

RESERVED
Court No.2
(Sl. No.8)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 283 of 2022

Wednesday, this the 05th day of July, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Hav (HK) Sanjoy Samanta (15420440 P) S/o Sh. Bikash Samanta, Posted at Military Hospital, Pulgaon, CAD Pulgaon, Deoli, Wardha Maharashtra, Pin-442303.

.....Applicant

Ld. Counsel for : **Shri Manoj Kumar Awasthi**, Advocate
the applicant holding brief for **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-11000.
3. Army Medical Corps Records Pin-900450 C/o 56 APO.
4. Military Hospital Pulgaon Pin-900420 C/o 56 APO.
5. HQ MG & G Area (MED) Pin-900497 C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate
Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed 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 Orders dated 06.01.2022.

(b) To consider the Applicant for grant of premature Discharge 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 Army Medical Corps (AMC) on 29.06.2004. He has been performing his duties with utmost dedication for more than 17 years. In February, 2021 he was medically examined and was diagnosed as a case of PIVD L4-L5 and was placed in low medical category P3 (T-24). On being downgraded to low medical category and finding difficult to perform his duties efficiently he submitted an application dated 01.12.2021 requesting for premature retirement from service on extreme medical grounds but it was rejected by the respondents vide letter dated 06.01.2022. 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 29.06.2004. It was further submitted that during the course of his service he was medically examined on 09.02.2021 and found to be suffering from PIVD L4-L5. Consequently, he was referred to Military Hospital, Kamptee from where he was further transferred to Command Hospital (Southern Command), Pune for further investigation and his medical category was downgraded to P-3 (T-24). It was further submitted that due to his nature of work i.e. housekeeping, he is facing great difficulties in accomplishing his assigned day-to-day tasks.

4. Learned counsel for the applicant further submitted that the medical board proceedings dated 01.03.2021 has clearly laid down that strenuous work and exercises be avoided to aggravate his problem further and also he is not permitted to lift weight. In support of his contention, learned counsel for the applicant has placed reliance on order dated 03.12.2021 passed by this Tribunal in O.A. No. 517 of 2021, **Hav/STA Mukesh Kumar vs. Union of India and Ors**, order dated

01.05.2013 passed by AFT (RB), Kolkata in T.A. No. 29 of 2012, **Havildar Ashok Kumar Joshi vs. Union of India and Ors**, the Hon'ble Apex Court judgment in **Sanjay Jain vs. Union of India**, Civil Appeal No. 7822 of 2011 and the Hon'ble Delhi High Court order dated 22.03.1999 passed in **K.S. Bhimwal Mohs (Lt. Col.) vs. Union of India & Anr.**, 79 (1999) DLT 297 and pleaded that applicant's case is squarely covered with aforesaid judgments and accordingly, keeping in view his medical disabilities and nature of work he be granted premature discharge from service with immediate effect.

5. Further submission of learned counsel for the applicant is that his parents are wholly dependent on him due to his age related difficulties and now it has become very difficult for them to lead life without any help. It was further submitted that due to aforesaid difficulties the applicant is unable to perform his duties efficiently and to the utmost satisfaction of himself and his superiors. He pleaded for grant of premature discharge forthwith.

6. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in

the AMC on 29.06.2004. It was further submitted that he will be completing his normal service limit on 30.06.2028, in the present rank. He is a case of PIVD L4-L5 and his present medical category is S1H1A1P3(P)E1. He has submitted an application dated 01.12.2021 seeking premature retirement from service on medical grounds due to health issues and no further scope of career progression being in low medical category.

7. Further submission of learned counsel for the respondents is that due to ongoing Covid-19 pandemic IHQ of MoD (Army) vide letter dated 07.10.2020, 16.10.2020, and 14.07.1972 imposed restriction on premature retirement, hence, due to deficiency of manpower in his trade, his case for premature discharge from service was not considered. Thereafter, vide IHQ of MoD (Army) letter dated 17.11.2020 the competent authority has restricted premature discharge quota to the extent of 0.5% of authorized/held strength whichever is less in the trade which was effective till 31.03.2023. It was 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.

8. Heard Shri Manoj Kumar Awasthi, Advocate holding brief for Wg Cdr Ajit Kakkar (Retd), learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents and perused the record.

9. Applicant was enrolled in the Army on 29.06.2004 and during the course of his service he was promoted to the rank of Havildar w.e.f. 24.03.2000. The applicant suffered with medical disability 'PIVD L4 L5 (M51.06)' and his medical category was downgraded to S1H1A1P3(T-24)E1 w.e.f. 01.03.2021. In the last medical board conducted at Military Hospital, Pulgaon his medical category has been re-categorized as S1H1A1P3(Permt).

10. Due to aforesaid disability applicant submitted application dated 01.12.2021 for premature discharge from service on medical grounds but it was not allowed vide letter dated 06.01.2022 on the ground of deficiency

of manpower which was increasing owing to impact of Covid-19.

11. In the instant case we find that the applicant vide application dated 01.12.2021 had submitted his unwillingness certificate to continue in service due to adverse impact on his health and the said application was recommended by his Commanding Officer on 03.12.2021 keeping in view of his adverse medical condition.

12. Application for grant of premature discharge from service in respect of the applicant was turned down vide AMC Records letter dated 06.01.2022 mainly on the ground of deficiency of manpower due to Covid-19 which is over now. For convenience sake, extract of Para 3 of letter dated 06.01.2022 is reproduced as under:-

"3. At present Corps is facing huge defi of 110 (-) 3.56% in HK cat and the same is also on increasing tend owing to sanctioned manpower is not getting recruited due to impact of Covid-19 pandemic as well as monthly superannuation on completion of TOE."

13. During the course of hearing it was informed that there was a restriction for premature discharge from service due to Covid-19 pandemic up to 31.03.2023.

Thus, from the aforesaid it is noticed that due to restriction imposed on premature discharge on account of Covid pandemic the competent authority has rejected his application for his premature discharge due to restriction imposed up to 31.03.2023 which date in the instant case has already expired, meaning thereby restriction imposed on premature discharge due to Covid pandemic has been withdrawn and applications may be considered.

14. It is true that at the time of enrolment certain terms and conditions are laid out 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 a provision for voluntary retirement or premature discharge on stated grounds. Therefore, the applicant has a right to submit such application on medical grounds/compassionate grounds/family problems such as due to ill health of his parents.

15. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. We are, however, of the view that his early discharge will not prejudice the respondents in any manner. The applicant belongs to housekeeping category and housekeeping is a very critical function in hospitals. The

main functions of housekeeping is overall cleanliness, ensuring maintenance of the building and its infrastructure, linen management, waste management, pest control, infection control, safety and security of the patients as well as the infrastructure. Considering all aspects of the matter i.e. his low medical category due to L4 L5, improved Covid Pandemic situation and recommencement of recruitment in the Army, we are of the view that applicant's case for premature discharge from service deserves to be allowed.

16. Accordingly, Original Application is **allowed**. The respondents are directed to allow his premature discharge application on extreme compassionate grounds keeping in view his low medical category (L4 L5) of the applicant, overall improved situation post Covid-19 Pandemic and also commencement of recruitment in the Indian Army, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

17. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: 05.7.2023

rathore

(Justice Anil Kumar)
Member (J)