

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 427 of 2023****Thursday, this the 27th day of July, 2023****Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

JC-702334-A Naib Subedar (Nursing Technician) Ritesh Kumar of
 Command Hospital, Central Command, Lucknow
 S/o Late Shri Kapur Chand Shah
 R/o House No. 34/3, Old Victoria Line, Lucknow Cantt – 226002

.... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate
 Shri Girish Tiwari, Advocate
 Shri Dheerendra Kumar Agnihotri, Advocate
 Shri Sandeep Tripathi, Advocate
 Shri Vishnu Kant Awasthi, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Additional Directorate General Manpower (Policy and Planning)/MP-3, Adjutant General's Branch, Integrated HQ of Ministry of Defence (Army), DHQ Post Office, New Delhi – 110011.
3. DGMS (Army)/DGMS-3D, AG's Branch, IHQ of MoD (Army), Defence Officers Complex, 'A' Block, 3rd Floor, KG Marg, New Delhi -110001.
4. HQ Central Command (Med), PIN – 900450, C/o 56 APO.
5. OIC Records, AMC, PIN- 900450, C/o 56 APO, Lucknow.
6. Command Hospital through its Commandant, CC, PIN- 900450, C/o 56 APO.
7. Brig IC Adm & Cdr Tps.

... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,
 Central Govt Counsel

ORDER (Oral)

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *That this Hon'ble Tribunal may kindly be pleased to set aside the impugned rejection order of Premature Discharge dated 19.03.2023, passed by opp. Party no. 5, as contained in annexure no. 1, and direct the opp. Parties to discharge the applicant from service on extreme compassionate grounds in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be awarded the cost Rs. 20,000/- (Rs. Twenty Thousand only) to the applicant against the opposite parties.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant."*

2. Counter affidavit and rejoinder affidavit filed by the parties are taken on record.

3. Brief facts of the case are that applicant was enrolled in the Army on 25.09.2006. The applicant while posted with 419 Field Hospital applied for General Nursing and Midwifery Diploma (GNMD) course and signed an undertaking certificate dated 13.10.2012 that he will not apply for premature retirement within 10 years from the date of completion of the course in terms of Appendix 'E' to paragraph 688 (b) (v) of AMC Record Office Instructions 29/2009. The applicant successfully completed the GNMD course on 23.02.2016. The

applicant was promoted to the rank of Naib Subedar (Nursing Technician) on 06.02.2017 on completion of the course. Thereafter, in 2021, the applicant submitted an application dated 13.11.2021 for premature retirement from service on compassionate grounds which was examined in detail and was rejected by the competent authority due to policy constraints. Thereafter, applicant submitted another application dated 20.12.2021 for premature retirement on compassionate grounds citing his selection for the post of Bihar Technical Service Commission (BTSC) which was examined and rejected by the respondents vide letter dated 12.02.2022 due to overall deficiency of manpower in the Corps and restriction of premature retirement within 10 years from the date of completion of the GNMD course as per undertaking given by the applicant. Thereafter, applicant submitted another application dated 14.03.2022 for premature retirement which was returned to the applicant's unit unactioned with observation vide AMC Records letter dated 29.03.2022. Thereafter, applicant filed O.A. No. 216 of 2022 before this Tribunal which was dismissed vide order dated 07.07.2022. Now, the applicant has filed the present Original Application for premature retirement taking another grounds of medical of self and family and children education etc.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army in Army Medical Corps on 25.09.2006. The applicant, due to his adverse family circumstances, critical problems and responsibilities, applied for premature retirement on

extreme compassionate grounds vide his application dated 18.01.2023 duly recommended and approved by the opposite party No. 6 & 7. The applicant also furnished an undertaking certificate dated 21.01.2023 duly signed by him but the premature retirement application of the applicant has been rejected vide impugned order dated 19.02.2023, though, there was no restriction of premature retirement quota at the time of passing impugned order dated 19.03.2023 which is evident from the respondents letter dated 17.11.2020. The applicant's case is not considered as per sub rules F & G of para 105 of Army Rules, 1954 which is illegal. There is no shortage of manpower in the category of the applicant and total number of Subedars is not less than required strength but opposite party no. 2 rejected premature retirement application of the applicant in an illegal manner without having any authority. Domestic problems such as need to look after his family, inheritance problems, need to look after family business, serious illness of wife and son requiring applicant's presence at home, possibility of breakup of conjugal life if the applicant continues in service etc. would be treated in the category of 'Extreme Compassionate Grounds' but, without scrutiny of the position of the facts, opposite parties rejected request made by the applicant without application of mind.

5. Learned counsel for the applicant further submitted that due to mental stress of his family problems, applicant also became a victim of diseases Primary Hypertension & Dyslipidemia. The medically unfit minor son of the applicant is required to be properly treated by

medical specialist and wife of the applicant cannot move anywhere because another minor son is studying in class 8th and no one is to look after him whereas children education is declared as Fundamental Right under the Constitution of India. The ground on which opposite parties have rejected the request of the applicant for premature retirement is not sufficient in the eyes of law as held by the Delhi High Court in the case of **Major Rahul Shukla vs. Union of India and Others**, C.W. No. 770/1995, decided on 09.08.1995. He placed reliance on the judgment of Armed Forces Tribunal (PB) New Delhi in OA No. 88 of 2018, **Nb Sub Ram Kalyan Jat vs. Union of India and Others**, decided on 26.03.2019.

6. It is well settled law that reasoned order is the basic criteria for clarity and transparency. Absence of reasonableness in an administrative order results in arbitrariness in decision making, which is not desirable as held by the Hon'ble Apex Court reported in AIR 2007 SC 1363 (**Union of India and Ors vs. Jai Prakash Singh & Anr**) and **Union of India vs. Raj Pal Singh**. He pleaded that issue related to joining of BTSC job has become infructuous because the last date of joining in the job was 22.12.2022. The family members of the applicant are mentally, physically and medically required assistance from the applicant because applicant is sole member of the family to look after them therefore, applicant's premature retirement application be considered and he should be discharged from Army service on extreme compassionate grounds in the interest of justice.

7. On the other hand, learned counsel for the respondents submitted that applicant while posted with 419 Field Hospital applied for General Nursing and Midwifery Diploma (GNMD) course with an undertaking certificate dated 13.10.2012 that he will not apply for premature retirement within 10 years from the date of completion of the course in terms of Appendix 'E' to paragraph 688 (b) (v) of AMC Record Office Instructions 29/2009 and successfully completed the course on 23.02.2016. The applicant was promoted to the rank of Naib Subedar (Nursing Technician) on 06.02.2017 on completion of the course. The applicant submitted an application dated 13.11.2021 for premature retirement from service on compassionate grounds which was rejected by the respondents due to policy constraints. Thereafter, applicant submitted another application dated 20.12.2021 for premature retirement on compassionate grounds citing his selection for the post of Bihar Technical Service Commission (BTSC) which was examined and rejected by the respondents vide letter dated 12.02.2022 due to overall deficiency of manpower in the Corps and restriction of premature retirement within 10 years from the date of completion of GNMD course. Thereafter, applicant submitted another application dated 14.03.2022 for premature retirement which was returned to the applicant's unit unactioned with observation vide AMC Records letter dated 29.03.2022. Thereafter, applicant filed O.A. No. 216 of 2022 before this Tribunal which was dismissed vide order dated 07.07.2022 with direction that "Grounds made for premature discharge from service are an after-thought and seem to be

concocted. The fact is that the applicant did not obtain prior permission before applying for civil job. He appeared and got selected and when his belated application seeking prior permission was turned down, he applied for premature discharge on fictitious domestic compulsions. With the aforesaid observation, the O.A. has no force and is liable to be dismissed”.

8. Learned counsel for the respondents further submitted that applicant was diagnosed a case of ‘Dyslipidemia’ and ‘Primary Hypertension’ and was downgraded to low medical category P2 (Permanent) w.e.f. 25.01.2023. The applicant again submitted an application dated 18.01.2023 for grant of premature retirement from service on compassionate grounds citing his own medical condition and dispute for ancestral property which was examined in detail and the same was not agreed to by the competent authority due to Corps deficiencies, organization requirement and the restriction imposed by the competent authority on PMR quota by the competent authority. He further submitted that due to adverse impact of COVID-19 pandemic on recruitment in Indian Army, the competent authority has made ceiling of 0.5% in the trade for PMR of JCOs/ORs and 1% for unforeseen reasons upto 31.03.2023 and this restriction has been further revised/extended from 01.07.2022 to 30.06.2024 by Additional Directorate General of Manpower, IHQ of MoD (Army) vide their letter dated 12.10.2022.

9. Learned counsel for the respondents further submitted that in O.A. No. 578 of 2021, **Havildar Bibhuti Bhushan Pattanaik vs.**

Union of India and Others, this Tribunal vide its order dated 03.03.2022 has rejected the application on the similar nature of case. The applicant willingly accepted his promotion to the rank of Naib Subedar and in terms of policy in vogue, service in the rank of Naib Subedar is 26 years of colour extendable by 2 years by screening or 52 years of age whichever is earlier. Keeping in view of the aforesaid facts, it is not feasible to consider premature retirement of the applicant and rejection of applicant's application for premature retirement earlier was also just and legal as per policies on the subject in vogue and no injustice has been done to him. Therefore, present original application is also liable to be rejected being devoid of merit and lacking substance.

10. We have heard learned counsel for the parties and perused the material placed on record.

11. We find that applicant underwent General Nursing and Midwifery Diploma Course and successfully completed the course on 23.02.2016. Before proceeding to said course, the applicant submitted an undertaking certificate dated 13.10.2012 that he will not apply for premature retirement within 10 years from the date of completion of the course in terms of Appendix 'E' to paragraph 688 (b) (v) of AMC Record Office Instructions 29/2009. The applicant was promoted to the rank of Naib Subedar (Nursing Technician) on 06.02.2017 on completion of GNMD course and thus, in terms of policy in vogue, service limit/terms of engagement of the applicant in the rank of Naib Subedar is 26 years of colour extendable by 2 years

by screening or 52 years of age whichever is earlier. Hence, applicant's retirement in the rank of Naib Subedar will fall in Sept. 2032. Therefore, seeking premature retirement on compassionate grounds before completion of 10 years period is against the rules and AMC ROI, as the applicant has himself given an undertaking that he will not seek premature retirement within 10 years from the date of completion of the course. Besides this, there is shortage in overall strength of applicant's category/trade/Corps and restriction on premature retirement has been further revised/extended from 01.07.2022 to 30.06.2024 by Additional Directorate General of Manpower, IHQ of MoD (Army) vide their letter dated 12.10.2022.

12. We also find that applicant has earlier approached this Tribunal by filing O.A. No. 216 of 2022 which was dismissed vide order dated 07.07.2022. Now the applicant has filed the present/second Original Application for premature retirement taking another grounds. Since, applicant's three applications submitted to the respondents on different intervals for premature retirement have been rejected by the competent authority as per rules after taking into consideration all facts and circumstances of the case mentioned in each application and this Tribunal has also rejected applicant's earlier O.A. No. 216 of 2022 vide order dated 07.07.2022, therefore, present Original Application needs no consideration and is liable to be rejected.

13. In the result, we do not find any irregularity or illegality in denying premature discharge to the applicant which is as per AMC ROI, rules and policy on the subject. There seems no bias or partiality

in non granting premature discharge to the applicant. Hence, prayer of premature retirement made in the application is not justified. The Original Application deserves to be dismissed and is accordingly, **dismissed.**

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 27th July, 2023
SB

(Justice Ravindra Nath Kakkar)
Member (J)