

**ARMED FORCES TRIBUNAL**  
**REGIONAL BENCH, KOLKATA**

**OA No. 89 of 2022**

Sub/M Tech Ashis Kumar Maity ... Applicant  
Versus  
Union of India and Ors ... Respondents

For Applicant : Mr Aniruddha Datta, Advocate  
For Respondents : Mr Ajay Chaubey, Advocate

**CORAM**

**HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)**  
**HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)**

**ORDER**

1. The Applicant filed this OA praying to set aside the Impugned Order No.B/12240/Extn/MP(A)/EME Pers/MP-1 dated 15.2.2022 and Letter No.1535/T-10/RTU/CA-2(MP) dated 13.9.2022, direct the Respondents to issue Discharge Order of the Applicant, hold RMB with immediate effect and discharge him from service at the end of the ongoing month after completion of other discharge formalities thereafter through his last Unit.

2. The Learned Counsel for the Applicant submits that the Applicant was enrolled in the Army on 2.5.1994 and is serving in the Corps of EME in the trade of Mechanical Tech 'B' Veh for more than 28 years

and is presently posted at 312 FdWksp Coy (EME) at Ballygunge Maidan Camp, Kolkata 700 019. The Applicant submits that he has two sons, the elder son is being brought up by his grand parents and the younger son is suffering from Cerebral Palsy with Microcephaly with Seizure Disorder since his birth. The Applicant further submits that his younger son who is unable to walk, stand or speak and can only sit with support needs constant medical care and assistance for all his day-to-day activities. The Son's 100% disability has made him a full time wheelchair bound child and he has been undergoing regular physiotherapy, speech therapy and occupational therapy apart from regular treatment from Command Hospital, Eastern Command. The Applicant submits that the facts of his son's disability was brought to the knowledge of his erstwhile Unit (27 Rajput) which had published Part II Order notifying the disability of the Applicant's son. The Applicant further submits that after examination by the Zonal Medical Mental Board, NRS Medical College and Hospital, Govt of West Bengal, the son was granted Disability Certificate on 6.9.2018. (Annexure A1). The Applicant submits that the disabled son's needs were taken care of by the Applicant's wife who used to stay back in Kolkata for providing him the essential medical treatment/therapies. The Applicant further submits that with the growth of his son, his weight

as increased and his day-to-day needs could not be adequately taken care of by his wife alone and hence on request, the Applicant was posted to his present Unit at Kolkata on compassionate grounds w.e.f. May 2018. The Applicant further submits that while serving in the trade of Mechanic Technical of 'B' Vehicles in the EME, he had to lift and deal with mechanical parts and equipments of heavy vehicles due to which he intermittently suffered extreme back pain and could not discharge his duties in the said trade. Therefore, as the Applicant was due to complete his term of engagement (28 years) in the rank of Subedar on 2.5.2022, submitted his unwillingness for any further extension and requested for discharge on completion of his term, i.e. 31.5.2022. The Applicant further submits that he sent a Petition dated 29.12.2021 expressing his Unwillingness for further extension for which he received a reply dated 15.2.2022 Annexure A2) from the 2<sup>nd</sup> Respondent that his willingness/unwillingness was not considered by the Competent Authority on the only ground that the Unwillingness Option was not exercised within the laid down cut-off date, which is 8 months prior to commencement of extension of service. The Applicant, aggrieved by the service extension imposed against his willingness, sent a specific Application dated 2.3.2022 to the 3<sup>rd</sup> Respondent seeking discharge from service on compassionate grounds

for treatment of his disabled son but no reply was received till May 2022. Subsequently, the Applicant was deemed willing for extension of service and his service was extended for a period of another two years till 31.5.2024. The Application for discharge from service on compassionate grounds was rejected vide the 3<sup>rd</sup> Respondent's Letter No.1535/T-10/RTU/CA-2(MP) dated 12.9.2022 on the ground that the Ministry of Defence has reduced the quota of Pre Mature Retirement from 0.5% to 0.25% vide its Policy Letter dated 3.6.2022 and no more quota is available till July 2023. In the meanwhile, the Applicant, during his Annual Medical Examination at Command Hospital, Eastern Command, was diagnosed to be suffering from Prolapsed Invertibril Disc(PIVD) at L3-L4/L4-L5/L5-S1 vertebra. In view of this, Resurvey Medical Board was held on 20.9.2022 which placed the Applicant in Temporary Low Medical Category P3(T24) w.e.f. 20.9.2022.

3. The Applicant further argues that he had sought for discharge from service on completion of his regular term of engagement of 28 years and hence his case cannot be deemed as premature retirement. Also the MoD Policy letter dated 3.6.2022 relates to only premature retirement and the same is not applicable to him. The Applicant submits that his Unwillingness Certificate tendered by him for

extension of his service after completion of his service period of 28 years cannot be denied by the Respondents on the grounds that the same was not made prior to 8 months from the date of extension as there is an inherent principle of law that any unwilling or willingness undertaking can be altered prior to coming into effect of the said event. Hence, the Applicant has approached this Tribunal seeking remedy.

4. The Learned Counsel for the Respondents admits that the Applicant was enrolled in the Corps of EME on 2.5.1994 and presently working with 312 FdWksp Coy EME (7017 EME Bn) at Kolkata since 15.4.2018. The Respondents submit that the Applicant completed his mandated 28 years of service on 31.5.2022 and his service was extended by two years upto 30.5.2024 vide letter dated 15.2.2022. The Respondents further submit that the exercising of option of change in willingness/unwillingness for extension can be done only once prior to the cut off date, i.e. eight months prior to date of discharge. The Change of Option form from deemed willingness to unwillingness of the Applicant was received on 6.1.2022 vide letter dated 29.12.2021, 4 months before superannuation of the individual which was required to be submitted eight months prior to the date of

superannuation as per ibid policy and hence the same was rejected. The Respondents submit that the Applicant had preferred an Application dated 7.4.2022 for discharge from service which was received on 16.4.2022. The Respondents submit that the PMR quota was reduced from 0.5% to 0.25% vide IHQ MoD (Army) letter No.B/10190/MP-3 dated 3.6.2022 for a period of two years. Hence the excess PMR issued against PMR quota for the year 2022 has now been staggered upto 2023 and no more vacancies are available till July 2023. The Respondents further submit that the willingness/unwillingness option for extension of 2 years service of the Applicant was not received by EME Records till Dec 2021 and hence the Applicant was deemed willing and granted 2 years extension of service w.e.f. 2.5.2022 to 1.5.2024 being a deemed willing case as per the Policy letter of IHQ of MoD (army) letter No.B/33098/AG/PS-2(C) dated 20.9.2010.

5. The Applicant, in the Rejoinder, states that the Respondents, vide letter No.1751/3670/CG/MTECBVEH/CA-5 dated 16.12.2021, had issued a Posting Order No.3670/CG/MTECBVEH wherein he was posted from 7017 EME Bn to 16 Engr Bridge Regt (MEG), C/o 56 APO (at Kolkata) and the maximum tenure of his posting is stated as 36

months. Accordingly the Applicant sent an application for seeking discharge from Army and hence there was no way that he could have expressed his unwillingness for extension, eight months prior to his completion of term of engagement. The Applicant further states that his posting order was not given carried out as per its stipulated date (31.12.2021) because he had tendered his unwillingness for further continuation in service vide his Application dated 28.12.2021.

6. During the course of the hearing on 14.11.2022, the Tribunal directed the Learned Counsel for the Respondents to bring on record any document to substantiate that EME Records Letter No.No.1599/T-15/CA-2(MP)/May 2022 dated 1.10.2019 (Annexure R5) was received by the Applicant and whether the Applicant's Unit at that time had any responsibility to ensure that Willingness/Unwillingness Certificate was submitted by the Applicant in the time frame mentioned in the letter dated 1.10.2019.

7. Supplementary Affidavit dated 25.11.2022 was submitted by the Respondents. While no specific document has been brought on record by the Respondents to prove that the Applicant was informed of the letter (Annexure A5), the following points which allude to the Applicant being aware of the same were brought to the fore:

(a) The Terms of Engagement for a Subedar is 28 years of pensionable service extendable by 2 years by screening or 52 years of age as per the Enrolment Form (IAFK-1162) signed by him (Annex S1).

(b) Service of the JCO was extended by 2 years vide Part II Order No.1/1329/0018/2020 dated 25.3.2020 (Annex S3) and the same has not been challenged by the Applicant.

(c) Record Office is to issue Discharge Order to the Applicant 14 months in advance of the Discharge but the Discharge Order had not been issued to the Applicant on completion of normal terms of service as his service has been extended by two year. There was also no representations on the part of the Applicant for non receipt of the same.

(d) As the Applicant was posted to HQ Eastern Command (EME) in 2019 when the EME Records had sought for the willingness/unwillingness for extension of two years vide their letter No.1599/T-15/CA-2(MP)/May 2022 dated 1.10.2019, it is not possible that the Applicant had not seen the abovementioned letter and was not made privy to the said letter.

As the Applicant did not exercise the option of

willingness/unwillingness, extension of two years of service was given by the Screening Board as deemed Willingness.

(e) The information regarding extension of two years of the Applicant which was published vide EME Records Part II Order No.1/1329/0018/2020 has also been reflected in Monthly Payslip of the Applicant. (Annex S5)

8. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and also carefully perused the material placed on record.

9. It is apparent from the facts placed on record that the Applicant has been serving in the Indian Army ever since his enrolment in the Army on 2.5.1994. The Applicant was given an extension of service of two years based on his 'deemed' willingness for extension though no such request for extension was made by the Applicant. The Applicant's Representation for discharge from service on compassionate grounds was rejected vide the 3<sup>rd</sup> Respondent's Letter No.1535/T-10/RTU/CA-2(MP) dated 12.9.2022 on the ground that the Ministry of Defence has reduced the quota of Pre Mature Retirement from 0.5% to 0.25% vide its Policy Letter dated 3.6.2022 and no more quota is available till July 2023.

10. We have also perused the documents filed in support of the medical treatment/therapies being given to the younger disabled son of the Applicant and also the Applicant's disability, and we find that the reasons put forth by the Applicant appear genuine and merit consideration.

11. The following facts merit attention:

(a) In view of the difficulties faced, the Applicant submitted a petition dated 29.12.2021 for Unwillingness for any further extension and his request for release on completion of regular term of service on 31.05.2022.

(b) The 2<sup>nd</sup> Respondent sent a letter dated 15.02.2022 stating that exercising of change in option for willingness/unwillingness was not considered by the competent authority on the ground that the same was not exercised within the cut off date which is 8 months prior to mandated date of discharge from service (Annexure A2).

(c) The service of the Applicant was extended by 2 years upto 30.5.2024 vide letter dated 15.2.2022 (Annexure A2).

(d) The Applicant subsequently sent another Application dated 2.3.2022 to the 3<sup>rd</sup> Respondent seeking discharge on compassionate ground for treatment of his disabled son.

(e) The 5<sup>th</sup> Respondent recommended the cause of the Applicant, 4<sup>th</sup> Respondent forwarded to 3<sup>rd</sup> Respondent vide letter dated 7.4.2022.

(f) The Applicant received a letter dated 13.9.2022 from 3<sup>rd</sup> Respondent stating that his discharge on compassionate ground has been turned down on the grounds that MoD has reduced quota of Pre Mature Retirement from 0.5% to 0.25% vide its Policy Letter dated 3.6.2022 and no more quota is available till July 2023.

12. In this case, the Applicant did not forward any Willingness Certificate for extension of service and his extension was effected on a 'Deemed Willingness' provision. While extant provisions provide for a change of option clause which must be forwarded prior to 8 months of date of discharge, rejection of the Applicant's plea for change of option based on a Deemed Willingness Option 4 months prior to date of discharge on the grounds that it has been forwarded after the designated 8 months period is putting the Applicant in a

disadvantageous position as the initial option itself was not offered by the Applicant but was deemed to have been offered.

13. A careful study of the MoD letter dated 20.9.2012 (Annexure R6) and 30.1.2019 (Annexure R7) clearly indicates that the primary thrust of laid down policy is that the interests of the military personnel must be preserved and that on no count should an eligible individual be denied extension on specious grounds. Para 3 and 4 of MoD Letter dated 30.1.2019 (Annexure R7) is extracted below:'

Para 3: It is a matter of concern that few cases have recently been reported wherein indls have been denied extension of service/change of option for extension before cut off date, quoting 'norms of unit' or non acceptance of option certificate by the units. Any such action, if carried out are against the spirit of policy/guidelines issued by this Dte.

Para 4: In view of the above, it is requested that following guidelines be strictly adhered to:

- (a) Ex of Option: The option for willingness/unwillingness for extension should be accepted as given by the individual. No Individual should be forced to sign any unwillingness for extension quoting norms of unit, etc. The exercising of option is the solemn right of the individual, however, the grant of extension or otherwise is subject to the individual meeting the

requisite QRs which are checked by the Screening Board.

(b) Change of Option: Similarly change of option (once, upto cut off date) should be unconditionally accepted and forward to Records for individual info. The grant/non grant of extension would continue to remain subject to individual meeting laid down QRs which would subsequently be checked by the Screening Board. It is also clarified that exercising option for change in willingness/unwillingness for extension can be done once at any time upto cut off date (eight months prior to superannuate or by 1 Aug of the year of conduct of DPC (in case of Subs) by an individual irrespective of when screening is being conducted in unit. Efforts should however be made to conduct such screening Boards at earliest.

(c) Change of option for extension of service is not permitted beyond cut off date and no provision for waiver/acceptance beyond cut off date is available.

14. While this Tribunal is fully cognizant of the Administrative Compulsions and policies of the Indian Army, it would be pertinent to reiterate that to persist with an "unwilling horse" would be detrimental to the interests of both the Organisation as also the Applicant. Furthermore, there is no tangible material available with the Respondents to indicate that the aforementioned

willingness/unwillingness document was ever communicated to the applicant and no conclusion of "deemed willingness" can be arrived at on the basis of presumptions of deemed knowledge. It is apparent that the Applicant is under tremendous stress on account of his domestic compulsions owing to the 100% disability of his younger son and it would only be fair and equitable to deal with such cases on a case to case rather than purely on technicalities of extant policies and regulations.

13. In view of the aforesaid facts of the case, we are of the considered opinion that extension of service to the Applicant despite his unwillingness for continuing in service which was forwarded well before his retirement date on extremely genuine grounds is not sustainable and is against the spirit of natural justice and equity and contrary to the spirit and content of the policy in vogue.

14. In fine, the Respondents are directed to grant the Applicant Discharge from Service within 8 weeks of pronouncement of this Order, i.e. 30.11.2022. The Applicant be retained in his present posting, 312 FdWksp Coy (EME) at Ballygunge Maidan Camp, Kolkata 700 019, till date of discharge from service.

15. The OA is ordered accordingly.

16. No order on costs.

Pronounced in the Open Court on 30<sup>th</sup> day of November, 2022.

**(LT GEN BOBBY CHERIAN MATHEWS)**  
**MEMBER (A)**

**(JUSTICE ANJANA MISHRA)**  
**MEMBER (J)**

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