



Australian Government

Defence Honours and Awards Appeals Tribunal

Martin and the Department of Defence [2015] DHAAT 01 (21 January 2015)

File Number(s) 2014/068

Re **Ross Patrick Paul Martin**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Mr M. Sullivan AO (Presiding Member)
Air Commodore M. Lax OAM, CSM (Retd)

Hearing Date 17 December 2014

DECISION

On 21 January 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Ross Patrick Paul Martin is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA'.

CATCHWORDS

DEFENCE AWARD – Naval General Service Medal 1915-62 with Clasp 'MALAYA'

LEGISLATION

Defence Act 1903 – ss110T, 110V(1), 110VA, 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
United Kingdom Command Paper 7907 of March 1950

REASONS FOR DECISION

Introduction

1. The applicant, Mr Ross Patrick Paul Martin (Mr Martin), seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA' (NGSM 1915-62 with Clasp 'MALAYA').
2. Mr Martin lodged an application with Defence on 6 August 2000 regarding his medal entitlements for his service during the Malayan Emergency, which ran between 1948 and 1960. On 10 September 2001, the Directorate responded with his entitlements, but advised he was not eligible for the NGSM 1915-62 with Clasp 'MALAYA'.
3. Being dissatisfied with this decision, Mr Martin lodged his application for review with the Tribunal on 23 February 2014. His application was based on his service in the Royal Australian Navy from 24 February 1958 to 23 February 1967.

Tribunal Jurisdiction

4. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award or a foreign award in response to an application. Reg 93C of the *Defence Force Regulations 1952* defines a *defence award* as being those awards set out in Part 2 of Schedule 3. Included in the defence awards set out in Part 2 is the NGSM 1915-62. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of the review

5. In accordance with its *Procedural Rules 2011*, on 19 June 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Martin's application for review and requesting that he provide a report. On 11 August 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report, the Directorate confirmed its position that Mr Martin's service did not meet the eligibility criteria for the award he sought. On 14 August 2014 the Tribunal forwarded a copy of the report of the Directorate to Mr Martin for comment. On 23 August 2014 Mr Martin provided a written response.
6. The Tribunal met on 17 December 2014. During its meeting the Tribunal considered the material provided by Mr Martin and the Directorate. It also heard oral evidence from Mr Martin who agreed to be available by telephone that day.

Eligibility Criteria for the NGSM 1915-62 with Clasp 'MALAYA'

7. The NGSM was instituted in 1915 by His Majesty King George V for service in minor operations. A total of 16 clasps have been awarded.

8. The NGSM 1915-62 with Clasp 'MALAYA' was established in March 1950 under UK Command Paper 7907. The Command Paper is 'by Command of His Majesty' and is for service in Malaya (Malaysia from 31 August 1957). The award is available to Australian servicemen and women who satisfy the eligibility criteria.
9. For members of the Royal Australian Navy, the applicable qualifying criteria 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.
10. Admiralty Fleet Order (AFO) 2466/1960 states that the Queen approved the terminal date for the NGSM 1915-62 with Clasp 'MALAYA' as 31 July 1960.
11. Eligibility for the NGSM ended in 1962 when it was replaced by the GSM 1962, thus creating a uniform general service medal across the three services.

Mr Martin's Service Record

12. Defence records of Mr Martin's service state he enlisted in the Permanent Naval Force on 24 February 1958 and discharged on 23 February 1967 after completing his term of engagement. During his service, Mr Martin served in three ships; HMAS *Voyager (II)*; HMAS *Vendetta* and HMAS *Supply*. Only his service in HMAS *Voyager* is applicable to his claim. Mr Martin served in HMAS *Voyager (II)* from 10 January 1959 to 23 January 1960, and again from 4 March 1960 to 8 September 1961.

14. For his service, Mr Martin has been awarded:

- The Australian Active Service Medal 1945-75 with Clasps 'MALAYA', and 'MALAYSIA';
- The General Service Medal 1962 with Clasp 'MALAYA PENINSULA';
- The Australian Service Medal 1945-75 with Clasp 'FESR';
- The Australian Defence Medal; and
- The Pingat Jasa Malaysia

Mr Martin's Submission

15. Mr Martin makes a number of claims in his written submission. He takes issue with the 28 days service afloat requirement to become eligible for the NGSM 1915-62 with Clasp 'MALAYA' as 'I believe the Army and the Air Force had to serve only one day'. He notes that he has only been allowed 19 days but according to his calculations, he served for 28 days and thus claims he is eligible for the award.

16. Mr Martin also seeks recognition for his service in HMAS *Vendetta* between 11 May 1963 and 19 June 1964, and recognition for his logistic support for the Vietnam

conflict while serving in HMAS *Supply* between 19 February 1965 and 10 December 1965. The nature of the recognition he seeks was not specified. Mr Martin explained the stressful nature of his work as a clearance diver conducted under dangerous conditions while serving in HMAS *Vendetta* and that when serving in HMAS *Supply*, they regularly provisioned other ships in Vietnamese waters during the Vietnam War.

17. At the hearing, Mr Martin reiterated the claims in his written submission and also quoted from the Summer 2014 edition of *Chin Up*, the newsletter of the Victorian branch of the Totally and Permanently Incapacitated Ex-Servicemen and Women Association of which he is a member. The article, entitled 'The Nation's Obligations', refers to the military compact between the government and members of the services. Mr Martin stated that under the compact, all military service should be formally recognised and he used this to support his case.

The Directorate's Submission

18. In its report, the Directorate stated that to qualify for the NGSM 1915-62 with Clasp 'MALAYA' a member must have served for 28 days afloat as specified in the UK Command Paper 7907 of March 1950. As Mr Martin only has 19 days qualifying service towards the award, he is not eligible.

19. The Directorate did not respond to Mr Martin's claims for recognition for service in HMA Ships *Vendetta* and *Supply* as the dates when Mr Martin was aboard each ship do not count towards any medallic recognition.

Conclusion

20. The Tribunal carefully considered all the written material before it, Mr Martin's oral submission and the eligibility criteria for the NGSM 1915-62 with Clasp 'MALAYA'.

21. There is no dispute about Mr Martin's naval service or that he served in HMA Ships *Voyager*, *Vendetta* and *Supply* on the dates he claimed. The Tribunal advised Mr Martin, that at this time, there is no medallic recognition for his service in HMA Ships *Vendetta* and *Supply* regardless of how dangerous the work was. At the hearing, Mr Martin stated he accepted this explanation.

22. The Tribunal further explained to Mr Martin that his claim regarding the Army and Air Force only having to serve one day (and that this was unfair) was not applicable to his case as the Army and Air Force members are not eligible for the NGSM 1915-62. The applicable medal according to the UK Command Paper 7907 is the GSM 1918-62.

23. At issue is the number of days Mr Martin spent in Malaysian waters to enable him to qualify for the NGSM 1915-62 with Clasp 'MALAYA'. The Tribunal recalculated the number of days Mr Martin had earned towards the NGSM 1915-62 with Clasp 'MALAYA' and also took into consideration dates accrued towards the other awards which Mr Martin has already earned. In taking these dates into consideration, the Tribunal noted that service towards the NGSM 1915-62 with Clasp 'MALAYA' ended on 31 June 1960 despite the fact that Mr Martin served in HMAS *Voyager* in Malaysian waters beyond that date. The Tribunal finds that Mr Martin has 19 days towards the

NGSM 1915-62 with Clasp 'MALAYA'; 38 days towards the Australian Active Service Medal 1945-75 (AASM 45-75); and 70 days towards the Australian Service Medal 1945-75 (ASM 45-75). The total number of days of eligible service is 127. The Presiding Member explained this to Mr Martin and how the days were calculated. The Tribunal noted that Mr Martin had previously been awarded the AASM 1945-75 and ASM 1945-75 with appropriate clasps.

24. The Tribunal noted that a naval member has to have served for 28 days afloat in the prescribed area between 16 June 1948 and 31 June 1960 to be eligible for the NGSM 1915-62 with Clasp 'MALAYA'. The Tribunal finds that Mr Martin only served for 19 of the required 28 days. As such, Mr Martin is not eligible for the NGSM 1915-62 with Clasp 'MALAYA'.

DECISION

25. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Ross Patrick Paul Martin is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA'.