



Australian Government

Defence Honours and Awards Appeals Tribunal

Muller and the Department of Defence [2014] DHAAT 33 (3 September 2014)

File Number(s) 2014/003

Re **Noel Patrick Muller**
Applicant

And **Department of Defence**
Respondent

Tribunal Professor D. Horner AM (Presiding Member)
Mr K. Woods, CSC, OAM

Hearing Dates 21 August 2014

DECISION

On 3 September 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Noel Muller is not eligible for the award of the General Service Medal 1962 with Clasp 'MALAY PENINSULA'.

CATCHWORDS

DEFENCE AWARD –General Service Medal

LEGISLATION

Defence Act 1903 – ss 110T, 110V, 110VA, 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
United Kingdom Command Paper 7907, March 1950
United Kingdom Command Paper 3432, October 1967

REASONS FOR DECISION

Introduction

1. The applicant, Mr Noel Patrick Muller (Mr Muller), a former member of the Royal Australian Navy (RAN), seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the General Service Medal (GSM) 1962 with Clasp 'MALAY PENINSULA'. Mr Muller's application for the award had been made on the basis of his service in the RAN between 1960 and 1966.
2. Mr Muller has sought the award of the Naval General Service Medal (NGSM) 1915 with Clasp 'MALAYA' and the GSM with Clasp 'MALAY PENINSULA' on several occasions. Most recently on 17 December 2011 he applied to the Directorate for the award of the GSM with Clasp 'MALAY PENINSULA'. Actually he sought the award of the GSM with bar 'MALAYSIA', but since that decoration does not exist the Directorate treated his application as though was applying for the GSM with Clasp 'MALAY PENINSULA'. On 15 February 2012 the Directorate advised Mr Muller that he was not eligible for any further awards. On 21 January 2014 Mr Muller lodged an application with the Defence Honours and Awards Appeals Tribunal (the Tribunal) to review the decision of the Directorate to refuse to recommend him for GSM with bar 'MALAYSIA'. As with the Directorate, the Tribunal accepted that its task was to review the decision not to award the GSM 1962 with Clasp 'MALAY PENINSULA'.

Jurisdiction

3. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Muller's application for review (see ss 110V, 110VA and 110VB(2) of the *Defence Act 1903* and reg 93C of the *Defence Force Regulations 1952*). The role of the Tribunal is to determine whether the decision of the Directorate is the correct and preferred decision having regard to the applicable law and the relevant facts.

Steps taken in the conduct of the review

4. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1)*, on 6 February 2014 the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Muller's application for review and requesting that he provide a report. On 27 March 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report, which confirmed the Directorate's position that Mr Muller's service did not meet the eligibility criteria for the award he sought. On 7 April 2014, a copy of the report of the Directorate was forwarded to Mr Muller for comment. Mr Muller replied on 12 April 2014.
5. The Tribunal met on 12 August 2014 to consider the material provided by Mr Muller and the Directorate. The Tribunal scheduled a hearing with Mr Muller on 21 August. At that hearing, the Tribunal heard oral evidence from Mr Muller and then completed its consideration.

Eligibility Criteria for the Award of the NGSM 1915-1962 with Clasp 'MALAYA'

6. The NGSM 1915-1952 was established by United Kingdom Command Paper 7907 in March 1950 to provide recognition for service by Navy personnel in the Malayan Emergency, which began on 16 June 1948. Eligibility for Royal Navy personnel are:

- (i) Naval Service Afloat – The qualifying service will be twenty eight days since 16th June 1948, inclusive, in ships or craft patrolling off the Malayan coast in support of operations against bandits.
- (ii) Naval Service Ashore – The qualifying period will be service of one day or more on duty ashore in the Federation of Malaya attached to other eligible Forces or Police since 16th June 1948, inclusive.

7. The terminal date for the NGSM of 31 July 1960 was set out in Admiralty Fleet Order 2466/1960. This was the date that the Malayan Emergency was declared ended.

Eligibility Criteria for the GSM 1962 with Clasp 'MALAY PENINSULA'

8. The GSM 1962 was introduced in 1962 to combine the General Service Medal (1918), as awarded to the Army and Royal Air Force (RAF), and the NGSM (1915). The GSM 1962 with Clasp 'MALAY PENINSULA' was introduced to recognise service in the Malay Peninsula during Malaya and Malaysia's 'Confrontation' with Indonesia between 1964 and 1966.

9. Conditions of the award are set out in UK Command Paper 3432, *Terms of the Award of the General Service Medal 1962 for Operational Service in the Malay Peninsula/Singapore between 17th August 1964 and 11th August 1966*. The first date was the date on which Indonesian 'volunteers' first attempted to infiltrate into the Malay Peninsula. The second date marks the end of Confrontation.

10. Paragraph 3 (ii) of Command paper 3432 covers qualifying conditions for service afloat. The qualifications are:

- (ii) Service of 30 days or more afloat, while in any Royal Navy or Army vessel on duty in the waters surrounding the Malaya Peninsula/Singapore between 17th August 1964 and 12th June 1965 (both dates inclusive). Service in any Royal Navy vessel on sea patrol duties between 13th June 1965 and 11th August 1966 (both dates inclusive) may also reckon as qualifying service and may be aggregated with qualifying service on land as in (i) above to complete the required period of 30 days.

11. These qualifying conditions are repeated in Australian Navy Order (ANO) 538/1969. The ANO also includes a list of HMA Ships operating in the area with dates, and states that personnel who served in ships that did not complete the 30 days service would need to aggregate this service with that in other ships or ashore to qualify for the award unless the qualifying service was brought to an early end due to death or evacuation due to wounds or other disability due to service, or if the member received certain gallantry awards during their short service.

Mr Muller's Service Record

12. Mr Muller enlisted in the RAN on 16 January 1961 and discharged on 30 June 1966. His sea postings were:

HMAS *Vendetta*

- 7 January 1962 to 20 June 1962
- 7 July 1962 to 22 December 1962
- 20 January 1963 to 8 February 1963
- 2 March 1963 to 2 March 1963
- 29 April 1963 to 29 April 1963
- 4 May 1963 to 29 May 1963
- 10 June 1963 to 15 March 1964

HMAS *Melbourne*

- 6 December 1965 to 29 June 1966

13. For his RAN service Mr Muller received the following awards:
- Australian Active Service Medal 1945-75 with Clasp 'VIETNAM'
 - Vietnam Logistic and Support Medal
 - Australian Service Medal 1945-75 with Clasp 'FESR'
 - Australian Defence Medal
 - Pingat Jasa Malaysia

Arguments of Mr Muller

16. Mr Muller argues that he should receive the GSM 1962 with Clasp 'MALAY PENINSULA' because 'I have more than fulfilled all the obligations for this medal'. He argues that because he received the Pingat Jasa Malaysia for 90 days operational service in the defence of Malaysia and that this is a 'campaign medal' he should therefore be awarded the GSM 1962 with Clasp 'MALAY PENINSULA'. Mr Muller claimed that his diving work 'to retrieve bodies of three dead men in Borneo' in 1966 is mentioned in *Tiger Territory* by Ian Pfennigwerth.

Arguments of the Directorate

17. The Directorate stated that the end date for the award of the NGSM 1915-1962 with Clasp 'MALAYA' is 31 July 1960 and because Mr Muller's service in the RAN began on 16 January 1961 he cannot be considered for that award.

18. The date on which eligibility for the GSM 1962 with Clasp 'MALAY PENINSULA' begins is 17 August 1964. Mr Muller did not serve on HMAS *Vendetta* after that date; therefore his service on HMAS *Vendetta* cannot be included in considering him for the award.

19. Mr Muller served on HMAS *Melbourne* from 6 December 1965 to 29 June 1966. During this period HMAS *Melbourne* did not undertake 'sea patrol duties' in

the eligible area for a period of 30 days, and hence Mr Muller is not eligible for the award.

Tribunal Consideration

20. The Tribunal carefully considered all the material before it and considered the criteria for the GSM 1962 with Clasp 'MALAY PENINSULA'.

21. The Tribunal accepts Mr Muller's claim that HMAS *Vendetta* served in waters off the Malaya Peninsula for a considerable period in 1963 and 1964. However, the Tribunal noted that all of Mr Muller's service on HMAS *Vendetta* was before the date of eligibility for the GSM 1962 with Clasp 'MALAY PENINSULA'. This period of service as part of the Far East Strategic Reserve was recognised with the award of the Australian Service Medal 1945-75 with Clasp 'FESR'.

22. An examination of HMAS *Melbourne*'s Reports of Proceedings reveals that it served at Singapore from 12 to 18 April and from 22 to 25 April 1966. This is a period of eleven days. HMAS *Melbourne* also served at Penang from 9 to 13 June 1966, a period of five days. Therefore HMAS *Melbourne* served in the area of eligibility for a total of 16 days. The period of eligibility is 30 days, so HMAS *Melbourne* did not serve in the eligible area for the required period of time. Further, during this period the ship needed to have conducted 'sea patrol duties'. There is no evidence that HMAS *Melbourne* conducted sea patrol duties.

23. Mr Muller argued that since he was awarded the Pingat Jasa Malaysia for 90 days operational service in the defence of Malaysia and that this is a 'campaign medal' he should therefore be awarded the GSM 1962 with Clasp 'MALAY PENINSULA'. The Tribunal noted that the Pingat Jasa Malaysia is not an Australian campaign medal but is a foreign medal with its own conditions of eligibility. Mr Muller served for more than 90 days in the Malay area, but almost all of that service was before the eligibility date for the GSM 1962 with Clasp 'MALAY PENINSULA'.

24. The Tribunal examined *Tiger Territory* by Ian Pfennigwerth and found that the diving in Borneo in 1966 was undertaken by Lieutenant Commander G. H. Miller, not by Mr Muller.¹ In his oral evidence Mr Muller accepted that it was unlikely that he served in Borneo because neither HMAS *Vendetta* nor HMAS *Melbourne* served there during the relevant period.

DECISION

25. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Noel Muller is not eligible for the award of the General Service Medal 1962 with Clasp 'MALAY PENINSULA'.

¹ Ian Pfennigwerth, *Tiger Territory: The Untold Story of the Royal Australian Navy in Southeast Asia from 1948 to 1971*, Rosenberg, Sydney, 2008, pp. 172, 293.