



Australian Government

Defence Honours and Awards Appeals Tribunal

Smith and the Department of Defence [2015] DHAAT 10 (18 March 2015)

File Number 2014/064

Re **Lieutenant Commander Daryl Anthony Smith RFD, RD,
RANR (Retd)
APPLICANT**

And **Department of Defence
RESPONDENT**

Tribunal Air Commodore M. Lax OAM, CSM (Retd) (Presiding Member)
Hon. P. Lindsay

Hearing Date 11 February 2015

DECISION

On 18 March 2015 the Tribunal decided to affirm the decision of the Department of Defence that Lieutenant Commander Daryl Anthony Smith RFD, RD, RANR (Retd) is not eligible for the award of the General Service Medal 1962 with Clasp 'SOUTH VIETNAM' or the Pingat Jasa Malaysia.

CATCHWORDS

DEFENCE AWARD – General Service Medal 1962 with Clasp 'SOUTH VIETNAM'
FOREIGN AWARD – Pingat Jasa Malaysia

LEGISLATION

Defence Act 1903 – ss110T, 110V(1)(a)(ii), 110VB(2)
Defence Force Regulations 1952 - reg 93C and Schd 3
Royal Warrant – General Service Medal 1962 with Clasp 'South Vietnam'
Statutes of Pingat Jasa Malaysia

REASONS FOR DECISION

Introduction

1. In 2001 and again in 2002, Lieutenant Commander Daryl Anthony Smith (LCDR Smith), a former member of the Royal Australian Navy Reserve (RANR), applied to the Directorate of Honours and Awards of the Department of Defence (the Directorate) to be awarded the Australian Active Service Medal (AASM) 1945-75 with Clasp 'VIETNAM' and the Australian Vietnam Service Medal (*sic*).¹ He was advised by the Directorate that 'your service in HMAS *Supply* from 7 March 1963 to 4 June 1963 is not a qualification towards any Vietnam service awards'.

2. On 3 April 2006, LCDR Smith applied to the Directorate for the Pingat Jasa Malaysia (PJM). The Directorate replied on 10 August 2006 that he was not eligible.

3. On 16 March 2014, LCDR Smith applied to the Directorate for the General Service Medal 1962 with Clasp 'SOUTH VIETNAM' (GSM 62 with Clasp 'SOUTH VIETNAM'). The Directorate replied on 6 May 2014 that he was not eligible. The Directorate also reiterated their previous advice that LCDR Smith was not eligible for any Vietnam awards.

4. LCDR Smith wrote to the Tribunal on 13 and 28 January 2014 seeking a review of decisions of the Directorate to deny him a range of medals for service. LCDR Smith was asked for evidence of these decisions. In correspondence dated 12 and 19 May 2014 LCDR Smith applied to the Tribunal for a review of the Directorate's decision not to recommend him for the GSM 62 with Clasp 'SOUTH VIETNAM' or the PJM for his service in HMAS *Supply* in 1963, and provided the Tribunal with a copy of the Directorate's letter dated 6 May 2014 as mentioned above, denying him these awards.

The Tribunal's jurisdiction

5. 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 GSM 62. The PJM is a foreign award. Therefore the Tribunal has jurisdiction to review this decision.

¹ The Tribunal interpreted this as the Vietnam Medal.

Steps taken in the conduct of this review

6. On 4 June 2014, in accordance with the Tribunal's Procedural Rules, the Chair of the Tribunal wrote to the Secretary of the Department of Defence advising of LCDR Smith's application for review and requesting that he provide a report. The Directorate responded on 11 August 2014. LCDR Smith was provided a copy of the Defence report in a letter dated 22 August 2014. He responded on 29 August 2014 and again on 18 September 2014.

7. The Tribunal met on 11 February 2015. During its meeting the Tribunal considered the material provided by LCDR Smith and the Directorate. It also heard oral evidence from LCDR Smith who agreed to be available by telephone that day.

8. It was not clear from the correspondence received from LCDR Smith which awards he wanted the Tribunal to review. This was clarified at interview and it was agreed to review the GSM 62 with Clasp 'SOUTH VIETNAM' and the PJM.

LCDR Smith's Service Record

9. LCDR Smith was appointed Acting Lieutenant on probation to the Royal Australian Navy Reserve (RANR) (Seagoing) on 31 July 1959. LCDR Smith held a Merchant Navy Masters Certificate and is a Master Mariner. His rank was confirmed in October 1967 and on 15 December 1965, he was promoted Lieutenant Commander. During his RANR service, LCDR Smith served in HMA Ships *Quickmatch*, *Supply*, *Queensborough*, *Stalwart* and *Sydney*. LCDR Smith retired on 8 February 1991.

10. For his service, LCDR Smith has been awarded the following:

Australian Service Medal 1945-75 with Clasp 'FESR';
Reserve Force Decoration with First Clasp;
National Medal;
Naval Reserve Decoration; and
Australian Defence Medal.

Eligibility Criteria for the GSM 62 with Clasp 'SOUTH VIETNAM'

11. Her Majesty Queen Elizabeth II instituted the GSM 1962 by Royal Warrant on 15 August 1964. The GSM 1962 replaced the Naval General Service Medal 1915-62 and the General Service Medal 1918-62 thus creating a uniform general service medal across the three services. Her Majesty approved the GSM 62 with Clasp 'SOUTH VIETNAM' on 16 December 1965.

12. The Royal Warrant specifies that the GSM 62 with Clasp 'SOUTH VIETNAM' is for 'Our Australian Armed Forces who qualify by participation in operations in defence of the Republic of Vietnam as from 24 December 1962, and to a date to be determined...'. A further Warrant was issued on 8 June 1968 providing the cut-off date as 29 May 1964.

13. To qualify, a member must spend 30 days, not necessarily continuous, on land or afloat on duty in surrounding waters, or official participation in one operational sortie with Australian or Allied aircraft in areas and during the periods described.

14. To date, only 68 have been awarded as only Australians are eligible, and all went to members of the Army Training Team Vietnam.²

Eligibility Criteria for the PJM

15. 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 acts on behalf of the Malaysian Government.

16. 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.

17. 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 website³ 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; and

² Clive Johnson, *Australians Awarded*, Renniks Publications Pty Ltd, Banksmeadow, 2007, p 202.

³ www.defence.gov.au/medals under the Foreign Awards tab.

- 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.
- 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.

18. One other criteria relating to the Navy is not relevant to LCDR Smith's service or claim.

Qualifying Periods for the PJM

19. In December 2004, the then Minister Assisting the Minister for Defence, the Hon De-Anne Kelly MP, agreed to the qualifying criteria as set by the Malaysian Government. Consequently, there are two categories of eligibility that will be assessed by the Department of Defence for the PJM. These relate to either direct support or indirect support. The qualifying period for the medal is 90 days for those personnel posted to units in direct support of operations in the prescribed areas. Those posted to units in indirect support are required to serve for 180 days in the prescribed areas.

20. The prescribed operational areas of Malaysia and Singapore:

...is the landmass of East Malaysia (that is: the States of Sabah and Sarawak on the Island of Borneo), the Malay Peninsula and the Island of Singapore extending to 12 nautical miles seaward from the coast of these areas.

21. For members who were outside the prescribed operational areas, but who served in an indirect support of operations in Malaysia require 180 days or more service to qualify. The secondary role appropriate to naval service is:

... seagoing service with HMA Ships patrolling outside of the operational area whilst allotted to the Commonwealth Far East Strategic Reserve.

22. Qualifying periods described above may be aggregated.

The Claims of LCDR Smith

23. LCDR Smith claimed that he went on a three-month voyage in HMAS *Supply* to South-East Asia in 1963 which crossed into a war zone. He further claimed that the ship went 'out of the Far East Strategic Reserve (FESR) area' and 'was engaged in an exercise under United States operational command which took the ship into Vietnamese (North and South) Waters'. He also stated that during this period, the 'Articles of War' were posted on the ship's notice boards. After the ship arrived in Manilla, the ship 'resumed service in the Far East Strategic Reserve'. He acknowledged that ships attached to the FESR did not take part in the Vietnam War.

24. To support his claims, LCDR Smith provided copies of the ship's log for 3 May 1963 and charts of the passage, including an enlargement of the chart showing the track on 3 May 1963.

25. At the hearing, LCDR Smith spoke of his service in HMAS *Supply* and confirmed it was only his service in 1963 that was at issue. He reiterated the comments in his submission regarding the ship's track and time spent in Vietnamese waters and that the ship 'entered a war zone'. He should therefore be eligible for the AASM 1945-75 with Clasp 'VIETNAM' and the Vietnam Medal.

26. At the end of the hearing, LCDR Smith again asked to be considered for the AASM 1945-75 with Clasp 'VIETNAM' and the Vietnam Medal.

The Defence Submission

27. In the Defence Submission provided by the Directorate, it is stated that after reviewing LCDR Smith's record of service and HMAS *Supply*'s Reports of Proceedings between March and June 1963, and in regards to the GSM 1962, LCDR Smith did not serve for 30 days or more in the area prescribed as required by the Royal Warrant. Therefore, he is not eligible for the GSM 62 with Clasp 'SOUTH VIETNAM'.

28. After reviewing LCDR Smith's service eligibility for the PJM, the Department claimed he had only accrued 61 days of the required 180 days of secondary service for the PJM and no days of primary service. Therefore he is not eligible for the PJM award.

Tribunal Consideration

29. The Tribunal carefully considered all the material before it and considered the eligibility criteria for the GSM 62 with Clasp 'SOUTH VIETNAM' and the PJM.

30. There is no dispute about LCDR Smith's service as shown on his Record of Service – Officers – Royal Australian Naval Reserve (Seagoing) provided to the Tribunal or that he served in HMAS *Supply* on two occasions; the first between 7 March 1963 and 5 June 1963 and the second from 19 July 1965 to February 1966. The Tribunal noted and LCDR Smith agreed that only his service in HMAS *Supply* in 1963 is pertinent to his claims. He stated at interview that he wanted to be considered for the AASM 1945-75 and the Vietnam Medal.

31. The Tribunal advised LCDR Smith that the hearing could not discuss the AASM 1945-75 or the Vietnam Medal as Defence had only refused to recommend him for the GSM 62 and the PJM at this time. The evidence of this is in the Directorate's letter of 6 May 2014 which LCDR Smith provided to the Tribunal as evidence of a refusal to recommend him for awards, in which it is stated that '... your [LCDR Smith's] service on HMAS *Supply* from 7 March 1963 to 4 June 1963 is not a qualification towards any Vietnam service awards'. As a consequence, LCDR Smith was advised that he would need to apply to the Directorate specifically for the AASM 1945-75 and the Vietnam Medal and after rejection by Defence, only then could the Tribunal hear that case.

32. When questioned by the Tribunal regarding the GSM 62 and the PJM, LCDR Smith stated that he didn't think he was eligible for these and had 'set them aside'. The Tribunal nevertheless reviewed the eligibility criteria for the GSM 62 with Clasp 'SOUTH VIETNAM' and the PJM with LCDR Smith, as these were the medals at issue.

33. The Tribunal found that to be eligible for the GSM 62 with Clasp 'SOUTH VIETNAM', the Royal Warrant requires a member to have spent 30 days in the prescribed area between 24 December 1962 and 28 May 1964. LCDR Smith did not spend 30 days in the prescribed area. Therefore, he is not eligible for the award.

34. The Tribunal found that to be eligible for the PJM, the statutes require a member to have spent 90 days in the primary area or 180 days in the secondary area. The Tribunal reviewed the records and confirmed that LCDR Smith served no days in the primary area and only 61 days in the secondary area. Therefore, he is not eligible for the PJM award.

DECISION

35. The Tribunal has decided to affirm the decision of the Department of Defence that Lieutenant Commander Daryl Anthony Smith RFD, RD, RANR (Retd) is not eligible for the award of the General Service Medal 1962 with Clasp 'SOUTH VIETNAM' or the Pingat Jasa Malaysia.