

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 986 of 2023

Monday, this the 20th day of January, 2025

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

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

Hav Jadhav Ajit Shrirang (15423018H)
S/o Shri Jadhav Shrirang Anandrao
R/o Presently posted at Military Hospital Bareilly Cantt, Bareilly, Uttar
Pradesh, PIN Code 900496, C/o 56 APO

.... 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, DHQ PO, New Delhi –
110011.
3. Senior Records Officer, Army Medical Corps Record Office,
Lucknow, PIN-900450, C/o 56 APO.
4. The Commandant, Military Hospital Bareilly Cantt, Bareilly, Uttar
Pradesh, PIN 900496, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
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 respondents to quash/set aside the impugned order(s) dated 31.05.2023.

(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 28.03.2005. The applicant is presently posted with Military Hospital, Bareilly Cantt since 26.08.2022. The applicant was promoted to the rank of Havildar on 18.11.2021. The applicant is in medical category SHAPE-1. The applicant will be completing his normal service limit on 31.03.2029 in the present rank of Havildar, i.e. 24 years of service. The applicant submitted an application dated 24.03.2023 seeking premature retirement from service on compassionate grounds citing family health issues, job related problems of wife serving in Mumbai and education of children 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 28.03.2005. The applicant's father who is 69 years old and suffering from Osteoarthritis and other age related complications and therefore, he requires constant monitoring and follow up and he is totally dependent on him financially and physically.

Such medical issues of his old age father have amplified the difficulties of the applicant. The applicant's mother was looking after the entire family but unfortunately she passed away in the month of Nov. 2022. The wife of the applicant is working as an Accountant in a Civil Organization in Mumbai for the past four years. The applicant has two children and one of them is 8 months old. The applicant's wife being a working woman is not able to cope up with her job, family responsibilities including the care and constant follow up owing to illness of applicant's father. It is moral and social responsibility of the applicant to look after the well-being of his family members, however, the same is difficult while he is continuing in service. The applicant is unable to focus on his job due to ill-health of his father and family problems. Based on these genuine grounds, applicant submitted premature retirement (PMR) application dated 24.03.2023 but the same was rejected by the respondents vide AMC Records letter dated 31.05.2023, citing reasons of deficiency of manpower in applicant's trade.

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 father and all other difficulties of routine activities of wife and minor children, 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 Army (AMC) on 28.03.2005. The applicant is presently posted with Military Hospital, Bareilly Cantt since 26.08.2022. The applicant was promoted to the rank of Naik on 03.03.2018 and Havildar on 18.11.2021. The applicant is in medical category SHAPE-1. The applicant will be completing his normal service limit on 31.03.2029 in the present rank of Havildar, i.e. 24 years of service. The applicant submitted an application dated 24.03.2023 seeking premature retirement from service on compassionate grounds citing health issue of his old age father, job related problems of wife serving in Mumbai and two children which was examined by the competent authority but the same was not considered by the competent authority and was rejected due to policy limitations, trade deficiency and 0.5% ceiling on premature retirement vide AMC Records letter dated 31.05.2023.

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 Havildar has been revised as 24 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. Besides this, Adjutant General's Branch, IHQ of MoD (Army) vide letter dated 06.04.2023 had extended the restrictions on premature retirement w.e.f. 01.07.2023 to 30.06.2024 as 0.5%. Therefore, premature retirement application of the applicant on compassionate grounds citing health issues of his old age father, job related problems of his wife and looking after of two minor children, has been examined but not agreed to by the competent authority due to acute deficiency in Corps manpower, deficiency in applicant's trade of Washerman, organization requirements and limitations imposed by the competent authority on consideration of premature retirement to reduce the impact of COVID-19 pandemic on Army recruitment process. Hence, keeping in view the deficiency in Corps manpower and limitations imposed by the competent authority on premature retirement in Washerman trade of the applicant, rejection of applicant's application for premature retirement was just and legal 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 application for premature retirement from service on the ground of his personal disabilities due to ill

health of his father who is more than 69 years old and patient of Osteoarthritis and other age related complications, job related problems of wife who is working in Mumbai and other difficulties of two minor children. 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 problems of father, wife and children. 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, 0.5% ceiling on premature retirement and non recruitment due to COVID-19 pandemic, and also to complete terms of engagement/service for 24 years of service in the rank of Havildar.

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 father and other job related problems of wife and look after of two minor children.

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 0.5%, 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 change 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.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 20th January, 2025
SB

(Justice Anil Kumar)
Member (J)