

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 578 of 2021**Thursday, this the 3rd day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Bibhuti Bhusan Pattanaik

S/o Shri Sarat Chandra Pattanaik

R/o V-Kharinipada, Bania Ganjam, Odisha

.... ApplicantLd. Counsel for the Applicant : **Shri Dharmesh Sinha**, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarters, South Block, Sena Bhawan, New Delhi-110011.
3. Director General of Armed Forces Medical Services, Ministry of Defence, Army Headquarters, New Delhi – 110011.
4. Director General Medical Services (Army), IHQ Ministry of Defence (Army), L-Block, New Delhi – 110011.
5. OIC Army Medical Corps Records office, PIN-900450, C/o 56 APO.

... RespondentsLd. Counsel for the Respondents : **Shri Amit Jaiswal**,
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) *The Hon'ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the order denying the discharge on compassionate ground to the applicant by summoning its original from the respondents.*
- (ii) *The Hon'ble Tribunal may kindly be pleased to issue an order or direction commanding upon the opposite parties to grant discharge on compassionate ground to the applicant immediately considering his family circumstances.*
- (iii) *The Hon'ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper under the facts and circumstances of the case.*
- (iv) *The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay cost of the O.A.”*

2. Rejoinder affidavit filed by the applicant is taken on record.

3. Brief facts of the case are that applicant was enrolled in the Army on 13.12.2004. The applicant while posted with 422 Field Hospital was detailed to undergo 3 years Bachelor of Paramedical Technology (BPMT) course in Optometry Technician at Armed Forces Medical College, Pune from 01.07.2014 to 30.06.2017 vide AMC Records letter dated 05.06.2014. Before proceeding for the said course, applicant had given an undertaking certificate dated 25.06.2014 that he will continue to serve in the Army and will not apply for premature retirement within 10 years from the date of completion of the course in terms of AMC ROI. The applicant successfully completed the course on 31.07.2017. The applicant

submitted an application dated 29.08.2020 for premature retirement from service on compassionate grounds to look after his old aged parents which was denied by the respondents on the grounds of his undertaking of not seeking premature discharge from service within 10 years from the date of completion of BPMT course and due to shortage in the trade of Operation Room Assistant (ORA) category. Being aggrieved, the applicant has filed the present Original Application.

4. Learned counsel for the applicant submitted that applicant was detailed to undergo Bachelor of Paramedical Technology (BPMT) course in Optometry Technology vide letter dated 05.06.2014 for a period of three years from 01.07.2014 to 30.06.2017 and he completed the same successfully. The parents of the applicant are old and ailing and there is no one to look after them as applicant is the only son of his parents and his wife is working as a private school teacher. The father who is 74 years of age is suffering from heart disease and is mentally disturbed undergoing treatment in Odisha, while mother is 66 years of age and suffering from hearing loss, Diabetes and Hypertension. Due to aforesaid circumstances, the applicant applied for premature retirement on compassionate grounds vide applications dated 29.08.2020 and 31.08.2020 but his request for premature retirement was rejected by the respondents, firstly, because the applicant had given an undertaking before proceeding to BPMT course that he will continue to serve in the Army and will not apply for premature retirement within 10 years from the date of

completion of the course and secondly, because the strength of the trade/category to which the applicant belongs will fall below 90% of the authorised establishment on an overall regiment/Corps basis.

5. Learned counsel for the applicant further submitted that action of the respondents is against the AMC ROI 13/2014 and 61/2014 which specifically provides that under compelling circumstances, as in the case of the applicant, discharge on compassionate grounds may be granted to personnel, as was done in the case of Hav Nirmal Singh Barman and Nk Deepu V.R. but the applicant has been denied such benefit, which is highly illegal and arbitrary. He pleaded to allow discharge of the applicant on compassionate grounds in the interest of justice.

6. On the other hand, learned counsel for the respondents submitted that applicant while posted with 422 Field Hospital was detailed to undergo 3 years BPMT (Optometry Technician) course at Armed Forces Medical College, Pune from 01.07.2014 to 30.06.2017 vide AMC Records letter dated 05.06.2014. Before proceeding for the said course, applicant had given an undertaking certificate dated 25.06.2014 that he will continue to serve in the Army and will not apply for premature retirement within 10 years from the date of completion of the course in terms of Appendix 'C' to para 167 of AMC Records Office Instructions 05B/2014. The applicant successfully completed the course on 31.07.2017. The applicant submitted an application dated 29.08.2020 for premature retirement from service on compassionate ground to look after his aged parents.

7. Learned counsel for the respondents further submitted that as per Army Headquarters policy letter dated 14.07.1972, personnel who are unwilling to continue to serve beyond completion of their combined colour and reserve service engagement will be discharged provided the strength of the trade/category to which they belong does not fall below 90% of the authorised establishment on an overall regiment/Corps basis. At the time of considering applicant's premature retirement application in Oct. 2020, deficiency in Operating Room Assistant (ORA) category to which the applicant belongs was 354, which was 12.33% against the authorisation of 2871 personnel. In addition to this, application for premature retirement of the applicant was contrary to undertaking certificate submitted by him before undergoing to BPMT (Optometry Technician) course that he will not apply for premature retirement within 10 years from the date of completion of the course. Besides this, there is a ceiling of 0.5% of authorised/held strength (whichever is less) in the trade on Premature Retirement (PMR) quota on compassionate grounds till 31.03.2023 as per IHQ of MoD (Army) Note/letter dated 07.10.2020, 16.10.2020 and 17.11.2020.

8. Learned counsel for the respondents also submitted that premature retirement of Havildar (Laboratory Assistant) Nirmal Singh Barman and Naik (Nursing Assistant) Deepu V.R. was approved by the competent authority in terms of Army Headquarters letter dated 14.07.1972 as the overall strength of their respective category/trade in the month of Dec. 2018 and May 2020 was more than 90%. He

also submitted that rejection/denial of premature retirement to the applicant by the competent authority is just and legal and as per rules and policies on the subject in vogue and no injustice has been done to him as there is gross deficiency in the trade of ORA category, specially, BPMT (Optometry Technician) course qualified NCOs in Army Medical Corps. He pleaded for dismissal of Original Application.

9. We have heard Shri Dharmesh Sinha, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents and perused the material placed on record.

10. We find that applicant underwent 3 years BPMT (Optometry Technician) course at Armed Forces Medical College, Pune from 01.07.2014 to 30.06.2017. Before proceeding for the said course, the applicant had also given an undertaking certificate dated 25.06.2014 that he will continue to serve in the Army and will not apply for premature retirement (PMR) within 10 years from the date of completion of the course in terms of AMC ROI. Thereafter, 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 a shortage in overall strength of applicant's category/trade which should not fall below 90% of the authorised strength in Army Medical Corps as per IHQ of MoD (Army) policy.

11. We also find that applicant's application for premature retirement has been rejected by the competent authority as per rules

after taking into consideration all facts and circumstances of the case which needs no interference.

12. 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 partiality in granting discharge to other personnel and not to the applicant as alleged by the applicant. The Original Application deserves to be dismissed and is accordingly, **dismissed**.

13. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**
Member (A) Member (J)

Dated: March 2022
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