

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 1041 of 2023

Wednesday, this the 6th day of March, 2024Hon'ble Mr. Justice Anil Kumar, Member (J)Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Hav Sujith V (15418175L)

S/o late Shri Vasu N

R/o Presently posted at Military Hospital, Bareilly

Bareilly Cantt (UP), C/o 56 APO, PIN-900496

.... Applicant

Ld. Counsel for the Applicant: **Wg. Cdr. Ajit Kakkar (Retd)** and
Shri Manoj Kumar Awasthi, Advocates

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, South Block, DHQ PO, New Delhi – 110011.
3. Senior Record Officer, AMC Records, Lucknow, C/o 56 APO, PIN-900450.
4. The Commandant, Military Hospital Bareilly, Bareilly Cantt (UP), C/o 56 APO, PIN-900496.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
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 the following reliefs:-

“(a) To direct the respondents to bring all relevant documents pertaining to the applicant’s case on record including the rejection letters of PMR and subsequently, quash the rejection letters.

(b) To direct the respondent to quash/set aside the impugned order dated 31.05.2023.

(c) To pass the directions to consider and grant discharge from service to the applicant.

(d) 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 the applicant was enrolled in the Indian Army (AMC) on 30.07.2003. The applicant is presently posted at Military Hospital, Bareilly since 13.06.2022. The applicant was promoted to the rank of Havildar on 28.10.2015. The applicant is in low medical category P3 (Permanent) for the disability **PIDV C5-C6** w.e.f. 15.03.2023 and P2 (Permanent) for the disability **Prolapsed Intervertebral Disc L4-L5** w.e.f. 02.11.2022. The applicant will be completing his normal service limit on 31.07.2027 in the present rank of Havildar, i.e. 24 years of service. The applicant submitted applications dated 17.07.2018, 23.03.2019, 20.05.2019, 25.01.2020 and 24.03.2023 seeking premature retirement on compassionate grounds citing his own and family health issues but his applications were not considered by the competent authority and were rejected due to policy limitations, Corps deficiency and organisational interest. Being aggrieved, the applicant has filed the present Original Application for grant of premature discharge from the service.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army (AMC) on 30.07.2003. The applicant is in low medical category P3 (Permanent) for the disability PIDV C5-C6 w.e.f. 15.03.2023 and P2 (Permanent) for the disability Prolapsed Intervertebral Disc L4-L5 w.e.f. 02.11.2022. The said infirmity had impacted the applicant both physically and mentally. The applicant feels heaviness and stiffness because of the disabilities. Though the applicant has been excused from strenuous physical activities and has been advised regular spinal exercise but applicant's trade is such that it involves strain on the back and thus, he is finding difficulty in performing the duties of his trade. Therefore, applicant is not able to discharge his duties to the satisfaction of his superiors due to his own difficult medical condition specially keeping in view applicant's medical condition due to adverse effect of disabilities in performing clerical duties/desk job assignment for prolonged periods.

4. Learned counsel for the applicant further submitted that applicant's mother has been suffering from Paranoid Schizophrenia for a long period and combined with her advanced age, is totally dependent financially and physically on the applicant for her daily routine activities. She is under treatment in the Command Hospital, Bangalore since October, 2021. Applicant is unable to perform moral and social responsibility to look after well being of his mother due to applicant's involvement in performing his trade duties. Due to Paranoid Schizophrenia disease, mother of the applicant occasionally shows aggressive behaviour and causes harm to others because of her poor medical compliance. The condition of his old

age father was also bad who was bedridden due to diabetes related complications who passed away on 06.02.2023. The death of his father caused a lot of mental pressure to the applicant as he was unable to give due care to his father due to service exigencies. The wife of the applicant also struggled to look after her in laws alone and was facing a lot of difficulty in coping up with the mental and physical stress of caring for two dependent in-laws.

5. The applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of **E.P. Royappa v. State of Tamil Nadu and Another**, 1974, SCC 43 and this Tribunal's judgment 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 judgment 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 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 pleaded that applicant's case is squarely covered with aforesaid judgments and accordingly, keeping in view his personal medical difficulties for the pressing and challenging circumstances being faced by him in performing his military duties, ill health and medical problems of mother and wife 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 30.07.2003. The applicant is presently posed with Military Hospital, Bareilly since 13.06.2022. The applicant was promoted to the rank of Havildar on 28.10.2015. The applicant was placed in low medical category P3 (Permanent) for the disability PIDV C5-C6 w.e.f. 15.03.2023 and P2 (Permanent) for the disability Prolapsed Intervertebral Disc L4-L5 w.e.f. 02.11.2022. The applicant will be completing his normal service limit on 31.07.2027 in the present rank of Havildar, i.e. 24 years of service or 49 years of age whichever is earlier. The applicant submitted applications dated 17.07.2018, 23.03.2019, 20.05.2019, 25.01.2020 and 24.03.2023 seeking premature retirement on compassionate grounds citing his own and family health issues but his applications were not considered by the competent authority and were rejected due to policy limitations, Corps deficiency and organisational interest.

7. Learned counsel for the respondents further submitted that as per Govt. of India, Ministry of Defence letter dated 03.09.1998, the terms of engagement in respect of a Havildar has been revised as 24 years of service extendable by 2 years or 49 years of age, whichever is earlier. Due to adverse impact of COVID-19 pandemic on recruitment in Indian Army, competent authority has conveyed the approval regarding the ceiling of '0.5%' of authorised/held strength whichever is less in the trade. Besides this, Adjutant General's Branch, IHQ of MoD (Army) vide letter dated 06.04.2023 had extended the restrictions on premature retirement w.e.f. 01.07.2023 to 30.06.2024 as 0.5%. Therefore, premature retirement

applications of the applicant on compassionate grounds have been agreed by the competent authority due to acute deficiency of manpower in respective trade in Corps and limitations imposed by the competent authority on consideration of premature retirement to reduce the impact of COVID-19 on recruitment process. Hence, keeping in view the deficiency in Corps manpower and limitations imposed by the competent authority on premature retirement, rejection of applicant's applications for premature retirement was just and legal and no injustice has been done to the applicant. He pleaded for dismissal of O.A. being devoid of merit and lacking substance.

8. We have heard learned counsel for the parties and perused the records.

9. We have given our thoughtful consideration to the facts and rival contentions. The applicant has submitted many applications from the year 2018 to 2023 for premature discharge from service on medical grounds/ill health of his mother and other problems of wife and children 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 applicant's trade and non recruitment due to COVID-19 pandemic, and also to complete terms of engagement/service for 24 years of service in the rank of Havildar.

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 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. The terms of engagement/service keep changing on promotion to the different higher posts. 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 applications for premature discharge from service on compassionate grounds due to his own medical condition/disabilities and ill health of his mother and other domestic problems of wife and children.

11. We find that respondents have cited deficiency of personnel in applicant's trade and restriction imposed by the competent authority as ground for rejecting his request of premature discharge from service. But considering all aspects of the matter i.e., improved Covid Pandemic situation and recommencement of recruitment in the Army and also restriction on premature retirement upto 30.06.2024 as 0.5%, 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 applicant's medical condition due to adverse effect of disabilities in performing desk job assignment for prolonged periods.

12. 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 extreme 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.

13. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 6th March, 2024
SB

(Justice Anil Kumar)
Member (J)