

**RESERVED**  
**Court No. 1**

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

**Original Application No. 608 of 2023**

**Thursday, this the 23<sup>rd</sup> day of January, 2025**

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

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

Nk Eldhose Abraham (15438965F)  
S/o Aviracham KM  
R/o Presently posted at Military Hospital, Nasirabad  
Nasirabad Cantt, Ajmer, Rajasthan  
Pin code : 305601

**.... Applicant**

Ld. Counsel for the Applicant: **Wg. Cdr. Ajit Kakkar (Retd)** and  
**Shri Manoj Kumar Awasthi, Advocates**

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110001.
2. The Chief of Army Staff, South Block, New Delhi – 110001.
3. Army Medical Corps Records, Lucknow, C/o 56 APO, PIN-900450.
4. Commandant, Military Hospital Nasirabad, Nasirabad Cantt, Ajmer, Rajasthan, Pin Code : 305601.

**..... Respondents**

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava,**  
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 the following reliefs:-

*“(a) To set aside/quash the impugned letter dated 18.01.2023.*

*(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 the applicant was enrolled in the Indian Army (AMC) on 16.06.2012. The applicant is presently posted with Military Hospital, Nasirabad Cantt since 29.12.2021. The applicant was promoted to the rank of Naik on 01.11.2017. The applicant will be completing his normal service limit on 30.06.2034 in the present rank of Naik. The applicant submitted an application dated 18.02.2022 seeking premature retirement from service on compassionate grounds citing family health issues of parents and father-in-laws, job related problems of wife who is working as a Nurse in Manchester, England but his application was not considered by the competent authority and was rejected by the respondents due to policy limitations, Corps deficiency and organisational interest. Being aggrieved, the applicant has filed the present Original Application for grant of premature discharge from the service on extreme compassionate grounds.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army (AMC) on 16.06.2012. The applicant's parents are above the age of 60 years. The applicant is obligated towards his wife who is working as a Registered Nurse in Manchester, United Kingdom since 05.10.2019. The applicant also has an obligation towards his father-

in-law who lives in Kerala and suffers from Rheumatoid Arthritis which is a chronic inflammatory disorder and typically affects the body joints. The applicant wishes to migrate his parents and father-in-law to Manchester, United Kingdom. The applicant's wife is the only breadwinner in her family as father-in-law is not able to work due to his medical problems. The wife of the applicant and applicant himself are unable to join each other during a leave due to service conditions. Besides this, applicant is concerned and fears that the said on-going challenges in his marriage may even lead to dissolution of the same by way of divorce. The applicant's mental health and stability is disturbed by his inability to comfort and support his wife, the applicant is left in acute agony and opted to seek premature discharge from service under the immense pressure and necessity to secure his marriage and family life for the future. The applicant submitted an application dated 18.02.2022 seeking premature discharge from service which was returned unactioned for want of certificate of non involvement in a disciplinary case and also no disciplinary case is pending against him. The applicant's application for premature discharge from service on compassionate grounds was again forwarded duly completed to the respondent No. 4 vide letter dated 27.10.2022 which was rejected by the respondents vide letter date 18.01.2023 with remark, "*not agreed to by the competent authority*".

4. The applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of **E.P. Royappa v. State of Tamil Nadu and Another**, 1974, SCC 43 and this Tribunal's judgment in OA No. 515 of 2021, **Hav/STA Mukesh Kumar vs. Union of India and Ors**, decided on

03.12.2021, OA No. 578 of 2022, **Hav Virender Singh vs. Union of India and Others**, decided on 02.12.2022, AFT (RB), Kolkata judgment in T.A. No. 29 of 2012, **Havildar Ashok Kumar Joshi vs. Union of India and Ors**, decided on 01.05.2013 and the Hon'ble High Court of Delhi in **K.S. Bhimwal Mohs (Lt. Col.) vs. Union of India & Anr.**, 79 (1999) DLT 297 dated 22.03.1999 and pleaded that applicant's case is squarely covered with aforesaid judgments and accordingly, keeping in view his personal difficulties in performing his military duties, due to ill health of his parents and father-in-law and service related problems of wife who is working alone in Manchester, United Kingdom having no child, 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.

5. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Indian Army (AMC) on 16.06.2012. The applicant is presently posted with Military Hospital, Nasirabad Cantt since 29.12.2021. The applicant was promoted to the rank of Naik on 01.11.2017. The applicant is in medical category SHAPE-1. The applicant will be completing his normal service limit on 30.06.2034 in the present rank of Naik. The applicant submitted an application dated 18.02.2022 seeking premature retirement from service on compassionate grounds citing family health issues of parents and father-in-laws, job related problems of wife serving in Manchester, England but his application was not considered by the competent authority and was rejected by the respondents vide AMC Records letter dated 18.01.2023 due to policy

limitations, deficiency in applicant's trade of Physiotherapy Assistant category and organisational interest.

6. Learned counsel for the respondents further submitted that as per Para 163 (a) of the Regulations for the Army 1987 (Volume-1) and Govt. of India, Ministry of Defence letter dated 03.09.1998, the terms of engagement in respect of a Naik has been revised as 22 years of service extendable by 2 years or 49 years of age, whichever is earlier. Due to adverse impact of COVID-19 pandemic on recruitment in Indian Army, competent authority has conveyed the approval regarding ceiling of '0.5%' of authorised/held strength whichever is less in the trade' for premature retirement quota. Moreover, Addl Directorate General of Manpower, AG's Branch, IHQ of MoD (Army) vide letter dated 12.10.2022 premature retirement quota was revised to 0.25% w.e.f. 01.07.2022 to 30.06.2024. Therefore, premature retirement application of the applicant on compassionate grounds citing health issues of his old age parents, father-in-law and job related problems of his wife who is serving alone in Manchester, England which may lead to their separation and divorce due to marital differences between him and his wife, has been examined but not agreed to by the competent authority due to substantial deficiency in Physiotherapy Assistant category to which the applicant belongs as well as due to the restrictions imposed by the competent authority towards grant of premature retirement. Hence, keeping in view the deficiency in Corps manpower and limitations imposed by the competent authority on premature retirement in applicant's trade, rejection of applicant's application for premature retirement by the competent authority was just

and legal and no injustice has been done to the applicant. She pleaded for dismissal of O.A. being devoid of merit and lacking substance.

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

8. We have given our thoughtful consideration to the facts and rival contentions. The applicant has submitted application for premature retirement from service on the ground of his personal disabilities due to ill health of his old age parents and father-in-law who is suffering from Rheumatoid Arthritis and other age related complications, job related problems of wife who is working in Manchester, England and staying alone. The applicant is facing personal difficulties in performing his assigned task/military duties in pressing and challenging circumstances of the Army extremely due to genuine family health problems of parents, father-in-law and wife who is serving/working as a Nurse in Manchester, United Kingdom. The applicant got married on 17.10.2021 but he is still issueless as both are unable to take leave to visit each other as per their choice and convenience due to service conditions. 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 (Physiotherapy Assistant), 0.25% ceiling on premature retirement and non recruitment due to COVID-19 pandemic, and also to complete terms of engagement/service for 22 years of service in the rank of Naik.

9. 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. The terms of engagement/service keep changing on promotion to the different higher posts. 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 application for premature discharge from service on compassionate grounds due to ill health of his old age parents, father-in-law and other job related/matrimonial problems of wife who is working as a Nurse in Manchester, United Kingdom and staying alone. Besides this, applicant is seeking premature retirement from service before completion of his pensionable service, thus, he will not be able to get any pension from the organisation as his discharge will take place before completion of 15 years of pensionable service.

10. We find that respondents have cited deficiency of personnel/manpower in applicant's trade and restriction imposed by the competent authority as ground for rejecting applicant's request of premature discharge from service. But considering all aspects of the matter i.e. improved Covid Pandemic situation and recommencement of recruitment in the Army and also restriction on premature retirement upto 30.06.2024 as 0.25%, we are of the view that applicant's case needs re-consideration and review by the competent authority for grant of premature discharge on extreme compassionate grounds.

11. 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 changed circumstances and grounds mentioned in 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.

12. No order as to costs.

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

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

Dated : 23<sup>rd</sup> January, 2025  
SB

**(Justice Anil Kumar)**  
**Member (J)**