

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 186 of 2022****Thursday, this the 4<sup>th</sup> day of August, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 15424423M Hav (Clk SD) Deepak Sahu  
S/o Shri Ram Bharose Sahu  
Presently posted at Adm Bn AMC Centre & College,  
Post : Dilkusha, Lucknow (UP) -226002**.... Applicant**Ld. Counsel for the Applicant: **Shri Shailendra Kumar Singh**, Advocate

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi – 110011.
3. DGMS (Army), IHQ of MoD (Army), Adjutant General's Branch, 'L' Block, New Delhi – 110001.
4. OIC Records, AMC Records, Lucknow – 226002 (UP).

**... Respondents**Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,  
Govt Standing Counsel**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

*“A. To quash and set aside the respondents Signal No. A-8015/MP (PMR) dated 31 Jan 2021 (Annexure No. A-1 of OA).*

*B. To issue/pass an order or directions of appropriate nature to the respondents to consider applicant's case for premature retirement from service afresh as per his circumstances.*

*C. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant."*

2. Counter affidavit filed by the respondents is taken on record.
3. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army (AMC) on 23.09.2005. The applicant while posted with Base Hospital, Delhi Cantt applied for premature retirement from service on compassionate grounds on 09.12.2020. His application was recommended by Additional DGMS (Army) and was forwarded to AMC Records on 04.01.2021 which was not agreed to by the Commandant AMC Centre & College and OIC Records due to deficiency in Clerical category in the Corps as on date. AMC Records vide letter dated 31.01.2021 also informed the Office of DGMS, IHQ of MoD that applicants case is not considered a fit case for PMR due to restrictions imposed by IHQ of MoD (Army) on premature retirement till 31.03.2023. Being aggrieved, the applicant has filed the present Original Application for grant of premature retirement.
4. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army (AMC) on 23.09.2005. The applicant while posted strength of Base Hospital, Delhi Cantt applied for premature retirement from service on compassionate grounds on 09.12.2020. His application was recommended by Addl DGMS (Army) on 23.12.2020 and was forwarded to AMC Records on 04.01.2021. In reply, Commandant

AMC Centre & College and OIC Records communicated to Officiating ADG MNS that case of applicant has been examined in detail and not agreed to due to deficiency in Clerical category in the Corps as on date. AMC Records vide letter dated 31.01.2021 also informed the Office of DGMS, IHQ of MoD that applicants case is not considered due to restrictions imposed by IHQ of MoD (Army) on premature retirement for two years till 31.03.2023.

5. Learned counsel for the applicant further submitted that applicant was under posting to 38 RR Bn w.e.f. 01.06.2021 and on 06.05.2021 he requested for cancellation of his posting to 38 RR Bn as his wife was undergoing treatment at Delhi but no reply was received from the respondents. The applicant reported to 38 RR Bn and during interview with the Commanding Officer, he narrated his case for denial of premature retirement on compassionate grounds, therefore, Commanding Officer considering the applicant's genuine domestic problems, routed him back to Adm Bn of AMC Centre & College, Lucknow for consideration/ decision on his PMR.

6. Learned counsel for the applicant also submitted that applicant has completed more than mandatory service of 15 years and he is having family problems due to ill health of his parents, no bar should be applicable for premature retirement in the present circumstances and he should be prematurely discharged from service granting pensionary benefits being a similar case as decided by this Tribunal in OA No. 517 of 2021, ***Hav Mukesh Kumar vs. Union of India & Others***, decided on 03.12.2021.

7. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army (AMC) on 23.09.2005 and presently attached with Administrative Battalion of AMC Centre & College, Lucknow after being returned from 38 Rashtriya Rifles w.e.f. 19.12.2021. He was promoted to the rank of Naik on 26.07.2010 and Havildar on 01.02.2013. The applicant's present medical category is SHAPE-1 and he will be completing his normal service limit on 30.09.2029 in present rank. The applicant submitted an application dated 09.12.2020 for premature retirement from service on compassionate grounds for looking after his aged parents staying at his native place. His application was processed and was examined in detail by AMC Records but the competent authority has not agreed to sanction premature retirement as per the merit of the case based on deficiency of his trade (Clerk) in the Corps and restriction imposed by IHQ of MoD (Army) on premature retirement till 31.03.2023. In between Officiating Additional Director General of Military Nursing Services, IHQ of MoD (Army) also forwarded a DO letter dated 04.01.2021 addressing to Commandant AMC Centre & College & OIC Records with a request to consider premature retirement of the applicant but the same was not agreed to by OIC Records due to critical position/deficiency in applicant's trade of clerical category.

8. Learned counsel for the respondents further submitted that as per para 164 (a) of Regulations for the Army, 1987 retirement age of Havildar is 24 years service or 47/49 years of age whichever is earlier. Besides this, there is restriction in granting premature retirement till 31.03.2023 due to COVID-19 pandemic and non recruitment in Indian Army.

9. Learned counsel for the respondents further submitted that premature retirement from service at own request is being dealt with as per guidelines issued by IHQ of MoD (Army) from time to time and only genuine cases are recommended after verifying the merit of the case and Corps manpower state. He also submitted that applicant signed a contract for 20 years of colour service and 03 years of reserve liabilities as per terms and engagement contained in the Enrolment Form signed by him at the time of enrolment in the Army. The respondents' refusal for grant of premature retirement from service is wholly just, proper and in accordance with law and there is no illegality in the said order. Hence, applicant is not entitled for grant of premature retirement from service. He pleaded for dismissal of O.A.

10. We have heard learned counsel for the parties and perused the records.

11. We have given our thoughtful consideration to the facts and rival contentions. The applicant submitted an application for premature discharge from service due to his domestic problems and also on medical grounds of the parents. The authorities could not consider his case in its proper perspective and rejected the same on the grounds of restrictions imposed by IHQ of MoD (Army) due to deficiency in applicant's trade and COVID-19 pandemic.

12. It is true that at the time of enrolment certain terms and conditions are laid down in the offer of appointment and an individual has to accept the same in order to join service. No doubt, it was a contract at that point of time. But once an individual joins service, he is governed by service

rules and regulations. In the relevant service rules, there is provision for voluntary retirement or premature discharge on stated grounds. Therefore, the applicant cannot be blamed if he has filed such an application on compassionate grounds/family problems due to ill health of his parents.

13. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. We are, however, of the view that his early discharge will not prejudice the respondents in any manner. Considering all aspects of the matter i.e., improved Covid Pandemic situation and recommencement of recruitment in the Army, we are of the view that applicant's case needs re-consideration and review by the competent authority for grant of premature discharge on compassionate grounds.

14. Accordingly, Original Application is disposed off finally with direction to the respondents to review and reconsider the prayer of the applicant for premature discharge from service on compassionate grounds, keeping in view the overall improved situation post Covid-19 Pandemic and also commencement of recruitment in the Indian Army, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

15. No order as to costs.

16. Pending Misc. Applications, if any, shall stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : August, 2022

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