



Australian Government

Defence Honours and Awards Appeals Tribunal

Cook and the Department of Defence [2015] DHAAT 15 (19 April 2015)

File Number(s) 2014/032

Re **Mr Brian Douglas Cook**
Applicant

And **Department of Defence**
Respondent

Tribunal Dr J. Harte (Presiding Member)
Brigadier K. O'Brien CSC (Retd)

Hearing Date 11 December 2014

DECISION

On 19 April 2015 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Brian Douglas Cook is not eligible for the award of the Pingat Jasa Malaysia.

CATCHWORDS

FOREIGN AWARD – refusal to recommend the award of the Pingat Jasa Malaysia.

LEGISLATION

Defence Act 1903 – 110T, 110V, 110VB

National Service Act 1964

Commonwealth of Australia Gazette (CAG) Special No. S159 - Guidelines Concerning the Acceptance and Wearing of Foreign Honours and Awards by Australians (Approved by Her Majesty the Queen, August 2012) dated 12 October 2012.

Statutes of Pingat Jasa Malaysia (P.J.M.) dated 3 March 2004, Malaysian Defence Ministry.

REASONS FOR DECISION

Introduction

1. The Applicant, Mr Brian Douglas Cook (Mr Cook) 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 Pingat Jasa Malaysia (PJM).
2. On 10 March 2005, 16 August 2006 and 9 April 2009, Mr Cook applied to the Directorate concerning his entitlement to the PJM. On each occasion, the Directorate found that Mr Cook was not eligible for the PJM.
3. Mr Cook subsequently provided a submission to the Defence Honours and Awards Appeals Tribunal (the Tribunal) on 27 February 2014 to the Tribunal's Inquiry into Refused, Withheld and Forfeited Defence Honours and Awards. On 10 April 2014, the former Chair of the Tribunal advised him to submit an application for review to the Tribunal, which he did on 20 April 2014.

Tribunal Jurisdiction

4. The Tribunal has jurisdiction to hear and determine Mr Cook's application for review - see 110VB of the *Defence Act 1903* (the Defence Act). 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.
5. Pursuant to s110VB(2) of 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 or a former Defence Minister to refuse to recommend a person for a foreign award in response to an application. The Directorate made a decision to refuse to recommend Mr Cook for the PJM following each of his applications.
6. On 6 December 2004, the then Minister Assisting the Minister of the Department of Defence approved the process for the award of the PJM to Australian Defence personnel, giving the Directorate the authority to receive, verify and approve applications for the award of the PJM on behalf of the Malaysian Government in accordance with the Guidelines Concerning the Acceptance and Wearing of Foreign Awards by Australians. The guidelines were revised in August 2012 and refer to a Schedule of Countries and Awards. This schedule provides a list of awards for which the Governor-General has granted approval for Australian to accept and includes the PJM. Therefore the Tribunal has jurisdiction to review this decision.

Steps taken in the conduct of this review

7. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* (as amended in 2013), on 24 April 2014, the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Cook's application for review and invited him to provide a submission, which was provided in the form of a written report on 3 June 2014.
8. Mr Cook was provided with a copy of the Directorate's report on 17 June 2014, and was invited to provide comments on it. Mr Cook provided written comments on 7 July 2014.
9. The Tribunal met initially on 14 November 2014. During this meeting the Tribunal considered the material provided by Mr Cook and the Directorate.
10. A hearing via telephone link was scheduled with Mr Cook on 11 December 2014. During the hearing, the Tribunal discussed with Mr Cook relevant points identified in the documentation.

Eligibility Criteria for the Pingat Jasa Malaysia

11. In 2004, the Government of Malaysia offered 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 (FESR) from Independence to the end of Confrontation over the period 31 August 1957 to 12 August 1966. The eligibility period was set as service between 31 August 1957 and 31 December 1966. Eligibility criteria are specified in the *Statutes of Pingat Jasa Malaysia* dated 3 March 2004. As the PJM is a foreign award, the Department of Defence receives applications, verifies the service and member's eligibility and facilitates the approval to wear the award in accordance with guidelines for foreign awards.
12. The *Statutes* provide the qualification criteria thus (spelling per the original):

“This Medal can be awarded to any entity from the Peacekeeping Group (Armed Forces, Semi Armed Forces, Police and Security Civilian Staff) from the communion countries either man or woman whoever been service in Malay Peninsular or Malaysia for the period from 31 August 1957 to 12 August 1966, either on service with or attached to any of the Armed Forces or security organisation group which directly involve demonstrated endowed with service, sense of duty, chivalry and gallantry for 3 month or more; or who had served indirectly not less than 6 month or more in any security organisation during the time period; or throughout in the service despite yet to fulfil the period predetermined, killed, wounded, or disable due to performing tasks against the enemy and in upholding this country sovereignty in the stated period, can be considered to be awarded the Pingat Jasa Malaysia.”

13. The Australian Government has set guidelines based on the Statutes and these have been agreed by the Malaysian Government. These are published on the Defence Honours and Awards website and state:

- The PJM will be awarded to Australian Defence personnel, who served in the prescribed areas from 31 August 1957 to 12 August 1966, or to 9 August 1965 for service in Singapore (the point at which it separated from the Federation of Malaysia);
- Service until 31 December 1966 will also qualify for those personnel who were posted to Malaysia for service prior to 12 August 1966, but failed to qualify for the medal before that date;
- Around 40 former members of the Australian Army who were recruited by the Government of the Federation of Malaya to serve as Lieutenants in the Malaysian Police Force are also eligible for the award; and
- Awards will also be made to those whose service was cut short as a result of death or injury as a result of service in these areas; and
- The Department of Defence will receive applications, verify the service and eligibility and facilitate the approval to wear the award in accordance with guidelines for foreign awards.¹

Mr Cook's Service Record

14. Mr Cook enlisted in the Australian Regular Army Supplement National Service on 10 April 1966. After completing his statutory period of service under the *National Service Act 1964* and the Defence Act, Mr Cook was discharged on 19 April 1968.

15. During his service, Mr Cook served with 4RAR in the Malaysia area of operations from 15 December 1966 to 3 August 1967.

16. For his service, Mr Cook has received the following defence awards:

- The Australian Service Medal 1945-1975 with Clasp 'SE ASIA'
- The Australian Defence Medal, and
- The Anniversary of National Service 1951-72 Medal.

¹ <http://www.defence.gov.au/Medals/Content/Foreign/Pingat-Jasa-Malaysia.asp> (accessed 16 March 2014).

Mr Cook's Case

17. In his application to the Tribunal on 20 April 2014, his response to the Defence submission on 7 July 2014 and during the hearing on 11 December 2014, Mr Cook expressed his disappointment that after so many applications for the PJM, the Directorate continues to deny his eligibility. This disappointment is further exacerbated by his observation that fellow ex-servicemen with whom he served in Malaysia and on the same dates, have been awarded the PJM and that the Directorate has not provided any adequate explanation for why some PJMs might have been awarded incorrectly.

18. Mr Cook's case is not centred on the fact that his qualifying service does not meet the eligibility criteria for the PJM, but that if others have been awarded it, albeit possibly as a mistake, he should be awarded it too.

The Directorate's Case

19. In its submission of 24 April 2014, the Directorate points to the fact that Mr Cook's service does not meet the requisite 90 days of direct support or 180 days of indirect support to Malaysia to the end of the cooling off period on 31 December 1966.

20. In their submission, the Directorate confirms that Mr Cook served with 4RAR in the Malaysia area of operations from 15 December 1996 to 3 August 1967 which gives him only 16 days of qualifying service. Consequently, they hold that Mr Cook does not qualify for the award of the PJM.

Tribunal Consideration

21. By reason of subsection 110VB(6) of the *Defence Act 1903*, in conducting this review, the Tribunal is bound by the eligibility criteria that govern the award of the PJM. Accordingly, in order for Mr Cook to be eligible for the award of the PJM, he must meet the eligibility criteria as set out in the *Commonwealth of Australia Gazette (CAG) Special No. S159 - Guidelines Concerning the Acceptance and Wearing of Foreign Honours and Awards by Australians* and the *Statutes of Pingat Jasa Malaysia (P.J.M.)*.

22. The Tribunal notes that Mr Cook's former military service does not meet the eligibility criteria for the PJM as set out in the Malaysian Statutes. In fact, because he did not arrive in the qualifying area until after 12 August 1966, none of his service was during the qualifying period for the award.² Whether some former serving members might have been incorrectly awarded the PJM is irrelevant to these deliberations.

² As opposed to the 16 days which Defence recognises.

Tribunal Finding

23. For the above reasons, the Tribunal finds that the decision of the Directorate is the correct decision and should be affirmed.

DECISION

24. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Brian Douglas Cook is not eligible for the award of the Pingat Jasa Malaysia.