

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 517 of 2021****Friday, this the 3<sup>rd</sup> day of December, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Hav/STA Mukesh Kumar (15424602M)  
 S/o Shri Om Prakash Dahiya  
 C/o H. No. T 06/2962, Sant Nagar, Pitampura, Near M2K  
 New Delhi-110034

**.... Applicant**

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, holding  
 brief of **Wg Cdr Ajit Kakkar (Retd)**,  
 Advocate

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-110011.
3. Army Medical Corps Record office, PIN-900450, C/o 56 APO.
4. Command Hospital Western Command, Chandimandir,  
Panchkula, Haryana – 134109.

**... Respondents**

Ld. Counsel for the Respondents : **Shri G.S. Sikarwar**,  
 Govt Standing Counsel

**ORDER (Oral)**

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 direct the respondent to quash/set aside the impugned orders dated 02.12.2020 and 20.12.2020.*

*(b) To consider the applicant for grant of premature retirement in view of his circumstances.*

*(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 29.09.2005. The applicant was diagnosed as a case of Hansen's Disease (Indeterminate) due to which he was placed in LMC P3 (T-24), P2 (T-24). The applicant was posted to Command Hospital (WC), Chandimandir on compassionate grounds for his treatment and was on medication and occupational therapy. The applicant was re-examined by a medical specialist and was placed in low medical category P2 (Permanent) w.e.f. 16.03.2019. The applicant's parent are also dependent on him and are facing an ordeal as both of them suffer from infirmities which require constant monitoring and follow-up. Therefore, applicant submitted an application in October 2019 to Brigadier In-charge Administration, Command Hospital, Chandimandir requesting for grant of premature retirement which was recommended and forwarded to Records but the same was rejected vide Records letter dated 02.12.2020 on the grounds of restrictions imposed by IHQ of MoD (Army) due to deficiency in applicant's trade i.e. Special Treatment Assistant (STA). A posting order dated 15.09.2020 was issued by AMC Records by which applicant was posted to MH Ramgarh w.e.f 14.11.2020, however his posting was withheld as applicant's application for premature retirement was pending for approval by the Respondents. The applicant after rejection of his request for premature retirement applied for change of posting

which was also rejected. Being aggrieved, the applicant has filed the present Original Application for grant of premature retirement.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 29.09.2005. The applicant was medically examined in September, 2017 and was diagnosed as a case of Hansen's Disease (Indeterminate) due to which he was placed in low medical category (LMC) P3 (T-24), P2 (T-24). He was further admitted for institutional therapy in Base Hospital, Delhi Cantt for 5 months. The applicant was posted to Command Hospital (WC), Chandimandir on compassionate grounds for his treatment and was on medication and occupational therapy. The applicant was re-examined by a medical specialist and was placed in low medical category P2 (Permanent) w.e.f. 16.03.2019 vide opinion dated 27.02.2019. The said infirmity had impacted the applicant both physically and mentally. Nevertheless, the applicant continued rendering his service with his best efforts and performed each and every task assigned to him with due diligence. The applicant's parents are also dependent on him and are facing an ordeal as both of them are advanced in years and suffer from infirmities which require constant monitoring and follow-up. The applicant's father is patient of Asthma and needs constant medical care and attention. The parents are unable to sustain their livelihood as they are dependent solely on farming and are unable to pursue the same owing to their old age and ailments. Therefore, applicant submitted an application in October 2019 to Brigadier In-charge Administration, Command Hospital, Chandimandir requesting for grant of premature retirement which was recommended and forwarded to Records but the same was rejected

vide Records letter dated 02.12.2020 on the grounds of restrictions imposed by IHQ of MoD (Army) due to deficiency in applicant's trade i.e. STA.

4. Learned counsel for the applicant further submitted that it is pertinent to mention here that the ground of rejection is absolutely arbitrary and invalid as the applicant had been working in ECHS Cell as Clerk for the past 18 months. The respondents have denied applicant's request without any due consideration of the circumstances of applicant's own medical condition and that of his parents. A posting order dated 15.09.2020 was issued by AMC Records by which applicant was posted to MH Ramgarh w.e.f 14.11.2020, however his posting was withheld as applicant's application for premature retirement was pending for approval by the Respondents. The applicant after the rejection of his request for premature retirement submitted an application dated 30.12.2020 to Brigadier Incharge Administration, Command Hospital, Chandimandir apprising lack of medical facilities at MH Ramgarh which would interrupt his ongoing treatment for Hansen's disease as well as his father's Asthma. However, the respondents rejected applicant's plea for change of posting vide order dated 04.01.2021.

5. Learned counsel for the applicant placed reliance on the judgment of AFT (RB), Kolkata in T.A. No. 29 of 2012, ***Havildar Ashok Kumar Joshi vs. Union of India and Ors***, decided on 01.05.2013. Relevant extract of Para 10 and 13 of the judgment being important is quoted below :-

*“10. 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 blamed if he has filed such an application in view of his family condition.*

*13. Considering all aspects of the matter, we are of the view that this is a fit case where this Tribunal should intervene and issue direction to the respondents to consider the matter of early discharge of the applicant as an extreme compassionate case.”*

6. Learned counsel for the applicant also placed reliance on the judgment of 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.

Para 9 of the judgment being relevant is reproduced as under :

*“9. The respondents have not disputed the position of the petitioner and his obligation to his parents. Therefore, the petitioner cannot be denied his right to seek premature retirement. The respondents have acted illegally in rejecting the request of the petitioner for premature retirement and the respondents have not taken into account the relevant factors to come to the decision relating to the request of the petitioner for premature retirement. The respondents are directed to retain the petitioner in Delhi until orders are passed on the petitioner's application for premature retirement.”*

Learned counsel for the applicant pleaded that applicant's case is squarely covered with aforesaid judgments and accordingly, applicant's premature discharge from service be sanctioned.

7. On the other hand, learned counsel for the respondents submitted that applicant was posted to 176 Military Hospital w.e.f. 03.07.2018 on compassionate grounds. After completion of his posting tenure with

Command Hospital (WC), Chandimandir, his posting order was issued to Military Hospital, Ramgarh vide Records letter dated 15.09.2020. The applicant completed his 15 years of service on 29.09.2020 and was eligible for service pension, therefore, he applied for premature retirement (PMR) on 18.10.2020. Applicant's request for PMR from service on compassionate grounds was not considered and it was rejected vide Records letter dated 02.12.2020 due to deficiency in applicant's trade. The applicant was under posting to MH Ramgarh which was implemented on 12.01.2021 vide movement order dated 11.01.2021.

8. Learned counsel for the respondents further submitted that applicant had not given any representation against his posting order till 29.12.2020 whereas his posting order was issued on 15.09.2020 with move date on 14.11.2020, hence, his posting order was implemented according to order of AMC Records. 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, applicant is not entitled for grant of premature retirement from service. He pleaded for dismissal of O.A.

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. It is not disputed that applicant is suffering from 'Hansen's Disease' for which he requires constant medical treatment and his parents are also suffering from some ailments. Since, the parents are wholly dependent on the applicant and suffering from Asthma and other

ailments being old age, applicant submitted an application for premature discharge from service due to his domestic problems and also on medical grounds. 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.

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 blamed if he has filed such an application in view of his Hansen's disease and ill health of his parents.

12. We also take note of the fact that the Brigadier In-charge Administration, Command Hospital (WC), Chandimandir has very strongly recommended the case of the applicant for early discharge on compassionate grounds. Although the respondents have taken a ground of deficiency of individuals in STA trade, we are of the view that his early discharge will not prejudice the respondents in any manner. Considering all aspects of the matter and aforesaid judgments, we are of the view that this is a fit case to issue direction to the respondents to consider the matter of premature discharge of the applicant as an extreme compassionate case.

13. Accordingly, Original Application is allowed. The impugned orders passed by the respondents are set aside. The respondents are directed

to consider the prayer of the applicant for premature discharge from service on extreme compassionate grounds and issue necessary release order within a period of three months from the date of communication of this order.

14. No order as to costs.

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

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 3<sup>rd</sup> December, 2021  
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