

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****Original Application No. 928 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. 4091548 Hav Clerk Gursevak Singh

S/o Late Joga Singh

Presently posted Records Garhwal Rifles Lansdowne

Pauri Garhwal, Uttarakhand

.... ApplicantLd. 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. Senior Records Officer, Records Garhwal Rifles, Lansdowne Pauri Garhwal.

... RespondentsLd. Counsel for the Respondents : **Shri Neeraj Upreti**, 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 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.

ii. 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 Indian Army on 06.03.2009. The applicant while posted with Records, The Garhwal Rifles applied for premature discharge from service on compassionate grounds vide application dated 04.02.2024. A Board of Officer was convened by the Records to scrutinize the genuineness of the grounds mentioned in the application for premature discharge from service. The Board of Officers recommended that applicant's application for premature discharge from service and his name be included in seniority roster of premature discharge from service. The applicant was posted out to new unit, 21st Battalion The Garhwal Rifles. Therefore, in the present case, the applicant was supposed to process his application for premature discharge from service duly recommended by the Commanding Officer of his present unit, 21st Battalion The Garhwal Rifles. However, instead of following due procedure to apply for premature retirement from service, the applicant has filed 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 06.03.2009. The applicant moved a representation dated 04.02.2024 before the competent authority for premature retirement from service on compassionate grounds stating therein that the applicant's old aged mother is under treatment and his

wife is also under treatment for abdomen issues for the last two years. The applicant has two children and the entire responsibility of the family is upon the shoulders of the applicant. The application of the applicant was forwarded duly completed in all respect for consideration by the competent authority but no intimation received from the respondents with regard to consideration of application. The Board of Officers recommended the case of the applicant for premature retirement from service on extreme compassionate grounds. Thereafter, the applicant also appeared in special interview of the Commanding Officer on 20.07.2024 but no confirmation status of the premature application received from the respondents.

4. Learned counsel for the applicant further submitted that wife of the applicant is suffering from various abdomen related issues for which she requires medication and attention and the applicant having two minor kids and the responsibility of all of them rests upon the shoulders of the applicant. However, the competent authority could not consider the case of the applicant for premature discharge despite of the fact that the Board of Officers recommended the case of the applicant finding it genuine. He 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

the applicant's domestic problems and also medical grounds, 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 Indian Army on 06.03.2009. The applicant while posted with Records, The Garhwal Rifles applied for premature discharge from service on compassionate grounds vide application dated 04.02.2024. A Board of Officers was convened by the Records to scrutinize the genuineness of the grounds mentioned in the application for premature discharge from service. The Board of Officers recommended that applicant's application for premature discharge from service be sanctioned by the Commanding Officer of the unit and his name be included in seniority roster of premature discharge from service. The applicant was about to complete his normal tenure with Records, The Garhwal Rifles on 24.07.2024 and applicant was directed by the competent authority to process his application from his new unit. His posting order was issued vide letter dated 09.05.2024 to proceed on permanent posting to new unit, 21st Battalion The Garhwal Rifles. The Record Office is following procedure while dealing with the premature retirement application on 'First cum First Serve' basis. Application of an individual seeking Premature Retirement duly recommended by their Commanding Officer is allotted seniority on receipt of their application in Records Office. Thereafter, applications based on seniority and authorized quota for the year are sent to Colonel of Regiment, i.e.

competent authority for sanction. Colonel of the Regiment after considering the genuineness/seriousness of the case, sanctions premature retirement of any individual. Therefore, in the present case, the applicant is supposed to process his application for premature discharge from service duly recommended by the Commanding Officer of his present unit, 21st Battalion The Garhwal Rifles. However, instead of following due procedure to apply for premature retirement from service, the applicant has filed present Original Application which is procedural lapse on the part of the applicant. He pleaded for dismissal of O.A. being devoid of merit and lacking substance.

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

7. We have given our thoughtful consideration to the facts and rival contentions. The applicant has submitted application dated 04.02.2024 for premature discharge from service on medical grounds/ill health of mother and wife and other domestic problems in looking after of children as the applicant is facing personal difficulties in performing his assigned task/military duties in pressing and challenging circumstances of the Army which was not considered by the competent authority due to procedural lapse.

8. In the present case, the applicant was directed by the competent authority to process his application from his new unit on being posted out to 21st Battalion The Garhwal Rifles. Since, the Record Office is following procedure while dealing with the premature retirement application on 'First cum First Serve' basis, the applications based on seniority and

authorized quota for the year are sent to Colonel of Regiment, i.e. competent authority for sanction and Colonel of the Regiment after considering the genuineness/seriousness of the case, sanctions premature retirement of any individual. Therefore, in the present case, the applicant was supposed to process his application for premature discharge from service duly recommended by the Commanding Officer of his new/present unit which will be scrutinize the Board of Officers and then his case to be decided by the competent authority.

9. In view of above, applicant is directed to submit fresh application for premature discharge from service from his present unit duly recommended by the Commanding Officer of the unit within a period of six weeks. The respondents on receipt of application for premature discharge from service will consider the case of the applicant accordingly.

10. The Original Application is **disposed of** finally with direction to the respondents to consider the prayer of the applicant for premature discharge from service on compassionate grounds on receipt of application from the applicant within a period of four months and communicate the decision to the applicant accordingly.

11. No order as to costs.

12. 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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