

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 78 of 2024

Monday, this the 27th day of January, 2025

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

Hon'ble Maj Gen Sanjay Singh, Member (A)

Nk/ORa Chanchlesh Pawar (15421825Y)

S/o Shri Jagdish Pawar

Presently posted at Base Hospital, Lucknow PIN - 926253, C/o 56 APO

R/o Qtr No. 49/03, Rajeev Sandhu Vihar, Lucknow Cantt, UP – 226002

.... 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-110011.
2. The Chief of Army Staff, South Block, New Delhi – 110001.
3. Headquarters South Western Command (Med) PIN: 908791, C/o
56 APO.
4. Senior Record Officer, Army Medical Corps Record Office, PIN
900450, C/o 56 APO.
5. The Commandant, Base Hospital Lucknow, PIN: 926253, C/o 56
APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
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 direct the respondent to quash/set aside the impugned order(s) dated 09.06.2020, 04.02.2021, 30.10.2021 and 14.09.2022.

(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 the applicant was enrolled in the Indian Army (AMC) on 19.12.2004. The applicant is presently posted with Base Hospital, Lucknow since 13.06.2022. The applicant was promoted to the rank of Naik on 01.10.2011. The applicant will be completing his normal service limit on 31.12.2026 in the present rank of Naik. The applicant has been downgraded to low medical category P3(P) for the disability ‘**PIVD L4-L5**’, A3(P) for ‘**MEDIAL MENISCUS TEAR RT KNEE**’ and P2(P) for ‘**PRIMARY HYPERTENSION**’ and ‘**DYSLIPIDEMIA**’. The applicant submitted applications dated 30.12.2019, 21.12.2020, 23.08.2021 and 02.07.2022 seeking premature retirement (PMR) from service on compassionate grounds citing his own disabilities and health related issues of old aged mother but his applications were not considered by the competent authority and were 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 19.12.2004. The applicant has been suffering from multiple medical issues and he is in low medical category for four disabilities, i.e. P3(P) for 'PIVD L4-L5', A3(P) for 'MEDIAL MENISCUS TEAR RT KNEE' and P2(P) for 'PRIMARY HYPERTENSION' and 'DYSLIPIDEMIA'. The applicant because of his medical disabilities is in a really difficult and stressful condition including constant pain in the knee, swelling, popping sensation and difficulty in bending and straightening the leg and also numbness on the inner side of leg. The applicant's father suffered from cardiac arrest and passed away in April 2020 and his mother who is above 65 years requires medical attention as she is suffering from old age ailments. It is moral and social responsibility to look after and take care of his mother but the same is very difficult with his on-going service in the Army. The applicant submitted applications dated 30.12.2019, 21.12.2020, 23.08.2021 and 02.07.2022 seeking premature discharge from service on medical and compassionate grounds which were rejected by the respondents vide their letters dated 09.06.2020, 04.02.2021, 30.10.2021 and 14.09.2022 stating the reasons of deficiency in respective trade as well as restrictions imposed by the competent authority in granting premature retirement from service. The respondents have wrongfully rejected PMR request of the applicant on extreme dire circumstances and therefore, refusal for grant of premature retirement is arbitrary, unreasonable and untenable in the eyes of law.

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 own multiple disabilities, causing difficulties in performing his military duties due to very high blood pressure which causes severe headache, chest pain, dizziness, difficulty in breathing, nosebleeds and even abnormal heart rhythm and ill health of old aged mother suffering from infirmities, it has become very difficult for him to continue the administrative and professional work properly 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 is presently posted with Base Hospital, Lucknow since 13.06.2022. The applicant was promoted to the rank of Naik on 01.10.2011. The applicant will be completing his normal service limit on 31.12.2026 in the present rank of Naik. The applicant has been downgraded to low medical category P3(P) for the disability 'PIVD L4-L5', A3(P) for 'MEDIAL MENISCUS TEAR RT KNEE' and P2(P) for 'PRIMARY HYPERTENSION' and 'DYSLIPIDEMIA'. The applicant

submitted applications dated 30.12.2019, 21.12.2020, 23.08.2021 and 02.07.2022 seeking premature retirement from service on compassionate grounds citing his own disabilities and personal and health related issues of old aged mother. All applications of the applicant were scrutinized/studied in conjunction with relevant rules and policy letters on the subject and not agreed to by the competent authority due to deficiency in applicant's trade, restriction imposed by the competent authority on PMR and organisational interest. The decision of the competent authority rejecting premature retirement request of the applicant was communicated by AMC Records vide letters dated 09.06.2020, 04.02.2021, 30.10.2021 and 17.09.2022.

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 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 upto 30.06.2024. Therefore, premature retirement applications of the applicant on compassionate grounds reflecting own medical condition and ailments of his parents have been examined but not agreed to by the competent authority due to organizational requirements, deficiency in Operating Room 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 applications for premature retirement by the competent authority was just and legal as per rules and policy on the subject and no injustice has been done to the applicant. He 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 four applications for premature retirement from service on the ground of his own disabilities and ill health of his old age mother. The applicant is facing personal difficulties in performing his assigned task/military duties in pressing and challenging circumstances of the Army extremely due to his own four disabilities causing several mental and physical agony and difficulties in performing assigned duties with due diligence, persistence and perfection. 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 (Operating Room Assistant), 0.50% 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 his own disabilities and ill health of his old age mother.

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 0.50%, 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, especially keeping in view his mental and physical condition in performing assigned duties due to his own four disabilities.

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, especially his disabilities, 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 three 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.

(Maj Gen Sanjay Singh)
Member (A)

Dated : January, 2025
SB

(Justice Anil Kumar)
Member (J)