

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

ORIGINAL APPLICATION No. 1125 of 2023

Wednesday, this the 13th day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No 4091682A Hav/Clerk Dalchand Pal, S/o Suresh Chand Pal, R/o Village-Harchandpur, P.O.-Nagal Soti, Tehsil-Najibabad, Distt-Bijnor, Uttar Pradesh-246732, presently posted at Records Garhwal Rifles, Lansdowne Pauri Garhwal, Uttarakhand.

..... Applicant

Ld. Counsel for the : **Shri Kishore Rai**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of MoD (Army), Post-DHQ, New Delhi-110011.
3. DGMS (Army), IHQ of MoD (Army), Adjutant General’s Branch, ‘L’ Block, New Delhi-110001.
4. Senior Records Officer, Records Garhwal Rifles, Lansdowne, Pauri Garhwa.

.....Respondents

Ld. Counsel for the : **Shri Neeraj Upreti**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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

- (i) *A direction to respondent No 4 to consider the application of the applicant dated 30.06.2023 for premature retirement from service w.e.f. 31.03.2024 or to-*
- (ii) *A direction to respondents to consider the case of the applicant for premature retirement from services w.e.f. 31.03.2024 on extreme compassionate grounds and to issue the necessary release order to the applicant.*
- (iii) *Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 27.03.2009 and after due basic military and technical training he was posted to Garhwal Rifles. While serving with 13 Garhwal Rifles, he submitted an application dated 12.04.2023 (Annexure No 2 to O.A.) for premature discharge from service on the ground of his parents' illness and also due to illness of his wife. The said application being not considered by the respondents, this O.A. has been filed for issuing directions to the respondents for consideration of his premature discharge from service on extreme compassionate grounds.

3. Submission of learned counsel for the applicant is that due to domestic compulsions the applicant had submitted application dated 12.04.2023 for premature discharge from service, and also sought interview before the Commanding Officer on 15.06.2023. It was further submitted that applicant submitted further application dated 28.06.2023 in which it is stated that he was unable to continue in service due to aged ill parents and deteriorating medical condition of his wife.

4. Further submission of learned counsel for the applicant is that the applicant had submitted frequent applications for proceeding on premature discharge on medical grounds, but his request has been turned down on the ground of shortage of man-power and non completion of pensionable service. It was further submitted that there is a provision for voluntary retirement/premature discharge from service on medical grounds but even then the applicant has been denied grant of premature discharge from service.

5. In support of his contention, learned counsel for the applicant has placed reliance on order dated 22.03.1999 passed by the Hon'ble High Court of Delhi in the case of **KS Bhimwal mohs (Lt Col) vs Union of India & Ors**, 79 (1999) DLT 297, this Tribunal order dated 03.12.2021 passed in O.A. No. 517 of 2021 in the case of **Hav/STA Mukesh Kumar vs Union of India & Ors** and order dated 01.05.2023 passed by AFT (RB), Kolkata in T.A. No. 29 of 2022, **Hav Ashok Kumar Joshi vs Union of India & Ors**. He pleaded for consideration of premature discharge from service in respect of the applicant.

6. On the other hand, learned counsel for the respondents submitted that while serving with 13 Garh Rifles, the applicant had applied for premature discharge from service on compassionate grounds vide his application dated 22.07.2023 citing that (i) his parents were going through many old age ailments and his wife Smt Kiran was also suffering from the Cardiac problem for which continuous treatment was required. It was also mentioned in the application that her wife had two Cardiac arrests and (ii) he is the only son of his parents and

there is no other male member other than him to take care of his parents and wife. It was further submitted that due to Covid-19 restrictions were imposed for sanction of premature discharge applications vide IHQ of of MoD (Army) letter dated 16.10.2020 and premature retirement quota for all arms was reduced to 0.5% from 01.01.2021 to 31.03.2023 which was later revised to 0.25% from 01.07.2022 onwards for a period of two years. It was however, submitted that after substantial improvement in ma-power, the competent authority again revised the quota from 0.25% to 0.5% from 01.07.2023 to 30.06.2024 vide letter dated 11.05.2023 which is currently in vogue.

7. Learned counsel for the respondents further submitted that keeping in view of the present scenario and 20 waitlisted applications for premature discharge at present, applicant's turn for premature discharge would likely be considered in the year 2028, in order to maintain transparency and to avoid ambiguity in the system. It was further submitted that applications for seeking premature discharge are serially numbered and the discharge is entirely based on 'first cum first serve basis'. It was further submitted that allowing individuals to leave the Army before completing their agreed-upon terms of service creates an environment of uncertainty and weakens the overall morale of the troops and granting individual's request for premature discharge would set a wrong precedence and invite numerous legal representations from other soldiers who are in seniority above the applicant seeking similar relief. He pleaded for dismissal of O.A.

8. Heard Shri Kishore Rai, learned counsel for the applicant and Shri Neeraj Upreti, learned counsel for the respondents and perused the record.

9. Applicant was enrolled in the Army on 27.03.2009. While serving with 13 Garhwal Rifles he submitted an application dated 12.04.2023 for premature discharge from service on the ground of ailment of his parents and wife. In this connection, he also sought interview before the Commanding Officer. On 28.06.2023, the applicant again submitted application for premature discharge from service which was duly recommended by his next superior officer.

10. 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 the 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.

11. In this case, applicant had moved an application dated 12.04.2023 (Annexure No 2) for premature discharge from service on the ground of severe illness of his parents and wife. The record reveals that it was duly recommended by the concerned officer on 13.04.2023. After two months from the date of previous application, applicant submitted form for special interview before the Commanding Officer. In the said form, Office Superintendent has endorsed his remarks mentioning that 'check whether individual completed

mandatory service in Records', which means that applicant's premature discharge application was likely to be considered after completing his tenure in the Record Office.

12. On 28.06.2023, applicant submitted another application for premature discharge from service on the same grounds as mentioned in his earlier application dated 12.04.2023. In this application, the recommending authority on his premature discharge application has endorsed the following remarks:-

"The NCO has been interviewed on 30.06.2023 and has only completed his 14 yrs 04 months service and if his disch application is considered he will be not entitled for any pension but indl is ready to go disch without pension. A letter has been initiated for consent of his wife. On receipt of consent of his wife, his application will be processed imdt for PMR disch".

13. Perusal of applicant's protracted correspondence for proceeding on premature discharge, his interview before the Commanding Officer on 30.06.2023 and remarks endorsed by the recommending authority on his second application for premature discharge, it is crystal clear that applicant, being in great distress on account of ailment of his parents and wife, is ready to proceed on premature discharge without granting pension. In regard to consent from his wife, a letter is stated to have been issued by the respondents. In the said endorsement it has also been mentioned that since applicant has only completed 14 years and 04 months service, he may not get service pension without completing pensionable service. At this stage, since after passage of time, applicant has completed pensionable service, his application for premature discharge may be considered keeping in view that he has completed 15 years service.

14. It is also worthwhile to mention that applicant's premature discharge application was duly recommended by the recommending authority on compassionate grounds but the respondents have taken a ground of deficiency of man-power. In regard to this we are of the view that since restrictions imposed on premature discharge have been taken back, applicant's premature discharge will not prejudice the respondents in any manner. Thus, considering all aspects of the matter and case law cited by the applicant, we are of the view that this is a fit case to issue directions to the respondents to consider the matter of the applicant for premature discharge from service on extreme compassionate grounds.

15. Accordingly, this O.A. is disposed off with directions to the respondents to consider applicant's premature discharge application on compassionate grounds within a period of three months from the date of communication of this order.

16. No order as to costs.

17. Miscellaneous application (s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 13.03.2024
rathore

(Justice Anil Kumar)
Member (J)