

E-Court

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

Original Application No. 925 of 2024

Thursday, this the 06th day of March, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No. 15425414X Hav (DORA) Kuldeep Singh

S/o Late Rajbir Singh

Presently posted at Military Dental Centre Meerut

.... Applicant

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

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. OIC Records, AMC Records, Lucknow – 226002 (UP).

... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**, Advocate
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 following reliefs:-

- i. A direction to quash the order dated 01.06.2023 passed by respondent no. 4 (contained as Annexure No. 1 to this original application) or to
 - ii. A direction to respondents to consider the case of the applicant for premature retirement from services 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 giving rise to this application are that applicant was enrolled in the Army Medical Corps of Indian Army on 16.10.2006 on the post of Nursing Assistant. The applicant submitted an application dated 27.04.2023 for premature retirement from service on medical grounds. His application was returned unactioned by the AMC Records vide letter dated 01.06.2023 for want of certain documents. The required documents were resubmitted by the unit of the applicant vide Military Dental Centre Meerut letter dated 12.06.2023, however, keeping in view the organizational requirements, policy limitations and deficiency in applicant's trade, premature retirement application was not considered by the competent authority which was intimated to the unit of the applicant vide AMC Records letter dated 31.10.2023. 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 16.10.2006. The applicant has been downgraded to low medical category due to disability **'MODRATE DEPRESSIVE EPISODE'** and **'PRIMARY HYPERTENSION'** w.e.f.

08.03.2016 for which the applicant is on complete medication. In addition to applicant's medical disability, wife of the applicant is under treatment for psychiatric treatment and mother of the applicant is also suffering from old age related ailments and unable to do any physical work and therefore applicant applied for premature retirement from service but the request of the applicant has been rejected by the respondents vide letter dated 01.06.2023 on account of restrictions imposed by the higher headquarters on grant of premature retirement till 30.06.2024.

4. Learned counsel for the applicant placed reliance on the judgment of the AFT (RB) Kolkata in T.A. No. 29 of 2022, **Hav Ashok Kumar Joshi vs. Union of India and Others**, decided on 01.05.2023, this Tribunal judgment in **Hav/STA Mukesh Kumar Vs UoI** in O.A No. 517/2021, decided on 03.12.2021 and the Hon'ble Delhi High Court judgment in **K.S Bhimwal Mohs (Lt. Col) Vs UoI reported in 79(1999) DLT 297** dated 22.03.1999 and pleaded that applicant's case is squarely covered with aforesaid judgments. Accordingly, keeping in view applicant's disabilities and personal difficulties for the pressing and challenging circumstances being faced by him in performing his military duties and ill health of his mother and wife who are also suffering from some ailments, 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.

5. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 16.10.2006 on the post of Nursing Assistant. The applicant was promoted to the rank of Naik on

21.11.2011 and Havildar on 01.12.2014. The applicant was awarded punishment of 'Severe Reprimand' on 22.06.2022. The applicant will be completing his normal service limit on 31.10.2023 in his present rank. The applicant was downgraded to low medical category S2 (P2) for the disabilities, **'MODRATE DEPRESSIVE EPISODE'** and **'PRIMARY HYPERTENSION'** w.e.f. 08.03.2016. The applicant submitted an application dated 27.04.2023 for premature retirement from service on medical grounds. His application was returned unactioned by the AMC Records vide letter dated 01.06.2023 for want of certain documents. Subsequently, the required documents were resubmitted by the unit of the applicant vide Military Dental Centre Meerut letter dated 12.06.2023, however, keeping in view the organizational requirements, policy limitations and deficiency in applicant's trade, premature retirement application of the applicant was not considered by the competent authority which was intimated to the unit of the applicant vide AMC Records letter dated 31.10.2023.

6. Learned counsel for the respondents further submitted that as per para 164 (a) of Regulations for the Army, 1987 and Govt. of India, Ministry of Defence letter dated 03.09.1998, retirement age of Havildar is 24 years service with colours extendable by 2 years by screening or 49 years of age, whichever is earlier. The applicant's trade is 'Nursing Assistant, hence deficiency of his trade will result in compromise with the life and limb of a patient and it may affect optimal functioning of a hospital. Besides this, there is restriction to 1% of authorized/held strength in granting premature retirement to JCOs/OR till 30.06.2025 vide IHQ of

MoD (Army) letter dated 29.02.2024. The refusal for grant of premature retirement from service by the competent authority is wholly just, proper and in accordance with law and there is no illegality in the said order. Hence, it is amply clear that the prayer of the applicant was not considered by the competent authority keeping in view of the policy limitations, organizational requirements, exigencies of service and deficiency of overall manpower in Corps. He pleaded for dismissal of O.A. being devoid of merit and lacking substance.

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

8. We have given our thoughtful consideration to the facts and rival contentions. The applicant has submitted application dated 27.04.2023 for premature discharge from service on medical grounds/ill health of mother and wife and other domestic problems 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, policy limitations and restriction of 1% imposed by the higher headquarters in granting premature retirement and also to serve as per contract for 20 years colour service and 03 years of reserve liabilities as per terms of engagement signed by the applicant at the time of recruitment in the Army or 24 years of service or 49 years of age in the present rank of Havildar.

9. 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. 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 such an application for premature discharge from service on compassionate grounds due to his own medical disabilities and ill health of mother and wife and other personal difficulties.

10. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. But considering all aspects of the matter i.e., improved Covid Pandemic situation and recommencement of recruitment in the Army and also applicant being a Nursing Assistant in comparison to a special/technical trade, 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 of his own medical disabilities and ill health of mother and wife and other personal difficulties in performance of duties.

11. Accordingly, Original Application is **disposed of** finally with direction to the respondents to review and reconsider the prayer of the applicant for premature discharge from service on compassionate grounds on changed circumstances and grounds mentioned in the Original Application by the applicant 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 2025 only, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

12. No order as to costs.

13. Pending Misc. Applications, if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 06 March, 2025
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