

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 578 of 2022****Friday, this the 2nd day of December, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Hav Virender Singh (15421314-P)

S/o Shri Balraj Singh

Presently posted at Command Hospital, Lucknow (UP) - 226002

.... ApplicantLd. Counsel for the Applicant: **Ms. Chhavi Yadav**, Advocate 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. Chief of the Army Staff, South Block, New Delhi-110011.
3. Senior Record officer, Army Medical Corps Record Office, PIN – 900450, C/o 56 APO.
4. Command Hospital Lucknow Cantonment road, Sadar Bazar, Lucknow (UP) – 226002.

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
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 25.10.2019, 01.10.2019, 19.05.2021 and 18.04.2022.

(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. Counter affidavit filed by the respondents is taken on record.
3. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 26.09.2004. His present medical category for ‘Primary Generalized Epilepsy’ is P3 (P) and for ‘Chronic Spontaneous Urticarial’ is P3 (T-24). The applicant has submitted many applications dated 16.09.2019, 18.05.2020, 15.04.2021 and 18.02.2022 requesting for premature retirement from service on extreme medical grounds but all the applications seeking premature retirement from service were rejected by the respondents on the ground of deficiency of manpower in applicant’s trade and restriction imposed by the IHQ of MoD (Army) till 31.03.2023. Being aggrieved, the applicant has filed the present Original Application for grant of premature retirement.
4. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 26.09.2004. The applicant was medically examined on 08.01.2010 and was diagnosed with ‘Primary Generalized

Epilepsy' and was placed in LMC S1H1A1P3(T-24)E1 by the medical board. He was reviewed in June 2010 and was placed in LMC S1H1A1P2E1 w.e.f. 25.06.2010. In re-categorisation medical board on 25.06.2012, applicant was placed in LMC P2(P) w.e.f. 25.06.2012. In next re-categorization medical board, he was downgraded to P3(P) w.e.f. 27.06.2016 for his disability 'Primary Generalized Epilepsy' and since then applicant continued in LMC P3(P). The applicant's re-categorisation board was done on 15.01.2022 in which he was diagnosed with 'Chronic Spontaneous Urticaria' and was placed in LMC P3(T-24). The applicant was medically examined at Base Hospital, Lucknow on 03.06.2022 and was placed in LMC P2(P) for 'Chronic Spontaneous Urticaria'.

5. Learned counsel for the applicant further submitted that as per Psychometric report, the applicant is suggestive of seeking approval and displacing anxiety under stress. The applicant's parents suffering from infirmities are also dependent on the applicant. The mother of the applicant is suffering from 'Rheumatoid Arthritis, Migraine and other age old problems and needs constant medical care and attention. The wife of the applicant is also under treatment of mental illness and is undergoing treatment from Psychiatrist for 'Panic Disorder and Hypothyroidism or Thyroiditis'. The applicant's wife and two little children need applicant's constant support and supervision. There is a

court case of ancestral property and it has become extremely difficult for the applicant to attend Court hearing. Due to aforesaid compelling situations, the applicant submitted an application dated 16.09.2019 for premature retirement (PMR) from service on medical grounds and health issues of himself and family members which was strongly recommended by Company Commander, Brigadier IC Administration and Commander Troops, Dean and Dy Commandant of AFMC Pune but the same was turned down by the respondents vide Signal/letter dated 25.10.2019. The applicant again applied for PMR vide application dated 18.05.2020 citing all medical and family problems duly recommended by the officers in chain but the same was also turned down by the respondents vide signal/letter dated 01.10.2020. The applicant submitted another application dated 13.05.2021 requesting issuance of NOC to apply for civil employment under ROI 21/2014 to settle himself nearby his home to earn bread and butter to his family but the same was rejected by the respondents. The applicant, facing a lot of difficulties in performing his duties due to his disabilities, again submitted application dated 15.04.2021 for his unwillingness to continue in service and to grant sanction/approval for his premature discharge from service but the same was rejected vide letter dated 19.05.2021 stating that application cannot be agreed to by the authorities due to deficiency in respective trades.

6. Learned counsel for the applicant further submitted that it is pertinent to mention that applicant is a Lab Assistant and has been working/performing his duties in the respective filed. The sole reason for rejection of the applicant's PMR application is that there is deficiency in his trade, however, if that is so, then applicant would not have been relieved of his duty as a Laboratory Assistant and asked to perform clerical duties. The respondents vide Part I Order dated 05.04.2022 has handed over the charge of NCO IC DGLP Receipt Cell to the applicant which is a clerical nature, thus, respondents are creating a hoax of deficiency of manpower in his trade. If there would have been a deficiency of personnel in the applicant's trade, he would not have been relieved of his duty of a Lab Assistant.

7. Learned counsel for the applicant placed reliance on the judgment of this Tribunal in OA No. 515 of 2021, **Hav/STA Mukesh Kumar vs. Union of India and Ors**, decided on 03.12.2021, 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 and the Hon'ble Apex Court judgment in **Sanjay Jain vs. Union of India**, Civil Appeal No. 7822 of 2011 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 mental disabilities,

wife's mental condition, mother's disease and children problems, court case and 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.

8. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army (Army Medical Corps) on 27.09.2004. The applicant was promoted to the rank of Havildar on 02.11.2015 and will be completing his normal service limit on 30.09.2028 in his present rank. His present medical category for 'Primary Generalized Epilepsy' is P3 (P) and for 'Chronic Spontaneous Urticarial' is P3 (T-24). The applicant while serving in Pune has submitted an application dated 16.09.2019 seeking premature retirement from service on medical ground due to health issues and no further scope of career progression being in low medical category. As per IHQ of MoD (Army) letter dated 29.08.2018 and letter dated 14.07.1972 restriction was imposed on premature retirement, hence, it was not agreed to due to deficiency of manpower in his trade. Thereafter, applicant again submitted an application dated 18.05.2020 for premature retirement on medical grounds, looking after old aged parents, court case and medical treatment of his wife etc. but the same was not considered due to deficiency in Laboratory Assistant category

to which the applicant belongs. Thereafter, due to COVID-19 pandemic, IHQ of MoD (Army) vide letter dated 17.11.2020 has conveyed the approval of competent authority regarding the ceiling on premature retirement quota, i.e. 0.5% of authorised/held whichever is less in the trade which is effective till 31.03.2023. Notwithstanding to the above, the applicant submitted his unwillingness to continue in service seeking approval of discharge on medical ground vide his application dated 15.04.2021 which was not agreed to by the competent authority as per the merit of the case vide AMC Records letter dated 19.05.2021. In spite of repeated instruction with regard to restriction imposed on premature retirement, the applicant again submitted an application dated 18.02.2022 due to his own health issues, health issues of his wife and parents and property dispute, which was rejected by the competent authority vide AMC Records letter dated 18.04.2022.

9. Learned counsel for the respondents further submitted that in view of deficiency of manpower in applicant's trade and restriction imposed by IHQ of MoD (Army) for premature retirement due to COVID-19 pandemic, the Original Application filed by the applicant seeking premature discharge from service is not justified from any angle or any ground, therefore, Original Application is liable to be dismissed on the ground of non-exercise of statutory remedy.

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

11. We have given our thoughtful consideration to the facts and rival contentions. It is not disputed that applicant is suffering from two disabilities, 'Primary Generalized Epilepsy' and 'Chronic Spontaneous Urticaria'. The applicant's parents are suffering from infirmities and are dependent on the applicant. The mother of the applicant is suffering from 'Rheumatoid Arthritis, Migraine and other age old problems and the wife of the applicant is also under treatment of mental illness and is undergoing treatment from Psychiatrist for 'Panic Disorder and Hypothyroidism or Thyroiditis'. A court case of ancestral property is also pending in which appearance of the applicant is required to attend Court hearing. The applicant's wife and two little children need applicant's constant support and supervision. Due to aforesaid compelling situations, applicant is unable to perform his duties in a proper way and simultaneously, he is unable to look after his family members who are facing medical/health related issues. The applicant submitted many applications for premature discharge from service on medical grounds of self, parents, wife and children but all the applications seeking premature discharge from service have been rejected by the respondents citing deficiency in his trade and ceiling on premature retirement quota as imposed by IHQ of MoD (Army) which is effective till 31.03.2023.

12. We have also observed that applicant is presently not performing the duties of his trade, i.e. Laboratory Assistant rather he is performing clerical duties, this shows that if there is shortage of manpower in his Laboratory Assistant trade, he should not have been detailed to perform clerical duties. This shows that authorities could not consider his case in its proper perspective, specially health related issues of the applicant, parents, wife and children and rejected the same on the grounds of deficiency in applicant's trade and restrictions imposed by IHQ of MoD (Army) on premature retirement due to COVID-19.

13. Keeping in view the aforesaid observations, we are of the view that since the applicant is deployed out of his trade work and recruitment process in the Indian Army has also started, therefore, at this juncture, we do not find any valid reason in denying sanction of premature retirement by the respondents on extreme medical grounds/disabilities to which applicant is suffering.

14. We also take note of the fact that all officers in chain including Deputy Commandant of AFMC, Pune who are Medical Officers have very strongly recommended the case of the applicant for early discharge on extreme medical grounds. Although the respondents have taken a ground of shortage of manpower in applicant's trade and restriction imposed for premature discharge by IHQ of MoD (Army) till 31.03.2023, 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.

15. 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/medical grounds and issue necessary release order of the applicant from service within a period of four months from the date of communication of this order.

16. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December, 2022
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