

RESERVED
(Court No.2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 649 of 2023

Thursday, this the 02nd day of May, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

JC-704523H Subedar (Pharm) Pawan Kumar of CH (NC), C/o 56 APO, son of late Rajbir Singh, resident of Quarter No P-5/6, JNE Colony, R Mor, District-Udhampur (J&K)-182101.

.....Applicant

Ld. Counsel for : **Shri KKS Bisht**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General Manpower (Policy and Planning)/MP-3, Adjutant General's Branch, Integrated Headquarter of Ministry of Defence (Army), DHQ, Post Office, New Delhi-110011.
4. Director General Medical Service (Army)/DGMS (Army)/DGMS-3D, AG's Branch, Integrated Headquarters of the Ministry of Defence (Army), Defence Offices Complex, 'A' Block, 3rd Floor, KG Marg, New Delhi-110001.
5. Officer-in-Charge Records and Commandant, Army Medical Corps Record Office, PIN-900450, C/o 56 APO.
5. Command Hospital, Lucknow, Cantonment Road, Sadar Bazar, Lucknow, Uttar Pradesh, PIN Code-226002.

.....Respondents

Ld. Counsel for : **Shri Amit Jaiswal**, Advocate
the Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) Issue/pass an order of appropriate nature to the respondents to quash/set-aside the arbitrary and illegal order passed by the AMC records, respondent No 5 vide letter No 490009MP/PMR/NAPP/22 (i) dated 19 March 2023 (Annexure No A-1) arbitrarily and illegally rejecting the application for premature discharge from service in respect of the applicant.

(b) Issue/pass an order or direction of appropriate nature to the respondents to allow premature retirement of the applicant on urgent basis due to low medical category and complete all retirement formalities before August, 2023.

(c) Issue/pass an order of appropriate nature to the respondents to complete all retirement formalities as applicable in PLMC cases before August, 2023.

(d) Issue/pass any other order as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with cost.

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) on 28.01.2003. During the course of his service he was promoted to the rank of Naik on 27.10.2009, Havildar on 24.11.2012. Subsequently, he was promoted to the

rank of Naib Subedar on 01.06.2019 and Subedar on 01.04.2022. His present medical category is S1H1A1P3(T-24)E1 w.e.f. 29.03.2023. In the year 2022, while posted at Udhampur (J&K) he was diagnosed to be suffering from disability 'Interveterbral Disc Disorders with Radiculopathy Thoracolumbar Region (M51.1) which led to downgradation of his medical category to S1H1A1P3 (T-24)E1 w.e.f. 29.03.2023. Due to above disability, restriction was imposed for service in high altitude area of more than 9000 feet, unfit for any duties involving sudden jerky movements to the back, not to indulge in strenuous activities and contact sports, not to lift heavy weight of more than 10 kgs, not to bend forward and precaution against any jerk or strain to the back. Applicant's father was admitted to Command Hospital, Northern Command for kidney ailment and he expired on 04.02.2023. On account of his domestic problems he applied for compassionate ground posting but it was not allowed even after writing a demi official letter by his Commanding Officer to Brigadier Records. In January, 2023 applicant submitted application for premature discharge from service, but it was turned

down vide letter dated 19.03.2023, hence this O.A. has been filed.

3. Learned counsel for the applicant submitted that due to his domestic problems earlier the applicant had submitted application for compassionate ground posting as his father was suffering from kidney ailment, but his request for compassionate ground posting was not accepted even after sending recommendation by his Commanding Officer through demi official letter dated 21.04.2022. He further submitted that his father expired on 04.02.2023 while admitted in Command Hospital, Northern Command.

4. Learned counsel for the applicant further submitted that applicant's wife is serving at Bikaner (Rajasthan) as Govt teacher. It was further submitted that keeping in view of applicant's deteriorating medical condition and present condition of his family, he applied for premature discharge from service in the month of January, 2023 but the said application has been rejected vide letter dated 19.03.2023 mentioning therein that *'it is apprised that application for premature retirement from service on compassionate ground in respect of JCO has been examined in*

conjunction with relevant rules, policy letters and docu in detail. After consideration of all aspects, appl for premature retirement is not agreed to by the competent authority due to policy limitations, corps deficiencies and org requirement'.

5. It was further submitted that feeling aggrieved by denial of premature discharge, applicant put in a request on 17.04.2023 for interview of Commandant, AMC Centre and College. In his letter, he mentioned about all his grievances but rather than giving an opportunity for interview he was informed vide letter dated 28.04.2023 that premature discharge is not feasible up to 30.06.2024 due to restrictions imposed on account of Covid-19 and deficiency of manpower. He pleaded for grant of premature discharge from service.

6. On the other hand, learned counsel for the respondents submitted that the applicant while serving with Military Hospital, Saugor, approached the respondents for compassionate ground posting through his personal application dated 21.02.2022 followed by a demi official letter dated 21.04.2022 (exhibit R1 and R2) but he could not be granted compassionate posting

as it was not feasible. However, keeping in view of his father's ailment he was provided prolonged tenure of three years and 04 months at Military Hospital, Saugor where super specialist medical facilities are available.

7. Learned counsel for the respondents further submitted that Covid-19 pandemic had resulted in abrupt suspension of all activities which had also adversely impacted the recruitment process of the Indian Army, causing shortage of manpower. This triggered an exceptional condition wherein induction of new combatants in Indian Army could not take place, however, monthly superannuation was going on as per mandated schedule. This ultimately resulted in acute deficiency in various categories of Indian Army. It was submitted that to mitigate the impact, higher authorities had imposed restrictions for premature retirement which was effective till 31 March, 2023 and it has been further extended to 30th June 2024.

8. Learned counsel for the respondents further submitted that the request of the applicant submitted through application dated 31.01.2023 was examined in detail and same was not agreed to by the competent authority due to substantial deficiency in Pharmacist

category to which the applicant is belonging. Learned counsel for the respondents further submitted that rejection of applicant's application for premature retirement by the competent authority is just and legal as per rules and policies on the subject in vogue and no injustice has been done to him. It is further submitted that the applicant being Pharmacist has an important role to play in service hospitals for patient care and there being acute shortage of Pharmacist in the Army, applicant's premature discharge application was not accepted in the interest of organization. Learned counsel for respondents pleaded for dismissal of O.A. stating that (i) there is an acute shortage of manpower in Pharmacist trade and (ii) applicant will be complete his normal service tenure by 31.01.2031 in the present rank.

9. Heard learned counsel for the parties and perused the record.

10. The applicant was enrolled in the Army on 28.01.2003 and during the course of his service he was promoted to the rank of Subedar w.e.f. 01.04.2022. While posted in Northern Theatre he suffered with medical disability 'Interveterbral Disc Disorder with

Raiculopathy Thoracolumbar Region (M 51.1) which resulted in downgradation of his medical category S1H1A1P3(T-24)E1 w.e.f. 29.03.2023. Due to above mentioned disability, the medical board imposed following restrictions regarding employment of the applicant:-

- (i) *Unfit for HAA (>9000 feet)*
- (ii) *Unfit for any duties involving sudden jerky movement to the back.*
- (iii) *Not to indulge in strenuous activities and contact sports.*
- (iv) *Not to lift heavy weight > 10 kgs.*
- (v) *Not to bend forward*
- (vi) *Precaution against any jerk or strain to the back.*
- (vii) *As per appx 'c' Army Order 03/2001 & spl opinion.*

11. Being a Pharmacist, applicant has to discharge his duties mostly by standing and there is every possibility for jerk in his back, which has been restricted by the Medical Board dated 29.03.2023. It appears that with this disability the applicant cannot discharge his duties efficiently as per restriction imposed by the Medical Board.

12. On account of illness of his father and domestic problems, applicant applied for compassionate ground posting but it was rejected due to service constraints. His father, who was suffering from kidney ailment, expired on 04.02.2023 while under treatment at

Command Hospital, Northern Command, Udhampur. Earlier in the month of January, 2023 the applicant applied for premature discharge from service on compassionate grounds but it was rejected vide letter dated 19.03.2023 stating therein that higher headquarters has imposed restrictions on premature retirement till 30.06.2024.

13. Respondents' contention is that application for premature discharge has been rejected due to restriction imposed during Covid-19 and shortage of manpower in Army Medical Corps especially of the Pharmacist trade to which the applicant is belonging. Perusal of letter dated 19.03.2023, we find that there is restriction on premature discharge up to 30.06.2024 and restriction imposed for Covid-19 is over, meaning thereby premature discharge applications may be considered w.e.f. 01.07.2024. For convenience sake, extract of Para 2 of letter dated 19.03.2023 is reproduced as under:-

"2. Further, it is intimated that higher HQs has imposed restrictions on PR till 30 Jun 2024."

14. Thus, from the aforesaid it is noticed that premature discharge was stopped due to restriction

imposed on account of Covid-19 pandemic in which period fresh recruitment was stopped for about two years and now the restriction for premature discharge is up to 30.06.2024 only which is likely to come up shortly, application for premature discharge may be considered.

15. It is true that at the time of enrolment certain terms and conditions are laid out 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 a provision for voluntary retirement or premature discharge on stated grounds. Therefore, the applicant has a right to submit such application on medical grounds/compassionate grounds/family problems such as due to ill health of his own.

16. We find that respondents have cited deficiency of personnel in applicant's trade as a ground for rejecting his request. Considering all aspects of the matter i.e. low medical category of the applicant, improved Covid Pandemic situation and recommencement of recruitment in the Army,

we are of the view that applicant's case for premature discharge from service deserves to be considered.

17. Accordingly, Original Application is disposed off with directions to the respondents to consider premature discharge application in respect of the applicant on medical grounds, overall improved situation post Covid-19 Pandemic and also commencement of recruitment in the Indian Army, within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

18. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated : 02.05.2024

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(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 649 of 2023

Sub (Pharm) Pawan Kumar

Applicant

By Legal Practitioner for the Applicant : Shri **KKS Bisht, Advocate**

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents : Shri **Amit Jaiswal, Advocate**

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="581 1620 721 1650"><u>02.05.2024</u></p> <p data-bbox="581 1655 1195 1690"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="581 1696 1195 1731"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="678 1790 956 1825">Judgment pronounced.</p> <p data-bbox="678 1843 1114 1878">O.A. No. 649 of 2023 is disposed off.</p> <p data-bbox="678 1897 1479 1932">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="597 2040 956 2112">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="581 2112 667 2139"><i>rathore</i></p> <p data-bbox="1240 2040 1544 2112">(Justice Anil Kumar) Member (J)</p>