

Ved Prakash vs U.O.I. & Ors on 8 December, 2016

Equivalent citations: AIR 2017 SUPREME COURT 578, 2017 (1) SCC 783, (2017) 2 LAB LN 18, (2016) 12 SCALE 608, AIR 2017 SC (CIVIL) 797, (2017) 1 SCT 453, 2017 (3) KCCR SN 215 (SC)

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Bench: L. Nageswara Rao, D. Y. Chandrachud, T. S. Thakur

Reportable

Non -

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.11933 of 2016
(Diary No. 13616 of 2013)

VED PRAKASH

... Appellant (s)

Versus

UNION OF INDIA & ORS

....Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

Delay of 13 days in filing the Civil Appeal is condoned. Leave to file Appeal granted.

The Appellant joined the Indian Navy as a Direct Entry Diploma Holder (D.E.D.H.) with an initial engagement of 10 years as acting Electrical Artificer 4th Class (EAR-4) on 01.08.2002. In the year 2005, the Appellant suffered an injury while playing Volley Ball due to which he was placed under "Low Medical Category" S2 A2 (PMT). He received intimation on 06.10.2010 that his initial engagement of 10 years would expire on 31.07.2012. As he was in a Low Medical Category S2 A2 (PMT), the application for re-engagement for a further period of 5 years was required to be routed through Headquarters Western Naval Command, Mumbai.

The Commanding Officer, INS Vindhyagiri, the fifth respondent herein, recommended the

Appellant for re-engagement for a period of 5 years to the Flag Officer Commanding-in-Chief, Headquarters Western Naval Command, the third respondent herein on 06.10.2010. In the said letter dated 06.10.2010, the fifth respondent appreciated the services of the Appellant as follows:

“Despite joining the ship recently, he has proved to be instrumental in executing critical defect rectifications onboard. The sailor has gained confidence of his superiors to single handedly resolve technical defects. The Sailor, has also been observed to possess a positive attitude towards service, a good military bearing and excellent leadership qualities. The sailor’s Training Particulars in his Service document also reflects his professional competence in that he topped the EAR 4 ‘Q’ Board scoring 90% marks. He also attained a Distinction grading during the PO (Leadership) Course.

The sailor is worthy of re-engagement in service, and has been observed to possess the will to aspire and grow in service”.

The third respondent examined the request of the Appellant for re- engagement and recommended him for consideration to the Commodore, Bureau of Sailors, Mumbai, the fourth respondent herein. The fourth respondent by a FAX message dated 29.11.2010 intimated the fifth respondent that the Appellant could be considered for re-engagement for a period of 2 years only. It was also stated that the Appellant would be considered for further re-engagement subject to suitability. The reasons given by the fourth respondent for re-engagement for only 2 years and not 5 years as requested by the Appellant are as under:

“(A) THE SAILOR WAS IN MEDICAL CATEGORY S3 A2 FROM 2006-2009. HE HAS BEEN UPGRADED TO S2 A2 (P) (PMT) CATEGORY IN DEC 2009 ONLY.

(B) HAS SERVED IN AFLOAT BILLETS FOR A VERY LIMITED PERIOD AND ON UPGADATION TO S2 A2 (P) (PMT) MEDICAL CATEGORY, HE HAS BEEN POSITIONED ONBOARD IN AUG 2010 ONLY.

(C) THE PREVIOUS RECORD OF THE SAILOR IS ALSO INDICATIVE OF LACK OF DESIRED DISCIPLINE/CONDUCT ATTRIBUTES.

(D) CHEAR ‘Q’ COURSE OF THE SAILOR HAS BEEN CANCELLED ON NUMEROUS OCCASION DUE TO LMC/DOMESTIC REQUIREMENTS.” The Appellant requested the fifth respondent for clarifications on re-

engagement by a letter dated 21.02.2011. It was forwarded to the fourth respondent on 06.04.2011. The Appellant also submitted a request for redressal of grievance of re-engagement for further service for a period of 5 years to the Chief of Naval Staff, the Second Respondent herein. The said redressal of grievance was forwarded to the Directorate of Personnel and Integrated Headquarters, Ministry of Defence (Navy). The redressal of grievance was disposed of on 15.02.2012 by stating that

the Appellant had no right of re-engagement. It was further stated in the said letter dated 15.02.2012 that the Appellant ought to have exercised his option for 2 years re-engagement and sought for further extension later on.

The Appellant approached the Armed Forces Tribunal, Mumbai by filing Original Application (O.A.) No. 11 of 2012 assailing the proceedings dated 15.02.2012 by which his redressal of grievance was rejected. He also sought a direction to the Respondents to approve his re-engagement for 5 years. By an order dated 04.02.2013, the Armed Forces Tribunal dismissed O.A. No. 11 of 2012. It was held by the Armed Forces Tribunal that re- engagement cannot be claimed as a matter of right and the period of re- engagement was at the discretion of the authorities. The Tribunal also held that there was no error in the re-engagement of the Appellant for 2 years with an option for further re-engagement. The Appellant filed an application under Section 31 of the Armed Forces Tribunal Act, 2007 seeking leave to Appeal to the Supreme Court which was rejected on 04.02.2013. Aggrieved by the said order dated 04.02.2013, the Appellant has filed the above Appeal.

We have heard Mr. Sukhjinder Singh, Advocate for the Appellant and Mr. Neeraj Kishan Kaul, learned Additional Solicitor General (ASG) for the Respondents. The learned counsel for the Appellant submitted that the grant of re-engagement of Direct Entry Diploma Holder Sailors is governed by a Policy dated 21.11.2006. He contended that the re-engagement has to be granted for 5 years till completion of 15 years of service in accordance with Navy Order (STR) 17 of 1994. He drew our attention to Navy Order (STR) 02/07 which according to him replaced Navy Order (STR) 17/94. The learned counsel referred to para 4, 5, 9 and 11 of the said Navy Order which will be dealt with in detail later. He also referred to the annual assessment of the Appellant for the years 2002-2009 which showed that his character was very good and his efficiency was superior throughout. The learned counsel for the Appellant relied upon the strong recommendation made in his favour by the fifth respondent for re-engagement for 5 years which was approved by the third respondent. He also urged that the decision of the fourth respondent to grant re-engagement for 2 years only is contrary to the Policy dated 21.11.2006 and Navy Order 02/07.

Mr. Neeraj Kishan Kaul, learned ASG, submitted that the Appellant has no right to claim that he should be re-engaged for a period of 5 years. He submitted that the Appellant should have accepted the re-engagement for 2 years, especially when he was given an option for further extension after the expiry of 2 years. The learned ASG contended that the Appellant worked on sea for a short period of one year only. He further submitted that the Appellant did not satisfy the conditions for re-engagement as laid down in Navy Order 02/07. The learned ASG also stated that the Appellant repeatedly refused to undergo the CHEAR (Q) Course.

The policy dated 21.11.2006 provided 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) ibdi." Navy Order 02/07 governs the re-engagement of Sailors. The initial period of enrolment of a Direct Entry Diploma Holder is 10 years and he can be re-

engaged if he fulfils the conditions as per para 4 of the Navy Order which are as under:

“(a) Out of three annual assessments immediately preceding. Re- engagement he must have at least two assessments of character and efficiency not below “VG” and “SAT” respectively.

(b) Must have been recommended by the Commanding Officer as suitable in all respects.

(c) Must have been declared medically fit for satisfactorily carrying out the duties required of him.

(d) The manpower requirements of the service/cadre must warrant his re-engagement.” Para 5 provides that a final decision regarding the re-engagement will be taken on the basis of the overall performance of the Sailor during his entire service as reflected by the factors mentioned therein. The Commodore, Bureau of Sailors is the authority to grant re-engagement.

According to para 9 (a) and (b), the re-engagement shall not be less than 2 years and not exceed 5 years. Para 9 (c) of the Navy Order is as under:

“Notwithstanding the above the sailors of Artificer Cadre and Submarine Branch will be governed by separate re-engagement norms in force from time to time. Sailors of Submarine Branch, on expiry of initial engagement, will be further re-engagement in the Submarine Cadre subject to availability of vacancies in the cadre. Otherwise, if re-engaged, they will be reverted to general service. Therefore, at the time of requesting for re-engagement, they are to give an undertaking as per Appendix ‘B’ to this order that in case of Submarine Cadre becoming overborne they are liable to be reverted to general service.” The procedure to be followed for re-engagement under Low Medical Category is dealt with in para 11 which provides that Sailors in permanent Low Medical Category below S2 A2 will not normally be given re-engagement.

It is clear from para 9 (c) of the Navy Order 02/07 that the Sailors of Artificer Cadre, to which the Appellant belongs, will be governed by separate re-engagement norms in force from time to time. On being asked to show the norms applicable to Sailors of Artificer Cadre, counsel appearing for both sides submitted that there are no such norms. The non obstante clause in para 9 (c) suggests that the conditions prescribed for re- engagement will not be applicable to Sailors of Artificer Cadre. As no norms as

contemplated in para 9 (c) have been framed, the re-engagement of Sailors of Artificer Cadre will have to be necessarily governed by the Policy dated 21.11.2006. The Appellant would be entitled to be considered for re-engagement for 5 years till he completes 15 years of service as per the Policy. The decision of the fourth respondent dated 29.11.2010 re- engaging the Appellant for 2 years is liable to be set aside on this ground alone.

The learned counsel for the Appellant and the learned ASG have made their submissions on the basis that Navy Order 02/07 is applicable to the re- engagement of the Appellant. We proceed further to examine whether the decision of the fourth respondent is justifiable applying the norms as per the Navy Order 02/07. The conditions mentioned in para 4 of Navy Order 02/07 are that 2 out of 3 annual assessments should not be below very good, that the Commanding Officer should have recommended the Sailor as suitable in all respects, the Sailor must have been declared medically fit and that the manpower requirements of this service should warrant his re-engagement. The annual assessments of the Appellant show the grade of 'Very Good' character from 2002-2009 and 'Superior Efficiency' from 2004-2009. The Commanding Officer made a strong recommendation for re-engagement of the Appellant for a period of 5 years. The Appellant was also found medically fit by being upgraded to S2 A2 (PMT) Category in December, 2009. His overall performance was found to be very good as per the recommendation of the Commanding Officer dated 06.10.2010.

One of the reasons given by the fourth respondent in the decision dated 29.11.2010 is that the Appellant was in medical category S3 A2 from 2006- 2009 and was upgraded to S2 A2 (PMT) only in December, 2009. As per para 11 of Navy Order 02/07, re-engagement of Sailors in permanent low category below S2 A2 will not be made normally. The Appellant is in medical category S2 A2 (PMT) and as such does not suffer any disqualification. The fourth respondent also held that the Appellant served in Afloat Billets for a very limited period and that he has been positioned onboard only in August, 2010. The learned counsel for the Appellant submitted that due to his being in low medical category he was not sent for duty at sea for a long period. He also stated that the Appellant served for three and half years out of 10 years at sea which cannot be said to be a short period. The learned ASG submitted that the Appellant served only for one year at sea which is a very short period for a Sailor. No norms showing the minimum period of service to be spent by a Sailor at sea were placed before us.

The Navy Order 02/07 also does not provide for any such prescription. It is relevant to refer to the recommendation dated 06.10.2010 of the Commanding Officer who stated that the Appellant proved to be instrumental in executing critical defect rectifications onboard though he joined the ship recently. The Appellant appears to be an efficient hand and he ought to have been given re-engagement for 5 years. The Commanding Officer further stated that the Appellant possesses excellent professional knowledge and he has gained the confidence of his superiors for single

handedly resolving technical defects. The Appellant's professional competence was found to be outstanding apart from the fact that he topped the EAR 4 'Q' Board by scoring 90 % marks.

Another reason given by the Fourth Respondent is that the Appellant did not complete the CHEAR 'Q' Course due to low medical category/ domestic requirements. We perused the record to verify the reasons for the Appellant not taking CHEAR 'Q' Course. On one occasion he did not opt to take the course due to the serious illness of his wife. He was not sent for the course on four occasions due to his placement in the low medical category. The Appellant cannot be accused of intentionally avoiding the course. In view of the above, the Appellant satisfies the conditions for re-engagement in para 4 of Navy Order 02/07. The fourth respondent ought to have re- engaged the Appellant for 5 years by giving importance to the recommendations of the fifth and third respondents. As mentioned above, the Appellant's performance was found to be outstanding.

The Appellant completed the period of 10 years of initial appointment on 31.07.2012. He has not been working thereafter. In the facts and circumstances, we are of the opinion that the Appellant is entitled for addition of 5 years of notional service to the period of 10 years which he has already served for the purpose of being eligible for pensionary benefits. He will not be entitled for salary and allowances for the said period of 5 years. The Appellant shall be entitled to claim all service benefits to which he is entitled by being treated as having completed 15 years of service.

Before parting with this case, it is necessary to refer to the casual manner in which the Navy Order pertaining to re-engagement of Sailors is made. The norms referred to in para 9 (c) of the Navy Order 02/07 which govern the re-engagement of Sailors of Artificer Cadre do not exist. The first respondent should ensure that the lacuna is removed at the earliest by either making separate norms as mentioned in para 9 (c) of Navy Order 02/07 or by amending the Navy Order suitably.

The Appeal is disposed of with the above directions.

.....CJI [T. S. THAKUR]J [Dr. D. Y. CHANDRACHUD]
.....J [L. NAGESWARA RAO] New Delhi, December 8, 2016