

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

31.

OA 2421/2021

Capt Anirudh Sharma		Applicant
VERSUS		
Union of India and Ors.		Respondents

For Applicant	:	Mr. S.S. Pandey, Advocate
For Respondents	:	Mr. Rajeev Kumar, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
03.08.2022

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant serving who is a Short Service Commissioned Officer and is aggrieved on not being granted release from the service. The applicant has made the following prayers:

(a) Call for the records based on which the Respondents have kept the application submitted by the Applicant seeking waiver from enforceability of the Service Liability clause pending since 19.08.2020 and thereafter passing the impugned order dated 18.10.2021 vide which the application submitted by the Applicant Vide letter dated 20.08.2021 seeking release from service has been declined on the sole ground that same has not been submitted six months before the date of Release and

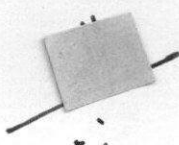
thereafter quash all such orders including any policy issued by the Respondents in this regard on the basis of which such order has been passed by the Respondents.

(b) Direct the Respondents to urgently consider the application submitted by the Applicant for release and subsequently, allow the Applicant for release from service in accordance with the Policy letter dated 20.07.2006 forthwith as was granted to his other course mates vide order dated 02.07.2021 and further, other Officers who were previously detailed for UN Mission namely, Lt Col Anjani Kumar Mishra and Col Jayant Coomar, who were allowed to leave the service without imposing any service liability whereas, such service liability was imposed in case of the Applicant even when he has never furnished any undertaking for such aspect; and

(c) Issue any other/ direction as this Hon'ble Tribunal may deem fit in the facts of this present Original Application.

Brief Facts of the Case

2. The brief facts of the case, as per the applicant, are that he was commissioned on 10.09.2016 into the infantry; 11 JAT. The applicant's unit was nominated for a UN Mission to Lebanon (UNIFIL) in 2017. The unit, including the applicant, proceeded



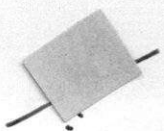
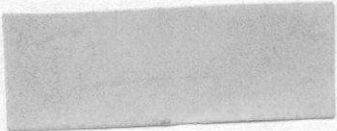
to UNIFIL on 22.10.2018. The applicant was de-inducted from the UN Mission and reported back on 18.11.2019. On his return due to certain compelling domestic issues, the applicant decided to apply for release from the Army. He was however, informed that prior to applying for the release he would need to seek for a waiver of service liability as per the Policy letter dated 26.06.2018, having gone on a foreign assignment. Due to the ongoing pandemic of Covid-19 at that time the applicant finally submitted his application for waiver of service liability on 19.08.2020. Since his application for waiver of service liability had not been disposed of for almost a year, the applicant by his letter dated 20.08.2021 submitted an application for release from service. Since both the applications were yet to be disposed of, the applicant later submitted the application dated 19.09.2021 seeking early disposal of his case. However, the respondents vide their letter dated 18.10.2021 intimated the applicant that his request for release cannot be processed since he had not filed the application for release six months prior to the date of release, as required by the policy. Aggrieved by the fact that his application for waiver of service liability and release from service was not agreed to, this OA has been filed.

3. During the course of hearing, on 20.05.2022 the respondents were directed to reconsider the matter and intimate the action taken. Subsequently when the matter was heard on

27.07.2022, the respondents submitted a copy of their letter dated 25.07.2022 rejecting the application for various reasons.

Brief Arguments by the Counsel for the Applicant

4. The counsel took us through the details of the case and elaborated on the policies related to extension of tenure and providing substantive promotion to SSCOs (Men) (Annexure A-2) and the policy for selection of officers for foreign assignments (Annexure A-3). The counsel then stated that the policy at Annexure A-3 did not lay down any stipulations for those proceeding on UN assignment as part of the respective sub-unit/unit contingent. He further added that since the applicant had proceeded on the UN Mission as part of his unit contingent, he had not signed any service liability certificate. The counsel further stated that as per Annexure A-2, and the fact that many other similarly placed officers like the applicant had been accorded release, there was no reason why the applicant's request for release was denied by the respondents on the ground that he had not applied for release six months prior to his release. The counsel further added that even if the service liability clause as per Para 17 of Annexure A-3 was to be applied, his liability of three years, having done a foreign assignment for one year would be over by October 2022. The counsel further added that the applicant had been recently informed that since his UN tenure was more than one year, the service liability was for a period of 5 years and that he was



required to serve till 17.11.2024. The counsel vehemently refuted this assertion by the respondents on the grounds that the tenure of the applicant was for two spells of six months each and had never been extended beyond that and the fact that the applicant returned in mid November 2019 was only due to the logistic issues connected with the repatriation of the contingent and its personnel. The counsel asserted that this logistic delay could not be held against the applicant with the direction that he ought to serve for a period of 5 years as part of the service liability. The counsel concluded that considering the compelling domestic circumstances the applicant be released from service by the end of October 2022, and by when he would have also completed his three years service liability having been on a UN Mission for one year.

Brief Arguments by the Counsel for the Respondents

5. The counsel took us through the details of the various policies related to the tenure and release of SSCOs and policies related to selection of personnel for foreign assignments and their service liability. Referring to the applicant's case for waiver of service liability having done a UN assignment, the counsel stated that the policy letter at Annexure A-3 was applicable to all officers who were nominated for any type of foreign assignment. Although the applicant had proceeded on UN assignment to UNIFIL as part of unit contingent, the service liability clause was equally applicable to him, irrespective of

whether such a certificate was signed or not. Further referring to the policy on foreign assignments, the counsel stated that waiver of any provision of this policy required the sanction of the COAS. In the applicant's case the COAS had rejected the application for waiver of service liability. The counsel further added that the applicant had proceeded on the UN Mission on 22.10.2018 and had returned on 18.11.2019. Since the applicant has done more than a year's tenure, his service liability was of five years.

6. Explaining the details of tenure of SSCOs, the counsel stated that till 2004 the contractual period for the SSCOs was 5 years, extendable by another 5 years. Subsequently, this was extended by another 4 years (5+5+4). Subsequently, the MoD vide this letter dated 20.07.2006 (Annexure R-2) laid down the revised terms and conditions for SSCOs with an initial contractual obligation of 10 years extendable by another 4 years. Thus, it was mandatory for the SSCOs to serve the initial 10 years of contractual service. He further added that as a special measure, the policy also had a special provision for release of SSCOs on completion of 5 years service, for which an officer is required to apply for release in his fifth year of service, and his application was required to reach the MS Branch six months prior to completion of the fifth year of service. The counsel stated that in the case of the applicant, his application for release was received after he had completed 5 years of

service and, therefore, was rejected. The counsel concluded that since the applicant's case for waiver of service liability and release from service had been considered as per the existing policies and had been rejected vide speaking order dated 25.07.2022 which had been issued in this regard. The Counsel concluded that in the light of the above, the OA be dismissed.

Consideration of the Case

7. Having heard both sides at length the only issue that requires to be adjudicated is whether the applicant is entitled to be released from service based on his application dated 20.08.2021. We have examined the policies related to selection of officers for foreign assignment and release of SSCOs. On the aspect of the service liability of the applicant, since the applicant was on a one-year tenure with his battalion in UNIFIL and there is nothing on record to suggest that the applicant's tenure had been extended beyond the period of one year, the service liability of the applicant will be limited to three years as laid down in the policy. The fact that the applicant remained in the mission area for a short period beyond the designated one year can be attributed to the logistic issues related to the repatriation of contingents and personnel deployed in such UN Missions. We therefore, find the Respondents direction in the Speaking Order dated 27.07.2022 that the applicant's service liability is for five years till 17.11.2024 specious. While the respondents have rejected the applicant's application for release from service on

completion of five years on the grounds that the application was not rendered in the stipulated time, and was submitted only on completion of five years has been noted. However, considering the fact that the applicant was deployed in the UN Mission assignment during the period of his fifth year of service and the compelling domestic circumstances stated by the applicant, we are of the opinion that there is a need to take a sympathetic view and accord sanction for release from service as a special case on completion of his three years service liability, having been on a foreign assignment for a duration of one year.

8. Based on the above considerations, the OA is allowed and the respondents are directed to release the applicant from service in October 2022, on completion of his three years service liability having been on a foreign assignment for a duration of one year.

9. No orders to cost.


(RAJENDRA MENON)
CHAIRPERSON


(P.M. HARIŽ)
MEMBER (A)

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