

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 749 of 2024

Thursday, this the 09th day of January, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Hav Ankush Kumar Yadav (15425785-A) Nursing Assistant, presently posted to 404 Field Hospital Pin – 903404 C/o 56 APO.

.... Applicant

Ld. Counsel for the Applicant : **Shri Rang Nath Pandey**, Advocate
Shri Rahul Pandey, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence, Govt. of India, New Delhi-110011.
2. Chief of Army Staff, Head Quarter South Block, New Delhi – 110011.
3. Officer In Chief, Army Medical Corps Records, Pin 900450 C/o 56 APO.
4. Commanding Officer, 404 Filed Hospital Pin 903404 C/o 56 APO.

... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani** , Advocate
Central Govt. Standing Counsel

ORDER

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 the impugned order dated 05.07.2024, Rejection of Application for premature retirement on medical

ground in respect of applicant passed by Respondent No. 3 vide letter No. 490009MP/PLMC. (Annexure No. A-1 to Compilation No. I).

b) To direct the respondents concerned to consider the application for premature retirement on medical as well as domestic grounds in accordance with law.

c) To issue any suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the present facts and circumstances of the case.

d) To award the cost of the proceedings to the applicant.

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Army Medical Corps of Indian Army on 27.12.2007 on the post of Nursing Assistant. The applicant while posted with 404 Field Hospital at Old Cantonment, Prayagraj, Uttar Pradesh applied for premature retirement from service on compassionate grounds on 15.11.2023 and again on 14.03.2024. His application was recommended by the higher officers in chain but the same was not agreed to by the competent authority and vide AMC Records letter dated 05.07.2024, applicant was informed that his premature retirement was not considered by the competent authority due to deficiency of manpower in his trade. Being aggrieved, the applicant has filed the present Original Application for grant of premature discharge from service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 27.12.2007. The applicant has a family comprising his old parents, wife and 2 children (daughter aged 06 years and a son aged only 03 years). His old aged parents are suffering from various medical ailments. The applicant is also suffering from various

permanent disabilities/ diseases. His wife is a government teacher who is posted away from the place of posting of the applicant. Hence, the applicant is facing the challenges and perils of his domestic and personal life while performing his duties in the Army.

4. Learned counsel for the applicant further submitted that applicant while posting at Tezpur (Assam) during 2021-22 has developed various disabilities and diseases like (i) Fracture Proximal Phalanx great TOE Left, (ii) Primary Hypertension and (iii) Pre diabetes (Impaired fasting Glucose) and he was placed under Low Medical Category. Thereafter, during posting at present station i.e. 404 Field Hospital, Old Cantt. Prayagraj, the applicant's disease Fracture Proximal Phalanx great TOE Left has freshly diagnosed as a case of PIVD C5-6 and that due to aforesaid reasons of health issues of family members and to look after well being of a combined joint family, applicant is unable to perform his military duties properly and effectively and therefore, applicant has applied for premature discharge from service on compassionate grounds on 15.11.2023 and again on 14.03.2024. His application was recommended by the higher officers in chain but the same was not considered by the competent authority and rejected vide AMC Records letter dated 05.07.2024 stating the reasons that there is deficiency of personnel in their respective trades.

5. Learned counsel for the applicant also submitted that the applicant has completed more than 16½ years of service with utmost dedication and complete satisfaction of his superiors but he is having genuine family problems due to his ill health and therefore, no bar should be applicable for premature retirement in the present circumstances and he should be

prematurely discharged from service granting pensionary benefits. He placed reliance on the judgment of this Tribunal in OA No. 1033 of 2023, **Hav Jadeja Pruthvirajsinh Jayubha vs. Union of India and Ors**, decided on 07.11.2024, **Hav Virender Singh Vs UoI** in O.A No. 578/2022, **Hav/STA Mukesh Kumar Vs UoI** in O.A No. 517/2021, **Hav Arun Kumar Singh Vs UoI** in O.A No. 609/2022, **Hav Ashok Kumar Joshi Vs UoI** passed by AFT (RB) Kolkata in T.A No. 29/2012 and **K.S Bhimwal Mohs (Lt. Col) Vs UoI passed by Hon'ble High Court of Delhi reported in 79(1999) DLT 297** dated 22.03.1999 and pleaded that applicant's case is squarely covered with aforesaid judgments. Accordingly, keeping in view his disabilities and personal difficulties for the pressing and challenging circumstances being faced by him in performing his military duties, ill health, old aged parents and children and all other difficulties of routine activities, it has become very difficult for him to continue the administrative and professional work with justifiable strength and vigour and therefore, applicant's premature discharge from service be sanctioned forthwith.

6. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army (AMC) on 27.12.2007 and presently posted with 404 Field Hospital Prayagraj since 16.08.2022. The applicant's present medical category is SHAPE-A2 & P2(P) and he will be completing his normal service limit on 31.12.2031 in his present rank. The applicant submitted an application dated 15.11.2023 and 14.03.2024 for premature retirement from service on compassionate ground citing his health issues and old aged parents, and to look after/provide assistance &

support to his aged parents and other family members. 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 in the Corps and restriction imposed by IHQ of MoD (Army) on premature retirement till 31.03.2023 due to adverse impact of COVID-19 pandemic on recruitment in Indian Army. The ceiling of 0.5% for grant of premature retirement to JCO/ORs has been further extended by the competent authority till 30.06.2024 vide IHQ of MoD (Army) letter dated 06.04.2023.

7. Learned counsel for the respondents further submitted that as per para 164 (a) of Regulations for the Army, 1987 and Govt. of India, Ministry of Defence letter dated 03.09.1998, retirement age of Havaldar is 24 years service with colours extendable by 2 years by screening or 49 years of age, whichever is earlier. The applicant's trade is 'Nusing Assistant, hence deficiency of his trade will result in compromise with the life and limb of a patient and it may affect optimal functioning of a hospital. Besides this, there is restriction in granting premature retirement to JCOs/OR till 30.06.2024 due to COVID-19 pandemic and non recruitment in the Army and therefore, premature discharge may affect the operational commitments and preparedness of the Army.

8. 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 and his present term of service/engagement in the rank of Havildar is upto 31.12.2031. 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, keeping in view the deficiency in Corps manpower and limitations imposed by the competent authority on premature retirement, it will not be feasible to consider premature retirement of the applicant at this juncture. He pleaded for dismissal of O.A. being devoid of merit and lacking substance.

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

10. We have given our thoughtful consideration to the facts and rival contentions. The applicant has submitted two applications on 15.11.2023 and 14.03.2024 for premature discharge from service on medical grounds/ill health and other domestic problems as the applicant is facing personal difficulties in performing his assigned task/military duties in pressing and challenging circumstances of the Army. 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 non recruitment due to COVID-19 pandemic, and also to serve as per contract for 20 years colour service and 03 years of reserve liabilities as per terms of engagement signed by the applicant at the time of recruitment in the Army.

11. 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 kept away from the statutory rights if he has moved such an application for premature discharge from service on compassionate grounds due to his own health and his family members and other personal difficulties.

12. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. But considering all aspects of the matter i.e., improved Covid Pandemic situation and recommencement of recruitment in the Army and also applicant being a Nursing Assistant in comparison to a special/technical trade, 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 specially keeping in view of his ill health and old aged parents and other personal difficulties of wife and children.

13. Accordingly, Original Application is **disposed of** finally with direction to the respondents to review and reconsider the prayer of the applicant for premature discharge from service on compassionate grounds on changed circumstances and grounds mentioned in the Original Application by the applicant keeping in view the overall improved situation post Covid-19 Pandemic and also commencement of recruitment in the Indian Army and

restriction imposed by the Army for premature discharge being upto June 2024 only, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

14. No order as to costs.

15. Pending Misc. Applications, if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 09 January, 2025
RK/ SB