT 11430(VIKRAMADITYA)**

1. I understand that I am required for Project 11430 (Vikramaditya) vide CABS DTC 282215/Jun.
2. I hereby declare that I am UNWILLING to sign for Project 11430 (Vikramaditya), I fully understand that the consequence of this declaration will be that any subsequent application from me for re-engagement will not be entertained.

Signed in my presence

Signature of sailor

Sign of Div. Officer -sd-
Zulkarnian

Name K S Cheema
Rank & No. LT 52280-T
Date: 02.07.2012

Name: Mohammed

Rank: AA3
P.No. 550032- Z
Date: 02.07.2012”

16. In the light of the aforesaid, it is evident that there is no infirmity in the decision of the respondents to reject the petitioner's request for revocation of the unwillingness submitted by him on 02.07.2012. Furthermore, we also agree with the learned AFT that the OA was liable to be dismissed on delay as well. From the record, it emerges that the petitioner was, on 18.12.2014 itself, informed that his request for revocation of the unwillingness submitted by him was being rejected. This order was followed by an order passed on 24.06.2015, but the petitioner took no steps to assail the same while he was on service and even after his superannuation on 31.08.2016, the petitioner waited for another three years to approach the learned AFT in November, 2019.

17. The learned counsel for the petitioner has vehemently urged that the learned AFT failed to appreciate that the petitioner, before approaching the learned AFT had approached the respondents by way of a representation dated 17.10.2017, which was followed by reminders in 2018 and 2019 but



his representation remained unactioned. He, therefore, contends that it could not be said that there was any delay on the part of the petitioner. It is trite law that submission of repeated representations in itself cannot be a ground to condone the delay. It is not open for an aggrieved employee to approach the Court belatedly on the pretext that he was awaiting consideration of his representations as mere filing of representations does not exempt a party from the rigours of limitation. We, therefore, find absolutely no merit in this plea of the petitioner and are of the view that the learned AFT was justified in dismissing the OA on the ground of delay as well.

18. For the aforesaid reasons, we find no infirmity in the impugned order passed by the learned Tribunal (AFT). The writ petition, being meritless, is accordingly dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 12, 2024 SU/G/FK