

Form No. 4  
{See rule 11(1)}  
ORDER SHEET

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

O.A. No. 210 of 2017

**Col Jiwan Kumar Singh**  
By Legal Practitioner for the Applicant  
**Versus**

Applicant

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal	
	<p><u>21.08.2018</u> <u>Hon'ble Mr. Justice SVS Rathore, Member (J)</u> <u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p>Judgment pronounced. O. A. No 210 of 2017 is dismissed. For orders, see our judgment and order of date passed on separate sheets.</p>	<p>(Air Marshal BBP Sinha) Member (A)</p> <p>(Justice SVS Rathore) Member (J)</p> <p>gsr</p>

RESERVED  
Court No.1

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

**ORIGINAL APPLICATION NO 210 of 2017**

Tuesday, this the 21<sup>st</sup> day of August, 2018

**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)"**

IC- 43230 F, Col Jiwan Kumar Singh, S/o Sh Prahalad Singh,  
R/o Polytechnic Road, Dhanbad, Jharkhand Last posted at  
Station HQ Faizabad U.P. - 224001.

....Applicant

Ld. Counsel for the:           Shri Rajiv Manglik, Advocate.  
Applicant

Versus

1. UNION OF INDIA, through: The Secretary, Government of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Military Secretary Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.

....Respondents

Ld. Counsel for the:           Shri Yogesh Kesarwani, Advocate.  
Respondents.

**ORDER**

**"(Per Hon'ble Air Marshal BBP Sinha, Member (A))"**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of the following relief:

“(a) To declare the action of the respondents as unjust, arbitrary and illegal; and

(b) To quash and set aside order dated 09 Jan 2017; and

(c) To direct the respondents to accept the withdrawal of the applicant’s request for his pre-mature retirement and re-instate the applicant back in service and the period of absence to be regularised; and

Alternatively;

(d) To direct the respondents

(e) Such further order or orders, direction/ directions be passed as to this Learned Tribunal may deem fit and proper in accordance in law.”

2. Brief facts of the case are that the applicant was commissioned in the Indian Army (Armoured Corps) on 14.12.1985, promoted from time to time and rose up to the rank of Col. The applicant was considered for selection to the rank of Brig but was not empanelled and was finally superseded in the rank of Col in 2007. Thereafter the applicant applied for pre-mature retirement from the Army and the same was sanctioned vide letter dated 03.05.2017, wherein it was categorically stated that the applicant shall be relieved of his duties as soon as possible but not later than 31.07.2017. The applicant decided to leave the Army on 29.05.2017 and was relieved of his duties on 29.05.2017. The applicant accordingly left the Army station for

his home town on 29.05.2017 itself. However, according to the applicant enroute to his home town he was informed that his father is serious and admitted in ICU and also got the message from his relatives regarding other financial crisis in the family. It is further averred in the petition that the applicant thereafter immediately spoke to his Station Commander at Faizabad on 29.05.2017 and requested him to cancel his relieving as he would like to continue in service and withdraw his request for pre-mature retirement. According to the applicant, Station Commander Faizabad intimated the applicant that he should report back to the unit and the absence shall be regularised as leave due to the applicant and his further retention in service shall depend upon the decision of the Army Headquarters on withdrawal of his pre-mature retirement application. However, the request of the applicant was rejected by MS Branch vide letter dated 09.06.2017. Hence, the present O.A.

3. Ld. Counsel for the applicant besides re-emphasizing his written arguments and supporting case laws has basically pleaded for cancellation of premature retirement and built up his case around the fact that as per the letter of premature retirement dated 03.05.2017, the applicant was required to be relieved of his duties not later than 31.07.2017. However he proceeded on premature retirement on 29.05.2017 based on his own request. However his cut off date from Army, therefore

has to be deemed to be 31.07.2017. He further submitted that after proceeding on premature retirement on 29.05.2017 he talked to Station Commander, Faizabad on same day and put up his application for cancellation of premature retirement on 01.06.2017. Therefore the applicant's case is a case of withdrawal of premature retirement before the due date of retirement and as per extant rules the withdrawal should have been permitted by respondents. He further submitted that when the applicant put up his application for withdrawal of premature retirement application on 01 June 2017, the Part II Order declaring him as non effective and retired had not been taken hence he is technically on the strength of the Army. He also cited Appendix 'B' to MS Branch letter dated 25.02.2009 on premature retirement and highlighted that para 2 of Appendix 'B' specifically insists on taking an undertaking from officers proceeding on premature retirement that in the event of cancellation of premature retirement order, the pensionary benefits in terms of Pension, DCRG, commutation value etc. shall be refunded, hence it proves that premature retirement can be cancelled even if one presumes that an officer has proceeded on retirement. He concluded his arguments by strongly pitching for withdrawal of premature retirement application exercised by the applicant and his re-instatement in service.

4. Per contra Ld. Counsel for the respondents has vehemently opposed the contention of Ld. Counsel for the applicant on the following grounds:-

- (a) The applicant has already retired on 29.05.2017 and has applied for withdrawal of his decision of premature retirement on 01.06.2017. Hence it is not a case of withdrawal of premature retirement but re-instatement.
- (b) The premature retirement sanction letter specifically states that "officer may be relieved as early as possible as but not later than 31.07.2017". Hence it is not a case that the date of premature retirement was 31.07.2017. In this case since the officer of his own free will opted to proceed on premature retirement w.e.f. 29.05.2017, therefore he has retired on 29.05.2017 after duty hours (AD hours) and has physically left his unit.
- (c) The applicant has mentioned for the first time in his O.A. that he talked to Station Commander, Faizabad on 29.05.2017 and requested for cancellation of his premature retirement. However there is no mention of this fact in his application for withdrawal of premature retirement dated 01.06.2017 and 05.06.2017.

(d) As per MS Branch policy letter dated 25.02.2009, para 29 clearly specifies that the withdrawal application may be applied to MS Branch at least 30 days prior to date of premature retirement.

(e) Admittedly Army Rule 16-B (2) and Regulation 104 (d) and 105 (h) are clear that withdrawal of premature retirement can be applied only 'before retirement.'

5. Ld. Counsel for the respondents finally concluded that the applicant had applied for premature retirement on the grounds that since he has no further scope of promotion, he wishes to take premature retirement for better career opportunities and scope for growth outside. His request for premature retirement was accepted and he has proceeded on premature retirement w.e.f. 29.05.2017. Hence it is not possible to accept his request for withdrawal of premature retirement because it has been made after retirement.

6. We have heard Ld. Counsels for both the sides and perused the records. We are clear that there is no ambiguity on the legal position that premature retirement has to be withdrawn before retirement and not after retirement. The primary argument of Ld. Counsel for the applicant is that the applicant has not retired on 29.05.2017 on two counts i.e., the date of premature retirement as given by MS Branch was upto

31.07.2017 and that even though the applicant opted for premature retirement on 29.05.2017, he opted for withdrawal of premature retirement on 01.06.2017 and by this date the Part II Order of his retirement was not taken hence he was still on the strength of the Army on 01.06.2017 when he applied for withdrawal of his premature retirement. We do not agree with both the lines of the argument of Ld. Counsel for the applicant for the following reasons:-

(a) The release letter of the officer unambiguously states that the officer may be relieved as early as possible but not later than 31.07.2017, hence since the applicant opted for retirement on 29.05.2017 and all formalities were accordingly completed on 29.05.2017, therefore we hold that the officer has retired on 29.05.2017.

(b) We are not impressed with the line of argument that since Part II Order of retirement was not taken till 01.06.2017 therefore applicant is on strength of Army on 01.06.2017. In our considered opinion Part II Order is subservient to an action or decision or an occurrence which affects the applicant. Part II Order is an administrative procedure to reflect an action or a decision or an occurrence which affects an individual in the Army, hence there is bound to be a time gap between the action/decision/occurrence and the publication of Part II



Order. Therefore to say that since Part II Order has not been issued, therefore the action/decision/occurrence which has already taken place has actually not occurred is perverse logic. By this logic no action will ever be complete in Army because there will always be a gap between actual action and making a record.

(c) Similarly we do not find any merit in the logic that Appendix 'B' of MS Branch letter on premature retirement can be interpreted to mean that withdrawal of premature retirement is permissible after retirement. An appendix cannot be interpreted to overrule the contents of main text. This appendix is an additional precaution by the respondents on financial matters concerning premature retirees and cannot be interpreted in any other way.

7. In view of the above, we are of the considered opinion that the applicant has proceeded on premature retirement on 29.05.2017. Thereafter the respondents are well within their right to reject any application after 29.05.2017 by the applicant for withdrawal of premature retirement or for re-instatement. Hence the O.A. lacks merit and is **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)  
Member (A)

(Justice SVS Rathore)  
Member (J)

Dated : 21 August 2018

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