



Australian Government

Defence Honours and Awards Appeals Tribunal

Singer and the Department of Defence [2016] DHAAT 34 (27 August 2016)

File number (s) 2015/040

Re **William Singer**
Applicant

And **Department of Defence**
Respondent

Tribunal Ms Naida Isenberg (Presiding Member)
Mr Richard Rowe PSM
Mr Graham Mowbray

Hearing Date 17 August 2016

DECISION

On 27 August 2016 the Tribunal decided that it has no jurisdiction to review the decision in respect of the Applicant's wearing of his awards issued to him for service in the South African Defence Force.

CATCHWORDS

Defence – Defence Honours and Awards Appeals Tribunal – wearing of foreign awards – refusal to recommend person for an award – jurisdiction

LEGISLATION

Defence Act 1903 – ss 110V(1), 110VB(2), 110T

REASONS FOR DECISION

Introduction

1. The Applicant, Lieutenant William Singer RANR (Lieutenant Singer), seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that refused permission for him to wear foreign awards issued to him for his service in the South African Defence Force.

Background

2. On 24 September 2015 the Applicant submitted an *application for approval to accept and wear foreign awards* form to the Directorate, seeking approval to wear the South African General Service Medal and the South Africa Medal, which had been awarded to him for his service as a member of the South African Defence Force between 1987 and 1999. He currently serves in the Royal Australian Navy (RAN) and wishes to wear his South African medals.

3. On 8 October 2015 his application was refused. On 9 October 2015 the Applicant applied to the Tribunal for review of the Directorate's decision.

4. The Applicant provided further information in support of his application for review. The Directorate was asked to provide a report, which was provided to the Applicant, and he provided further comment.

5. All the material in respect of this matter including the application, the Directorate's report and the Applicant's comments on the Directorate's report, were provided to the Tribunal Members appointed by the Tribunal Chair to conduct the review. After reviewing all of the material before it, the Tribunal came to a preliminary view that it did not have jurisdiction to review the Directorate's decision in respect of this matter, and invited both the Applicant and the Directorate to make submissions in relation to the Tribunal's jurisdiction.

The submissions and the hearing

6. The Applicant made brief submissions dated 2 July 2016 in which he asserted that the Tribunal had jurisdiction, without spelling out his reasons.

7. The Directorate made submissions dated 14 June 2016 which did not address the Tribunal's jurisdiction but repeated its position that the Applicant was not entitled to wear his South African medals.

8. The Tribunal decided that it might be assisted by a hearing in relation to jurisdiction. That hearing was held on 17 August 2016 at which Lieutenant Singer appeared in person and at which the Directorate was represented by Mr M McCulloch, instructed by Ms M Kropinski-Myers.

9. At the hearing Mr McCulloch indicated that the Directorate now agreed with the Tribunal's preliminary view that it had no jurisdiction to consider Lieutenant Singer's application for review. Lieutenant Singer did not contest this but noted his disagreement with the policy which prevented him from obtaining permission to wear the medals.

CONSIDERATION

10. As discussed with Lieutenant Singer at the hearing, the Tribunal does not have jurisdiction at large; the types of decisions the Tribunal may review are set out in s 110V of the *Defence Act 1903* (the Act), which, relevantly, provides:

Section 110V

(1) A reviewable decision is a decision (whether made before or after the commencement of this Part) in relation to which the following conditions are satisfied:

(a) the decision is or was a refusal to recommend a person or group of persons for any of the following in relation to eligible service:

- (i) a defence honour;*
- (ii) a defence award;*
- (iii) a foreign award;*

(b) the decision is or was made:

(i) by or on behalf of the Minister, or a former Minister (a former Defence Minister) whose ministerial responsibilities included defence or matters related to defence; or

(ii) by a person within the Department, or a former Department of State of the Commonwealth that was administered by a former Defence Minister; or

(iii) by a person within the Defence Force, or an arm of the Defence Force;

(c) the decision is or was made in response to an application

...

11. What constitutes a *reviewable decision* is set out in s 110V(1) and, relevantly relates to eligibility for an award, including a foreign award. Further, such an award is only available if it relates to eligible service, as defined in s 110T of the Act.

12. The application relates to medals already awarded to Lieutenant Singer by the Government of South Africa. The Directorate's decision which he seeks to have reviewed relates to the *wearing* of those medals. Consequently, the decision does not

involve *a refusal to recommend a person for a foreign award* and does not relate to eligibility for such an award, neither does it relate to eligible service. As discussed at the hearing, s 110V(1)(a)(iii) of the Act restricts the Tribunal's review function to decisions with respect to eligibility for foreign awards and does not, on a plain reading, extend to issues *in connection with* a foreign award.

13. Therefore the Tribunal has no jurisdiction to review the decision.

DECISION

14. The Tribunal has no jurisdiction to review the decision in respect of the Applicant's wearing of the awards issued to him for service in the South African Defence Force.