

AFR
Court No. 2
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 188 of 2013

Wednesday this the 26th day of July, 2017

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Wg Cdr Ashwini Kumar Handa (Retd) – (MR-05986X), Son of Mr. Joginder Pal Handa, Permanent resident of B-97, Rajajee Puram, Lucknow – 226017 (Uttar Pradesh).

..... **Applicant**

By Legal Practitioner: Shri SS Rajawat, Advocate
Learned Counsel for the Applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Director General Armed Forces Medical Services (DG AFMS), Ministry of Defence "M" Block New Delhi -110001.
3. Chief of the Air Staff, Air Headquarters, (Vayu Bhavan), Rafi Marg, New Delhi-110106.
4. The Director General Medical Services (Air), Air Headquarters (Vayu Bhavan), Rafi Marg, New Delhi-110106.
5. The Deputy Controller of Defence Accounts (Air Force) West Block-V, RK Puram, New Delhi-110066.

..... **Respondents**

By Legal Practitioner: Shri DK Pandey, Learned Standing Counsel
for the Central Government.

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by Wg Cdr Ashwini Kumar Handa (Retd) (MR-05986X) (herein after referred to as the 'Applicant') with the following prayers :-

“(a) To issue/pass an order or direction to the respondents to set-aside/quash arbitrary orders of recovery of pay and allowances for the study leave period passed by the DGMS (Air) – Respondent No. 4 vide paragraph 9 of the impugned letter as contained in Annexure No A-1 of this application.

(b) To issue/pass an order or direction to the respondents to set-aside/quash the arbitrary execution of order of recovery implemented by the Dy. CDA (AF) – respondent No. 5 through LPC and PPO dated 18 Jan 2013/25 Feb 2013 as contained in Annexure No. A-2 of this application.

(c) To issue/pass an order or direction to the respondents to set-aside/quash the arbitrary rejection order of the representation dated 24 Sep 2012 passed by the DGMS (Air) – the respondent no. 4 as contained in Annexure No A-3 of this application.

(d) To issue/pass an order or direction to the respondents to refund the amount of recovery to the Applicant executed by the Dy CDA (AF) New Delhi-respondent No 5 together with its interest as per prevalent rates of Reserve Bank of India.

(e) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the Applicant against the respondents.

(f) To allow this original application with costs.”

2. The facts necessary for the purposes of instant application may be summed up as under :

3. The Applicant has challenged the impugned order of recovery of pay and allowances drawn by the Applicant during the period of his study leave, passed by the Director General Medical Services (Air) (herein after referred to as the 'DGMS (Air)', whereby a sum of Rs.9,27,993/- was deducted by the Dy. Controller of Defence Accounts (Air Force), New Delhi from the amount

payable to him on the premature retirement which was on his own request.

4. The Applicant was commissioned in the Army Medical Corps as a Permanent Commissioned Officer on 24 Dec 1988 and was subsequently seconded to the Indian Air Force in the rank of Flying Officer. After successful completion of the internship, the Applicant was promoted to the rank of Flight Lieutenant on 1st December 1989 and was subsequently elevated upto the rank of Wing Commander on 1st December 2002 on completion of 13 years of service. The Applicant applied for the study leave which was approved for the Medical Super Speciality, Medical Gastroenterology in 2001 by the DG AFMS by virtue of appropriate marks obtained by the applicant in his Annual Confidential Reports in the preceding years. The Applicant availed the aforesaid study leave for two years w.e.f. 27 December 2003 to 26 December 2005. The appointment of the Applicant was subsequently changed as Classified Specialist (Medicine & Gastroenterology) and he was posted to Command Hospital (Southern Command), Pune in March 2007 and served there till 21 April 2010. At the time of applying for study leave, he was required to submit a Service Guarantee Certificate in terms of the Army Instructions 13/78, as amended and he was liable to serve for nine years from the date of return from study leave, subject to certain conditions except ill health as was mentioned in the said Army Instructions. The said Service Guarantee was furnished by the Applicant on 15 Nov 2001. The Applicant had also mentioned several other facts in his Application as the reasons due to which he was not granted promotion in time and had to suffer because his transfer application to Pune was not considered, while promotions and postings of other officers were considered.

5. Keeping in view the controversy involved in this case, we do not consider it appropriate to give details of the facts of promotion and posting in our judgment.

6. The crux of the dispute is that the Applicant during the continuance of his service, availed the study leave for the period of two years. He executed all the papers as required under the rules for grant of study leaves. It is admitted by the Applicant in his application that after return from study leave, he had to put in service for a period of nine years, but the Applicant applied for premature retirement from service in the prescribed Performa (vide his application Annexure A-23 of the O.A.). In Section-II of this application he has mentioned several grounds due to which he has made prayer for premature retirement. We consider it necessary to mention the grounds which have been taken by the Applicant as grounds for his premature retirement, which are quoted as under:

“SECTION-II

(Reasons for Pre Mature Release/Retirement)

1. *I should have faced my first promotion board from Lt Col (& equivalent) to Col (& equivalent) – PB3 in Dec 2009. I was placed in ‘WITHDRAWN LIST’ due to lack of mandatory three ACRs in the rank of Lt Col when considered for the promotion board in Dec 2009. As exhaustively brought out in the statutory complaint put up on this issue, my first ACR in the rank of Lt Col raised in 2003 was subsequently declared technically invalid in 2005 with an instruction to me to re raise the ACR for that period. My IO, Gp Capt U Dutta in response to Air HQ/C/C26309/Cors/Med-1 dated 8 Feb 2006, did raise the ACR afresh & sent it to o/o DGMS(Air) vide TC/C3602/13/1/Med dated 6 Apr 2006. Hence three physical ACRs were available in the rank of Lt Col while being considered for PB3 in Dec 2009 (Year 2003, 2007 & 2008), which hence fulfills the mandatory requirement of three ACRs as Lt Col. Due to improper handling of the freshly raised ACR by the higher echelons, the freshly re raised ACR has probably been misplaced.*
2. *I put up the statutory complaint in 10 Mar 2010 & received a reply only after 10 months on 10 Dec 2010. Readdressal sought through the statutory complaint has elicited an oblique answer without in any way addressing the issue of the whereabouts of the misplaced/lost destroyed freshly re raised ACR.*
3. *In the supposed first PB3 I faced in 2010 as a result of the organizational faux pas in 2009. I have been graded “NS” (Not Selected) for promotion to the select rank of Col (& Equivalent).*
4. *Due to missing the promotion board for no apparent fault of mine. I have been put up to unwarranted mental stress & strain. Loss of face & a loss in terms of personal & professional standing in a strictly hierarchical organization like ours. For no fault of mine. I stand superseded and hence have become junior to my juniors. It is humiliating to work under colleagues who are junior to me.*
5. *Besides, I have been forced to keep my family at Pune, from where now, I just cannot move them out to any other place. My son is in the crucial 11th standard at Pune. Due to paucity of proper educational facilities at Udampur shifting them was out of question in April 2010, on posting in here. My being with him at Pune, is hence pivotal now, as*

also in the 12th standard next year, when he takes his competitive examinations. These competitive exam would be a deciding factor for him I how he well he does in his future endeavors. This forced separation from my family & the education of my son is causing a serious discord with my spouse being an avoidable cause for martial disharmony. Which I sincerely hope does not lead to an irretrievable breakdown.

6. I was diagnosed with disabilities – primary hypertension & PIVD about ten months after coming to my present unit, which is in Counter Insurgency Operation – CI Ops. Recently I developed target organ involvement – hypertensive retinopathy – necessitating addition of another drug. Multiple factors as enumerated are having a deleterious effect on my health. I am unable to concentrate on my work due to my illness. I want to give off my best to this esteemed organization which has given me so much.

7. As a result of the supersession, due to misplacing an important document like ACR by the higher echelons, family issues as enumerated above, besides my poor health, I am unable to take the stress & strain which military service inherently & necessarily mandates.

8. I Humbly request that on these grounds. I may please be granted premature release from service.

Sd/ X X X

Dated : 28 Sep 2011

(Signature of the officer)''

(Underlined by us)

7. The Grievance of the Applicant is that in the premature release application, he had taken a ground of ill health and as per the relevant rules, if the service is discontinued on the ground of ill health, then no such deduction can be made. At this stage, we would like to quote the relevant paragraph “e” of the Army Instructions Nos.13-15, which reads as under:

“(e) Prior to the grant of study leave under this AI, the officers, will give an undertaking in writing that be will not seek permission to retire or resign his commission except on grounds of ill health within a period of five years from the date of return from study leave last availed of.”

(This period of five years was subsequently raised to nine years).

It is also pleaded that after deducting the amount, he had moved an application for refund of the recovered amount, but the same was rejected without properly considering the grounds.

8. In the counter affidavit filed on behalf of the respondents, the respondents have admitted the facts that the Applicant was granted study leave and request for his premature retirement was allowed, but the claim of the Applicant has been denied on the ground that the Applicant was well aware of the fact that in case he requests his release from the service without completing the

mandatory period of nine years after availing the study leave, then he was bound to refund the pay and allowances which was drawn by him during the study leave period. It is also denied that premature retirement was on the ground of illness.

9. Learned counsel for the respondents has argued that in the case of the Applicant, illness was only an additional ground and it was mentioned as the last ground. The other grounds, on which the release was pressed, were entirely different having no relation with his illness. Since the Applicant, at the time of availing the study leave, had executed a Service Guarantee that in case he resigns from the service before the statutory period of nine years, then he shall be liable to refund the pay and allowances received by him during the study leave period. Even in the application for release, there was a column wherein he has given an undertaking to this effect, therefore, the prayer of Applicant is not tenable. Competent Authority has rightly rejected his representation for refund of the deducted amount.

10. During the course of arguments, learned counsel for the Applicant has raised an alternative argument that after availing the study leave, he has served the Armed Forces for a period of more than five years and made a request, in the alternative for proportionate refund of the amount of the period for which he has served. During course of arguments, we have also enquired from the learned counsels for the parties whether there is any law, circular, service rules or any Authority providing for such a proportional refund? Learned counsel for the Applicant utterly failed to bring any such circular, order, authority or rules to the notice of this Tribunal.

Discussions

11. Dispute involved in this case is very small. All the facts are admitted. During continuation of his service, the Applicant availed the study leave for two years. As per Service Guarantee executed by him, he had to serve the Armed Forces for a mandatory period of nine years after availing study leave and in case of any

default, he was bound to refund the pay and allowances which was paid by him during the study leave period. At this stage, we would like to mention the relevant portion of the Service Guarantee executed by the Applicant at the time of availing study leave, which reads as under :

*“Appendix ‘B’
(Refer to Para 7 (a) of DGAFMS
letter No. 33078/DGAMS/DG-D
(2002) dated Oct. 2001*

SERVICE GUARANTEE CERTIFICATE
(In terms of Ai 13/78 as amended)

1. *I certify that if I am granted study leave I will not seek permission to retire or resign my commission except on ground of ill health within a period of **nine** years from the date of return from study leave last availed of.*
2. *I also certify that if I resign my commission or retire from service at my own request within **nine** years after such return to duty or fail to complete the course of study leave and is thus unable to furnish the certificate as required under rule 4 (b). I will refund the actual amount of pay and allowances including study leave allowances/stipend or scholarship (from whatever source granted) drawn by me during the period of study leave and other expenses, if any, incurred by the Govt.*
3. *Further, if I choose to resign my commission after completion of **nine** years service from the date of return from study leave but before completion of twelve year of total commissioned service (excluding the period of ante date) I may be called upon to refund such amount of study allowance drawn by me as may be decided by the Government.*

Signature XXXX

*Station : AFMC Pune-40 Rank & Name Sqn Ldr AK Handa
Date 15 Nov 2001 Unit : 3 AFH Amla Depot, Dist Betul”*

12. In the order whereby the study leave was granted to the Applicant, the said condition was incorporated. Paragraph 9 of the said Order, which is annexed as Annexure A-1 to the O.A., reads as under :

*“9. **FOR AFCAO ONLY** Please ensure that the officer clears all outstanding dues before his NE benefits are finalized and paid to him. The officer has 9 years service liability to serve upto 25 Dec 2014 for doing two years study leave from 27 Dec 03 to 26 Dec 05 in GE (Med) from PGI Chandigarh. The officer is, thus, required to refund the actual amount of pay and allowances drawn by him during the period of study leave and other expenses, if any, incurred by the Govt, before his retirement from service.”*

13. Thus, from the above facts, it is abundantly clear that the study leave rules mandate that after completing the study leave period, the Applicant will have to serve for a specific period of service. The Applicant was aware of this fact from the very beginning and as per the Service Guarantee, he had given an undertaking to this effect. Admittedly, the aforesaid amount was deducted from his post retiral dues. The grounds raised by the Applicant in the instant O.A. is that because he has taken premature retirement on the ground of his ill health, so the said ground entitles him for the refund of the deducted amount. After perusal of the application of premature release, we are of the considered view that this ground is not tenable in view of the grounds taken by him in his own application. A plain reading of the aforesaid premature release application clearly shows that the main ground for his release was his dis-satisfaction due to delay in promotion and refusal to his posting to Pune, which were mentioned as the first five grounds. The sixth ground was taken as his ill health, wherein he has stated that I am unable to concentrate on my work due to my illness. I want to give off my best to the esteemed organisation which has given me so much and to conclude this application, he has written in paragraph 6, as under :

“6. I was diagnosed with disabilities – primary hypertension & PIVD about ten months after coming to my present unit, which is in Counter Insurgency Operation – CI Ops. Recently I developed target organ involvement – hypertensive retinopathy – necessitating addition of another drug. Multiple factors as enumerated are having a deleterious effect on my health. I am unable to concentrate on my work due to my illness. I want to give off my best to this esteemed organization which has given me so much.”

Contents of paragraph 7 of his own application show that the main ground for premature retirement were the other grounds.

14. It makes it abundantly clear that the main ground for his premature retirement from the service was his supersession and his family issue. It is not the case where the applicant has prayed for his premature retirement mainly on the ground of his ill health.

15. Hon'ble the Apex Court in the case of **Sant Longowal Institute of Engineering and Technology & another vs. Suresh Chandra Verma** (2013) 10 Supreme Court Cases 411 has an occasion to consider the study leave rule. Though the said rule was in connection with the Central Civil Service, but the provisions are similar to the rule applicable in the present case. In the facts of that case, the Government servant was given the study leave with salary and allowances after executing the necessary bonds for a period of three years. Due to various reasons, the PhD course for which the leave was granted could not be completed and he joined back in service. When he was asked to furnish the completion certificate of PhD course, he failed to produce the same. Therefore, there was demand by the Institution for refund of Rs.12,32,126/-. In the facts of that case, the bond executed by the Applicant was found to be a bit vague regarding the non completion of the course, but even in that facts situation, the Hon'ble Supreme Court observed as under :

“11. The abovementioned provision has a laudable object to achieve. A government servant or person like the respondent is given study leave with salary and allowances, etc. So as to enable him to complete the course of study and to furnish the certificate of his successful completion, so that the institute which has sanctioned the study leave would achieve the purpose and object for granting such study leave. The purpose of granting leave study leave with salary and other benefits is for the interest of the institute and also the person concerned so that once he comes back and joins the institute the students will be benefitted by the knowledge and expertise acquired by the person at the expenses of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute. In other words, such a person only enjoys the period of study leave without doing any work at the institute and, at the same time, enjoys the salary and other benefits, which is evidentially not in public interest. Public money cannot be spent unless there is mutual benefit. Further, if the period of study leave was not extended or no decision was taken on his representation, he could have raised his grievance at the appropriate forum.”

16. However in the facts of that case, Rs.6,50,000/- had already been recovered from the Government servant and only balance amount was to be recovered from him. In that facts situation, since the bond executed by the respondent was found to be vague to some extent, therefore, Hon'ble Supreme Court directed

that the amount already recovered from the Government servant shall not be refunded to him. However, the Institute was directed not to recover the balance amount.

17. In another case, **State of Punjab & others vs. Dr. Rajeev Sarwal** (1999) 9 SCC 240, the Government servant enjoyed the study leave for a period of 24 months and thereafter he again applied for specialisation course, which was declined by the Government. Feeling aggrieved, writ petition was preferred before the Hon'ble High Court and the Hon'ble High Court allowed the writ petition on the ground that the rules could have been relaxed by the Government to extend the benefits of study leave as has been done in several other cases and similar treatment not having been extended to the respondent, the action proposed to be taken by the appellant is contrary to Art 14 of the Constitution. When this order was challenged before the Hon'ble Apex Court, then the Hon'ble Apex Court, regarding the above observation of the Hon'ble High Court, observed as under :

“3. We do not think the approach of the High Court in this matter is justified. The proper course was to interpret the rule and apply the same.”

In paragraph 6 of the abovementioned judgment, Hon'ble Apex Court observed as under :

“6. The contention put forth on behalf of the respondent that the period of study leave could be granted at a time not exceeding 24 months does not stand to reason at all because the rule is very clear that 24 months is relatable to the entire service and not to any part of service. The validity of the rule was not challenged before the High Court. Therefore, that aspect could not be gone into by the High Court. Nor could it be said that the exercise of power by the appellant was arbitrary, in any manner, merely because that power of relaxation was used in certain cases. In our opinion relaxation also cannot be read into a provision of this nature where the rule itself mandates the maximum period to be 24 months for the entire service. The order made by the High Court is, therefore, not sustainable.”

18. However, in this case also the Hon'ble Supreme Court had directed that if the amount has already been paid to the Government servant then the same shall not be recovered from him. This case law completely covers the other arguments of the learned

counsel for the Applicant, where he has placed a reliance of an information obtained by him under RTI Act and on the basis of the same, it is argued that he has served for a period of about 5 years, therefore, a proportional refund may be directed, but at the cost of the repetition, we observe that learned counsel for the Applicant could not furnish any rule, circular or Authority, whereby proportional recovery of the salary and allowances paid during the study leave period can be ordered. After the deduction from the retiral dues, an application was moved by the Applicant praying for exemption and refund of his pay and allowances. The said application was disposed of vide order dated 24th September 2012 with the following observations :

“.....(a) The application of the officer for premature retirement from Service was processed after the officer had expressed his willingness for refund of due service liability in case his PR application is accepted by the Govt.

(b) The officer is not placed in such a low medical category as is not acceptable for retention in service.”

19. Thus, the order of rejection of his application also does not suffer from any illegality or irregularity because premature release was not ordered on the ground of his illness. Simply because illness was mentioned as one of the six grounds it does not mean that the competent authority considered the illness as a ground for his premature release. There is nothing on record to indicate that his illness was considered as a ground for his premature release.

20. Learned counsel for the Applicant has relied upon a decision of this Tribunal in his own case **Wg Cdr Ashwani Kumar Handa vs. Union of India & others** (O.A.No.17 of 2014) decided on 26th of February 2016, wherein his disability pension was rounded off @ 75% for life, but this does not render any help to the Applicant, so far as the present dispute is concerned, because for disability, admittedly he is getting the disability pension.

21. On the other hand, learned counsel for the respondents has placed reliance on the order of the AFT, R.B. Mumbai in the case of **Lt Col PK Gupta vs. Union of India & others** (O.A.No.01 of 2013) decided on 25.07.2013, whereby the O.A. was dismissed because the Applicant had not completed nine years of service, as required under rule after availing study leave. The submission of the learned counsel for the Applicant is that the facts of that case were entirely different as in that case premature release was not prayed on medical ground.

22. We have already discussed in the earlier part of this judgment that the medical ground was taken as an additional ground and it was not the sole or main ground for his premature retirement and the main ground for release was entirely different and his premature release was not ordered on the ground of illness.

23. From perusal of the entire records, it is abundantly clear that the premature retirement was not prayed mainly on the medical grounds, but it was pleaded only as an additional ground.

24. From perusal of the case laws and the arguments advanced by learned counsel for both the parties, it clearly comes out that the applicant took premature release from the Indian Air Force without completing the mandatory period of nine years as given in the Service Guarantee Certificate. There has been no violation of the rules, regulations and policy on the subject.

25. In view of the discussions, made herein above, the Applicant is not entitled to any relief. Original Application deserves to be dismissed.

26. Accordingly, O.A. No.188 of 2013 is hereby **dismissed**.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: July , 2017.

PKG