

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.41 of 2013

Tuesday, the 3rd day of September 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Ex Col A.J Alexander
S/o late Asirvadam,
Aged about 54 years
Service No.IC-43502-W
House No.38/2/C, 2nd Street
Anna Complex, Muthapudupet
I.A.F. Avadi, Chennai-600055.

.. Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S.Biju

VS.

Military Secretary's Branch (MS-3A)
IHQ of MOD (Army), South Block
DHQ-P.O., New Delhi-110 011.

.. Respondent

By Mr. B.Santhakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. The petitioner was commissioned on 14th December 1985 and retired in the rank of Colonel on 30th June 2012. He applied for re-employment on 19th March 2012 which was not granted to him. This application has been filed for grant of re-employment with effect from 1st July 2012 at Avadi Military Station, Chennai with all consequential benefits.

2. The petitioner through his application and the pleadings of his learned counsel Mr. M.K. Sikdar would submit that he has had an excellent service record and has acquired more than one civilian qualification while in service. He also has to his credit two Army Advance Courses. He applied for re-employment, but the respondent rejected the application without valid reasons he pleads. He would submit that he meets all the criteria for re-employment, yet the respondent did not grant him re-employment. He would claim that since the time he was in the rank of Captain, injustice has been done to him and he was forced to file non-statutory complaint and statutory complaint in 1992 to 2002 against ACR's and two severe reprimands.

The petitioner filed Writ Petition No.10449 of 2011 before the High Court of Judicature at Madras in which he challenged the ACRs and severe reprimands and prayed for quashing the same and directing the respondent to grant seniority to him and consider him for promotion notionally with effect from April 2005. Order on this WP is awaited. The petitioner would highlight that according to the Policy Letter on re-employment, officer should be free of any disciplinary backgrounds. He would submit that he was promoted from the rank of Captain to Colonel which would indicate that the severe reprimand did not affect his regular promotions and therefore the same should not be a hindrance in his re-employment. He would plead that his wife is suffering from cancer and is undergoing treatment in Chennai and therefore, he requests for posting on re-employment at Chennai.

3. The respondent would submit that the petitioner applied for re-employment vide his application dated 19th March 2012. His application was considered by the appropriate Selection Board which observed that the petitioner while in service had been awarded punishment of Severe Reprimand twice, on 25th January 1993 and 6th December 1996, for similar offences, i.e., for absenting himself without leave under Army Act Section 39(a). In view of the nature and gravity of the offences and the repetitive nature of acts of indiscipline, the Selection Board did not find the petitioner fit for re-

employment in accordance with the laid down criteria since he did not meet all the criteria for re-employment. The respondent would submit that the petitioner had filed O.A.13 of 2010 before this Tribunal against the award of severe reprimands and ACR for the year 1996. This O.A. was dismissed on the ground of jurisdiction under Section 3 (o) (iii) of the Armed Forces Tribunal Act and the petitioner was granted liberty to agitate his grievances before the appropriate forum, if so advised. The petitioner filed W.P.No.10449 of 2011 before the Hon'ble High Court of Madras which is pending. The respondent would say that there is no merit in the application and request that the same be dismissed with costs.

4. Heard both sides and perused documents. The point to be considered is whether the rejection of the petitioner's request for re-employment is valid or not ?

5. The Policy Letter No.04580/MS Policy, dated 30th May 2000 lays down the provisions for re-employment and extension of re-employed service of officers of the rank of Colonels and below. The criteria for initial re-employment have been stated in paragraphs-6 to 19. These are as follows:

" 6. The basic aim of re-employment is to offer appointments against existing deficiencies in the officer cadre to officers of the rank of Colonel and below, in the substantive rank held at the time of retirement, so as to make up deficiencies in the Army and utilise re-employed officers for general administrative/station duties as also specialised appointments, based on their expertise.

Criteria for Initial Re-employment

7. Grant of initial re-employment and extension will be approved on selection Re-employment Selection Board at the Army HQ (MS Branch) based on the criteria enumerated below and officers overall record of service.

8. Officers should be free of any disciplinary background, except of trivial nature which in any case should not involve moral turpitude, loyalty, gross negligence and cowardice. Repetitive indiscipline, even of trivial nature, which is indicative of a trait towards indiscipline, would be viewed as a factor towards ineligibility.

9. There should be no adverse remarks with regard to financial mismanagement, alcoholism, moral turpitude or gross negligence. There should be no marked slackness, lack of interest and drop in performance.

10. In case all the ACRs are not received in MS Branch, the case for re-employment will be deferred till receipt of complete inputs. The record of service as a whole, and last five years ACRs in particular, will be examined. Following criteria will be applicable:-

(a) Box grading should not be less than 5 in any of the ACRs.

(b) In the ACRs under process, the officer should not have been graded less than the grading indicated against each of the following qualities:-

(i) Integrity .. 7

(ii) Loyalty .. 7

(iii) Maturity .. 6

(c) The Demonstrated Performance of the officer should not be graded below in more than one ACR.

11. Willingness to serve in any station in India in any capacity.

12. Officers must not be over 55 years of age on the date of initial re-employment.

13. Should be recommended for re-employment by all officers in the chain of command.

14. Should be in acceptable medical category, as given at Para 27 of this letter.

15. Should be selected for re-employment by the Selection Board at Army HQ (MS Branch).

16. Officers who have resigned/obtained premature retirement from Army or whose services were terminated as a result of adverse report/indiscipline/inefficiency/misconduct, are not eligible for grant of re-employment in the Army.

17. Officers who meet the basic QR will be merit listed and granted re-employment, based on the number of available vacancies, in their own turn. Based on the competitive merit list, officers volunteering to serve anywhere in India and those with better qualifications and employability, will be given preference over other officers. The officers who are not high up in the competitive merit list will be waitlisted and be offered re-employment as and when vacancies occur.

18. Officers who fail to meet the laid down QR will not be granted re-employment.

19. Initial re-employment granted to officers will commence with effect from the date the officers report for duty at the station to which posted and not otherwise. "

6. The petitioner filed O.A.No.13 of 2010 before this Tribunal challenging the impugned ACR and award of Severe Reprimands in which order was passed on 6th day of January 2011. The operative part of the order reads,

"9. In fine, the application is dismissed on the ground that this Tribunal has no jurisdiction under Section 3(o) (iii) of the Armed Forces Tribunal Act 2007 to decide the same. The applicant is at liberty to agitate his grievances before the appropriate forum, if so advised. No costs. "

7. Admittedly, W.P.No.10449 of 2011 is pending before the Hon'ble High Court of Madras and the punishments of severe reprimands have not been set aside. The policy on re-employment clearly lays down in para-8 that officers should be free of any disciplinary background and mentions that repetitive indiscipline even of trivial nature would be viewed as a factor towards ineligibility. Accordingly, the respondent found him not suitable for re-employment. The petitioner's claim that these punishments did not interfere with his promotion may not be valid for re-employment since criteria for promotion would be different. Since the punishments of

severe reprimands still hold good and order of the Hon'ble High Court of Madras is awaited, there is no ground for us to pass any order on the rejection of the petitioner's request for re-employment. On receipt of order of the High Court on his WP No 10449/2011 the petitioner may come before this Tribunal, if so advised, within a period of 3 months.

8. With the above observations, the application is disposed of. No costs.

Sd/

LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/

JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

03.09.2013
(True copy)

Member (J) – Index : Yes / No Internet : Yes / No
Member (A) – Index : Yes / No Internet : Yes / No

VS

To:

1. Military Secretary's Branch (MS-3A)
IHQ of MOD (Army), South Block
DHQ-P.O., New Delhi-110 011.

2. M/s. M.K. Sikdar & S.Biju
Counsel for Petitioner.

3. Mr. B. Shanthakumar, SPC
Counsel for respondent.

4. OIC, ATNK & K Area HQ, Chennai.

5. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

O.A.No.41 of 2013

Dt: 03.09.2013