

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 113 of 2024

Thursday, this the 05th day of December, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Gajendra Singh (No. 15425198P Hav/NA), Son of Bheem Singh, permanent resident of Village – Paigaon, Post Office – Paigaon, District – Mathura (Uttar Pradesh)-281401.

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi-110001.
2. Director General Medical Services (Army), Integrated Headquarters of the Ministry of Defence (Army), Adjutant General’s Branch, ‘L’ Block, New Delhi-110001.
3. Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow, PIN-900450, C/O - 56 APO.
4. MG Medical, Headquarters Norther Command, PIN-908545, C/O – 56 APO.
5. Commandant, Command Hospital (Northern Command), Udhampur, C/O – 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**, Advocate
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 following reliefs:-

(a) *Issue/pass an order setting aside the letter/order dated 17.11.2023 issued on behalf of the Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow, rejecting the case of the applicant for premature discharge from service, after summoning the relevant original records.*

(b) *Issue/pass an order directing the respondents to reconsider and grant the applicant's pre-mature discharge on own request with consequential service benefits from due date.*

(c) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(d) *Allowing this Application with cost.*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Army Medical Corps of Indian Army on 06.07.2006. The applicant sustained injury while posted at Dogra Scouts (High Altitude) on 09.09.2022 when he slipped and fell on snow during performance of duty. Since then, the applicant became a patient of 'Low Backache'. The applicant has also been diagnosed as a case of 'Primary Hypertension'. The applicant has also been suffering with headache and migraine pain. The applicant applied for premature retirement from service on compassionate grounds on 04.09.2023. His application was

recommended by the higher officers in chain but the same was not agreed to by the competent authority and vide AMC Records letter dated 17.11.2023, applicant was informed that his premature retirement was not agreed to by the competent authority, due to policy limitations, Corps deficiencies and organizational interest. Being aggrieved, the applicant has filed the present Original Application for grant of premature discharge from service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 06.07.2006. The applicant is suffering with mental stress due to family circumstances and is feeling great difficulty to perform his military duties with full potential and upto the marks. The applicant has the responsibility to take care of his disabled minor daughter and aged and ailing parents. Eleven years old daughter of the applicant is suffering with a visual impairment at the rate of 40%. Applicant's daughter is a case of '*Open Globe Injury (Left Eye) Optd with Anisometropic Amblyopia (Left Eye)*'. As per the medical opinion, the visual condition is not likely to improve. Further, the aged parents of the applicant residing at the native place are also not keeping well as they are suffering with various ailments. Applicant's mother is mainly suffering with '*Chronic Obstructive Pulmonary Disease (COPD)*', whereas, the father of the applicant is suffering with '*Total Hip Replacement (RT)*' since the year 2011 and now he is facing various complications including persistent pain. Hence, the applicant is facing the challenges and perils of his domestic and personal life while performing his duties in the Army.

4. Learned counsel for the applicant further submitted that due to aforesaid reasons of health issues of family members and to look after well being of a combined joint family, applicant is unable to perform his military duties properly and effectively and therefore, applicant applied for premature discharge from service on compassionate grounds on 04.09.2023 and his application was recommended by the higher officers in chain but the same was not agreed by the competent authority and rejected vide AMC Records letter dated 17.11.2023 on the ground of policy limitations, Corps deficiencies and organizational interest.

5. Learned counsel for the applicant also submitted that the applicant has completed more than 18 years of service with utmost dedication and complete satisfaction of his superiors but he is having genuine family problems due to ill health of his family members and therefore, no bar should be applicable for premature retirement in the present circumstances and he should be prematurely discharged from service granting pensionary benefits. He 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, OA No. 578 of 2022, **Hav Virender Singh vs. Union of India and Others**, decided on 02.12.2022, 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 **Major Rahul Shukla vs. Union of India & Ors** (1995) 34

DRJ 399 (DB) and pleaded that applicant's case is squarely covered with aforesaid judgments and accordingly, keeping in view his personal difficulties for the pressing and challenging circumstances being faced by him in performing his military duties, ill health and medical problems of daughter and parents and all 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.

6. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army (AMC) on 06.07.2006 and presently posted at Command Hospital, Udhampur since 01.05.2023. He was promoted to the rank of Naik on 01.07.2011 and Havildar on 16.07.2018 with seniority with effect from 17.06.2018. The applicant's present medical category is SHAPE-1 and he will be completing his normal service limit on 31.07.2030 in his present rank. The applicant submitted an application dated 04.09.2023 for premature retirement from service on compassionate ground citing health issues of his family members, and to look after/provide assistance & support to his aged parents and other family members. His application was processed and was examined in detail by AMC Records but the competent authority has not agreed to sanction premature retirement as per the merit of the case based on deficiency of his trade in the Corps and restriction imposed by IHQ of MoD (Army) on premature retirement till 31.03.2023 due to adverse impact of COVID-19 pandemic on recruitment in Indian Army. The ceiling of 0.5% for grant of premature retirement to JCO/ORs has

been further extended by the competent authority till 30.06.2024 vide IHQ of MoD (Army) letter dated 06.04.2023.

7. Learned counsel for the respondents further submitted that as per para 164 (a) of Regulations for the Army, 1987 and Govt. of India, Ministry of Defence letter dated 03.09.1998, retirement age of Havildar is 24 years service with colours extendable by 2 years by screening or 49 years of age, whichever is earlier. Besides this, AMC is providing medical treatment to all dependents of serving personnel and many multispecialty service hospitals are located across the country to provide required treatment and to ensure good health of serving soldiers and their dependents. The applicant can utilize the medical facilities available at service hospitals at his duty station as well as at nearest military hospital of his native place. After consideration of all aspects i.e. organization requirement, deficiency in Corps Manpower and the limitations imposed by the competent authority for consideration of premature retirement to reduce the impact of COVID-19 pandemic on Army requirements process the applicant's premature application was not agreed to by the competent authority. The applicant had wilfully accepted promotion to the rank of Havildar in July, 2018, hence his revised term of engagement/service is 24 years or 49 years of age, whichever is earlier.

8. Learned counsel for the respondents further submitted that premature retirement from service at own request is being dealt with as per guidelines issued by IHQ of MoD (Army) from time to time and only genuine cases are recommended after verifying the merit of the case and Corps manpower state. He also submitted that applicant signed a contract

for 20 years of colour service and 03 years of reserve liabilities as per terms and engagement contained in the Enrolment Form signed by him at the time of enrolment in the Army and his present term of service/engagement in the rank of Havildar is upto 31.07.2030. 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, keeping in view the deficiency in Corps manpower and limitations imposed by the competent authority on premature retirement, it will not be feasible to consider premature retirement of the applicant at this juncture. He pleaded for dismissal of Original Application being devoid of merit and lacking substance.

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. The applicant has submitted two application on 04.09.2023 for premature discharge from service on medical grounds/ill health of family members (self, daughter and parents) and other domestic problems as the applicant is facing personal difficulties in performing his assigned task/military duties in pressing and challenging circumstances of the Army. 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 Corps Manpower and non recruitment due to COVID-19 pandemic, and also to serve as per contract for 20 years colour service and 03 years of reserve liabilities as per terms

of engagement signed by the applicant at the time of recruitment in the Army.

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 kept away from the statutory rights if he has moved such an application for premature discharge from service on compassionate grounds due to ill health of self, daughter and his parents.

12. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. But considering all aspects of the matter i.e., improved Covid Pandemic situation and recommencement of recruitment in the Army and also applicant being a Nursing Assistant in comparison to a special/technical trade, we are of the view that applicant's case needs re-consideration and review by the competent authority for grant of premature discharge on compassionate grounds specially keeping in view ill health of members of his joint family.

13. 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 compassionate grounds, 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, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

14. No order as to costs.

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

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 05 December, 2024

SB/AKD/-