

Court No. 2**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 609 of 2022**Tuesday, this the 17th day of January, 2023**“Hon’ble Mr Justice Ravindra Nath Kakkar (J)”****“Hon’ble Maj Gen Sanjay Singh (A)”**

Hav Arun Kumar Singh (15422397-X) S/O Shri Rajnath Prasad,
Resident of Chhota VD Road New Cantt, Allahabad,

Presently posted at:

Military Hospital, Allahabad, Uttar Pradesh, Pin Code : 211001

..... Applicant**Applicant, Shri Arun Kumar Singh in person**

Versus

1. Union of India, Through the Secretary,
Ministry of Defence, DHQ PO,
New Delhi - 110011.
2. The Chief of Army Staff
South Block, DHQ P.O.
New Delhi - 110001.
3. Senior Records Officer
Army Medical Corps Record Office
Lucknow, PIN - 900450
c/o 56 APO
4. Station Commander, Military Hospital, Allahabad
PIN CODE : 226001

.....RespondentsLd. Counsel for the
Respondents.**:Shri Shailendra Sharma Atal,
Sr. Central Govt. Counsel.**

ORDER**“Per Hon’ble Mr Justice Ravindra Nath Kakkar, Member (J)”**

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

- (a) *To direct the Respondent to quash / set aside the Impugned Orders dated 06.09.2021, 04.01.2022 and 21.02.2022.*
- (b) *To pass the directions to consider and grant discharge from service to the Applicant.*
- (c) *To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 04.03.2005. He was placed in Low Medical Category for the disabilities Fracture Femur Lt (OPTD), Seizure Disorder, Primary Hypertension and Asymptomatic Hyper Uricaemia. On 08.07.2021, applicant applied for Premature Retirement (PMR) from service on extreme compassionate grounds as he was not in a position to perform his duty effectively due to serious health problems. Family of the applicant also wrote letter to Army Welfare Wives Association for premature discharge of her husband and against harassment of her husband by senior officers but PMR to applicant was denied. Being aggrieved, the applicant has filed the present Original Application for grant of PMR.

3. Applicant submitted that he was diagnosed a patient of Fracture Femur Lt (OPTD), Seizure Disorder, Primary Hypertension and Asymptomatic Hyper Uricaemia and he was placed in Low Medical Category. He was not in a position to perform his duty effectively due to serious health problem. He applied for Premature Discharge on 08.07.2021. He was informed that JCOs/OR cannot be sent on PMR due to COVILL-19 impact. Respondents informed the applicant that JCOs/OR of Army Medical Corps/ Army Dental Corps (AMC/ADC) have been granted two years extension as interim solution to deal with shortage of manpower vide letter dated 31.03.2021. However, the applicant's trade was not mentioned in the said letter. He was relieved from duty of Store Keeper Technical (SKT) and given the duties of Awaan. He submitted an application dated 15.07.2021 for harassment by superiors. Wife of the applicant also wrote letter to Army Welfare Wives Association (AWWA) describing the difficulties faced by her husband. Applicant was issued Show Cause Notice dated 06.08.2021 and finally awarded punishment of reprimand under Section 39 of Army Act 1950. His application for PMR was rejected by the respondents vide letter dated 06.09.2021 stating that there is deficiency in the respective trade whereas his juniors belonging to same trade were granted Premature Retirement on 30.11.2021. Wife of the applicant further submitted applications for PMR of her husband which were also rejected by the respondents stating that due to deficiency in overall

manpower position, PMR cannot be granted and personal illness is not treated a ground for PMR. Applicant again submitted application dated 14.04.2022 for PMR on medical grounds explaining difficulty faced by him in performing his duties but of no avail. He also submitted that situation after imposing restriction in granting discharge from service due to Covid Pandemic has improved and process of new enrolment in the Army has begun, therefore, discharge request of the applicant be considered and PMR of the applicant be sanctioned.

4. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 4.03.2005. He was promoted to the rank of Naik on 01.05.2011 and Hav on 01.07.2013. He was awarded punishment of "Severe Reprimand" under Section 39 (b) of Army Act 1950 on 15.05.2012 and "Reprimand" under Section 39 (d) of Army Act 1950 on 11.09.2021. He will be completing his normal service limit on 31.03.2029. Presently, he has been placed in Low Medical Category. Due to spread of COVID-19 Pandemic in India, a country wide lockdown was announced by Govt of India with effect from 25.03.2020. This resulted in abrupt suspension of all activities which had also adversely impacted the recruitment process of the Indian Army. However, monthly superannuation was going on as per mandated schedule. Competent authority has issued mitigating measures to overcome the impact of COVID-19 pandemic on recruitment and training with

respect to Indian Army and conveyed the approval regarding the ceiling on premature retirement quota on compassionate grounds i.e. '0.5% of authorised/held whichever is less in the trade' with respect to JCOs/OR effective till 31.03.2023 vide Integrated Headquarters of Ministry of Defence, Adjutant General Branch Note No B/10201/2020-21/MP 3 dated 07 Oct 2020 and 17.11.2020. As per this Note discharge on medical, discipline and other unforeseen reasons was allowed 1% and discharge on compassionate grounds was allowed 0.5% of the authorised/held whichever is less in the trade. Further competent authority instructed that JCOs/OR of AMC and ADC be encouraged to serve till completion of maximus service limit including extension of service limit. It was also instructed that PMR of the individuals which have been approved will be deferred by one year.

5. Learned counsel for the respondents further submitted that PMR application of the applicant was examined in detail. Due to huge deficiency in SKT category to which the applicant belongs, his case was not recommended for PMR and applicant was informed. Thereafter, Smt Sarita Kumari wife of the applicant had approached AWWA, through personal application regarding PMR of the applicant. Appropriate reply was communicated to the spouse of the applicant. Then applicant submitted PMR application dated 16.04.2022 which was examined in detail and the same was rejected due to alarming deficiency in the trade of SKT and essential requirement of his service

to meet the organisational interest. Decision of the respondents was communicated to applicant vide letter dated 10.07.2022. As per Govt of India, Min of Defence letter dated 30.05.1998, terms of engagement in respect of Hav has been revised as 24 years service with colour extendable by 2 years by screening or 49 years of age, whichever is earlier'. In the instant case, the applicant willingly accepted his promotion to the rank of Hav with effect from 01.07.2013 and in terms of Paragraph 2 (h) of Records Office Instruction No 10/2014 he has given certificate stating that 'I, Hav Arun Kumar Singh hereby accept and give my consent to be governed by the terms and condition of service prescribed for the rank of Substantive Hav (SKT) including reserve liability as laid down in SAI 2/S/76 on my promotion to the rank of Substantive Havildar. Now the applicant has filed application for premature discharge on compassionate ground before fulfilling the terms and conditions of service. PMR application is considered based on the vacancies available with the unit. Now with introduction of modified career progression scheme, large numbers of individuals are applying for premature retirement after completing their minimum pensionable service. Applicant applied PMR only after completion of 15 years of pensionable service. It shows that applicant had already planned for premature discharge from service on completion of pensionable service without taking care of organisation needs. For recommending premature discharge on extreme compassionate

ground, Commanding Officer exercises the power as per quota given by Records Office for entire year and when he is satisfied that sanction of premature discharge will not affect functioning of the unit, then only premature discharge application is recommended. No special treatment is given to any specific individual. The prayer of premature discharge of the applicant was turned down due to policy constraints. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

6. we have heard the applicant in person and also heard learned counsel for the respondents and perused the documents available on records.

7. We have given our thoughtful consideration to the facts and rival contentions submitted by both the parties. At the time of considering premature discharge application, the respondents should consider various aspects of the matter including the requirement of administration, along with difficulties of the employee. If we analyse the case of the applicant in the backdrop of the requirement of law, it can be seen that applicant is himself suffering from number of diseases and unable to perform his trade work and he was detailed for AWAAN duty. His old mother is suffering from lifestyle ailment. The requirement of the service even though has to be given paramount consideration, but while examining a case for premature retirement, nonetheless, the competent authority should keep in mind the fact that catering to the social and

emotional needs of the soldier is *sine qua non* for maintaining motivational and moral standards in the organisation. The object of the policy for granting premature discharge is to strike a balance between the requests made by the applicant to leave service and the interest of the force. The rules framed under the Army Act are a necessary concomitant of the intention of the Legislature to establish the Army as an armed force of the Union and the member of this force are subjected to the Act and the Rules and regulations framed thereunder, which contemplate rigorous disciplinary measures. In fact, the rationale which underlies the Article 33 of the Constitution empowers the Parliament by law to restrict or abrogate the provisions of Part I of the Constitution in its application to the members of the Armed Forces. It has been emphasised by the Hon'ble Supreme Court that the purpose of these restrictions is to ensure that proper discharge of duties and proper maintenance of discipline is given paramount consideration. Armed Forces are governed by the provisions of the statutory rules and guidelines framed under the Act and the matter will not lie with the sweet will of army authorities. Various aspects of the matter have to be taken note of and consistent with the requirement of maintaining efficiency and discipline in the force, a decision has to be taken. Though discharge from service is not a right available to the employee or a member of the forces, but it is based on various considerations and the discretion is vested with the competent authority. The applicant has

applied for premature discharge from service due to his health/family problems. The authorities could not consider his case in its proper perspective and rejected the same due to restrictions imposed by Record Office. Rejection of request for discharge should be based on sound reasoning and should be exercised after due caution, prudence and not in an arbitrary manner. While recommending the application for PMR, weightage required to be given by Commanding officer seems to have been ignored. On perusal of record, it is revealed that despite restrictions, some JCOs/OR were sent on PMR but the applicant was denied for PMR. The applicant cannot be punished because his wife also wrote letters to respondents for premature discharge of her husband. Keeping in view family health and family problems of the applicant, PMR of the applicant needs reconsideration by the approving authority. The matter is remanded back to the competent authority with a direction to re-examine the matter to take a decision afresh in accordance with law.

8. We are of the view that early discharge of the applicant will not prejudice the respondents in any manner. Considering all aspects of the matter, improved Covid Pandemic situation and recommencement of recruitment in the Indian Army, we feel that applicant's case needs a review and could be re-examined for grant of premature discharge on compassionate grounds.

9. Accordingly, Original Application is **disposed off** finally with direction to the respondents to reconsider the prayer of the applicant for premature discharge from service on extreme compassionate grounds, keeping in view the overall improved situation of restrictions due to Covid Pandemic and also recommencement of recruitment in the Indian Army. Respondents shall reconsider prayer of the applicant for premature discharge as per rule, within a period of three months from the date of this order and communicate the decision to the applicant accordingly.

10. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 17 January, 2023

Ukt/-