



Australian Government

Defence Honours and Awards Appeals Tribunal

Sharland and the Department of Defence [2015] DHAAT 06 (23 February 2015)

File Number(s) 2014/030

Re **Mr Arthur Henry Sharland**
APPLICANT

And **Department of Defence**
RESPONDENT

Tribunal Mr K. Woods CSC, OAM (Presiding Member)
The Hon P. Lindsay

Hearing Dates 11 December 2014 and 11 February 2015

DECISION

On 23 February 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Arthur Henry Sharland is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA' and the Pingat Jasa Malaysia Medal.

CATCHWORDS

DEFENCE AWARD – refusal to recommend the awards of the Naval General Service Medal 1915-62 with Clasp 'MALAYA' and Pingat Jasa Malaysia Medal.

LEGISLATION

Defence Act 1903 – ss110T, 110V(1)
Defence Force Regulations 1952 - Reg 93C Schd 3
United Kingdom Command Paper 7907
United Kingdom Command Paper 3432
Admiralty Fleet Order 2466 of 1960
Statutes of Pingat Jasa Malaysia (PJM) dated 3 March 2004

REASONS FOR DECISION

Introduction

1. The applicant, Mr Arthur Henry Sharland (Mr Sharland), 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) and Pingat Jasa Malaysia (PJM).
2. Mr Sharland had lodged an application for the award of the NGSM with Clasp 'MALAYA' on 6 June 2000. His application was based on his service in the Permanent Naval Forces from 10 August 1955 to 1 February 1980. On 21 June 2001, the Navy Medals Section responded to Mr Sharland advising him that he was not eligible for the award as he had only rendered five days of service towards the required 28 days. On 9 March 2005, Mr Sharland wrote to the Directorate concerning his eligibility for the PJM. The Directorate replied on 6 August 2005, advising Mr Sharland that he was not eligible as he had not served the required 90 days. On 27 November 2008, Mr Sharland re-applied to the Directorate concerning his entitlement to the NGSM with Clasp 'MALAYA' and the PJM. On 15 December 2008, the Directorate responded to Mr Sharland and confirmed that upon re-examination of his service record he was not eligible for either award.
3. Being dissatisfied with the decision of the Directorate, Mr Sharland lodged his application for review with the Tribunal on 1 February 2014. In his application for review, Mr Sharland said 'that it does not make sense for a warlike medal to be issued for one day or more (40 years later) but not a General Service Medal requiring one day or more and have a 28 day qualifying period imposed by the Australian Government. I feel exactly the same about the PJM'.

Tribunal Jurisdiction

4. There is no dispute that the Tribunal has jurisdiction to hear and determine Mr Sharland'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 or preferred decision having regard to the applicable law and the relevant facts.

Steps taken in the conduct of the review

5. On 24 April 2014, in accordance with the *Defence Honours and Awards Appeal Tribunal's Procedural Rules 2011 (No1)*, the Tribunal wrote to the Secretary of the Department of Defence advising it of Mr Sharland's application for review and invited it to make a submission and provide the Tribunal with any material on which it sought to rely. A written submission was received from the Directorate on 10 June 2014.
6. On 25 June 2014, Mr Sharland was provided with a copy of the Directorate's written submission and he was invited to respond to these and submit any further material he may have in support of his claim for the award of the NGSM with Clasp

'Malaya' and the PJM. Mr Sharland provided a written response on 25 August 2014. Mr Sharland was also invited to give oral evidence (by telephone) to the Tribunal on a date that was suitable to him and the Tribunal panel members.

7. The Tribunal met on 11 December 2014. During its meeting the Tribunal considered the material provided by Mr Sharland and the Directorate. It also heard oral evidence from Mr Sharland who agreed to be available by telephone that morning. Midway through the hearing Mr Sharland advised the Tribunal that he had not received a copy of the Defence submission. At that point the Tribunal suspended the hearing and advised Mr Sharland that he would be sent another copy of the Defence submission and a new date for a hearing would take place some time in the future.

8. On 19 December 2014, the Defence submission was sent to Mr Sharland for comment. Mr Sharland acknowledged receipt of the document on 28 December 2014, and on 11 January 2015, Mr Sharland provided his comments on the Defence Submission.

9. The Tribunal met for a second time on 11 February 2015. During its meeting the Tribunal considered the material provided by Mr Sharland and the Directorate. It also heard oral evidence from Mr Sharland who agreed to be available by telephone that afternoon.

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

10. The NGSM 1915-62 with Clasp 'MALAYA' was established in 1950 under Command Paper 7907. Paragraph 3 states:

- i) *Naval Service Afloat. – The qualifying service will be twenty-eight days since 16th June, 1948, inclusive, in ships or craft patrolling off the Malaya 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 16 June, 1948, inclusive.*

11. Admiralty Fleet Order 2466/1960 amended these conditions and confirmed the terminal date of 31 July 1960. It states:

The Queen has now approved that the terminal date for the qualifying service for the award of the Naval General Service Medal for service in Malaya shall be 31st July, 1960, and that no service after that date shall be a qualification for the meda'

2. The conditions of award are as set forth below:-

- (a) *Service Afloat.* The qualifying service will be 28 days *between* 16th June, 1948 *and* 31st July 1960, inclusive, in ships or craft patrolling off the Malayan coast in support of operations against bandits, or one journey between 16th June, 1948, *and* 31st July 1960, inclusive, in a Harbour Defence Motor Launch or other small

craft, up a river or creek in the Federation of Malaya, in close support of operations against bandits.’

Eligibility Criteria for the Pingat Jasa Malaysia

12. In 2004 the Government of Malaysia made an offer to confer a special medal of service to eligible current and former Australian servicemen and women in appreciation of their service in Malaysia with the Commonwealth Far East Strategic Reserve from independence to the end of Confrontation over the period 31 August 1957 to 31 December 1966.

13. The PJM Medal was established by the Malaysian Government on 3 March 2004 under *Statutes of Pingat Jasa Malaysia*.

14. The eligibility criteria for the PJM are contained in the *Statutes of Pingat Jasa Malaysia* as determined by the Malaysian Government. To qualify for the PJM a member must have;

- a. served in direct support on the Malay Peninsular or in Malaysia for a period of not less than 90 Days from 31 August 1957 to 12 August 1966 inclusive; or
- b. served in indirect support on the Malay Peninsular or in Malaysia for a period of not less than 180 days from 31 August 1957 to 12 August 1966 inclusive.

15. A member may be awarded the PJM if before reaching the 90/180 days required, his service is brought to an end by death, wounds or disability.

Defence records of Mr Sharland’s service

16. Defence records of Mr Sharland’s service state he enlisted in the Permanent Naval Forces (PNF) on 10 August 1951 for a six year enlistment period. During his time in the PNF Mr Sharland served in a number of ships and shore base postings. During his service Mr Sharland served in HMAS *Melbourne* on two separate occasions. Firstly from 25 October 1955 to 15 November 1956 and 24 January 1963 to 6 June 1963. It is the service in this ship that Mr Sharland seeks recognition for the award of the NGSM with Clasp ‘MALAYA’ and the PJM.

17. Mr Sharland discharged from the PNF on 1 February 1980 having completed nearly 29 years military service.

Summary of the claims of Mr Sharland

18. In his written submissions Mr Sharland said:

‘My appeal is based on two difficulties with the Australian Government Circa 1950-1970. First it is not insignificant to note that as HMAS Melbourne arrived in Singapore waters a letter to the Captain from the Royal Navy Admiral in charge of ‘Far Eastern Asian Area’ at the time requested a list of

ships company names for the award of the NGSM under the conditions of one day or more including Singapore until 31/07/1960. It is my feelings that the wish of the English and the Malayan governments offering their award were happy with the criteria they set for the individuals to receive a medal but our Government on our behalf should see fit to change the requisite to what they feel best befits these awards. I feel exactly the same about the PJM. In both cases awards were offered to reward service in the Malayan peninsula and in both cases the Australian Government circa 1950-1970 have added penalties not required by the issuing authority’.

19. In his oral evidence on 11 February 2015, Mr Sharland informed the Tribunal that he wished to withdraw his appeal for the award of the NGSM as he now understood why he did not meet the eligibility criteria for that award.

20. In regard to the PJM, the essence of Mr Sharlands’ written and oral submission is that he believed that the two tours he served in HMAS *Melbourne* gave him the required amount of days necessary to qualify for the award. However, the Tribunal explained to Mr Sharland that his first tour in HMAS *Melbourne* (1955-1956) does not count as days towards eligibility for the PJM as eligibility for the PJM did not commence until 31 August 1957. Mr Sharland accepted this advice from the Tribunal and now understands why he does not qualify for the award of the PJM.

Summary of the Defence Submission

21. In its written submission, the Directorate reiterated that which it had said in its decision, namely Mr Sharland had aggregated five days qualifying service towards the NGSM 1915-62 with Clasp ‘Malaya’ and that he was not eligible for the award. The Directorate also stated that Mr Sharland had 35 days qualifying service toward the PJM and that he was not eligible for the award.

The Tribunal’s Findings

22. In conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the NGSM 1915-62 with Clasp ‘MALAYA’ and the PJM. These criteria are found in paragraphs [9 to 14] above. Accordingly, in order for Mr Sharland to be eligible for the award of the NGSM 1915-62 with Clasp ‘MALAYA’ and the PJM, it must be established that his period of service met the prescribed minimum period of service (in the case of Mr Sharland this is 28 days for the NGSM and 90 days for the PJM).

23. Mr Sharland rendered five days qualifying service towards the award of the NGSM 1915-62 with Clasp ‘MALAYA’ and thereby fails to meet the eligibility criteria of a minimum of 28 days qualifying service. Mr Sharland does not qualify for the NGSM 1915-62 with Clasp ‘MALAYA’.

24. Mr Sharland rendered 35 days qualifying service towards the award of the PJM and thereby fails to meet the eligibility criteria of a minimum of 90 days qualifying service. Mr Sharland does not qualify for the PJM. These findings do not in any way diminish the contribution Mr Sharland made to his country for the period he did served.

DECISION

25. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Arthur Henry Sharland is not eligible for the award of the Naval General Service Medal 1915-62 with Clasp 'MALAYA' and the Pingat Jasa Malaysia.