

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 379 of 2022****Monday, this the 28th day of November, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

JC-700113-P Subedar (Nursing Technician) Kailash Chandra Bhatt
of MH Alwar, C/o 56 APO
S/o Shri Hari Dutt Bhatt
R/o House No. C-49, Nehru Vihar, Kalyanpur,
Post Office – Vikas Nagar, Lucknow (UP) – 226022

.... ApplicantLd. Counsel for the Applicant : **Shri K.K.S. Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Additional Directorate General Manpower (Policy and Planning)/MP-3, Adjutant General's Branch, Integrated Headquarters 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 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.

... RespondentsLd. Counsel for the Respondents : **Shri Rajesh Shukla**,
Govt Standing Counsel

ORDER (Oral)

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:-

(a) Issue/pass an order of appropriate nature to the respondents to release the applicant on urgent basis due to Unwillingness to accept sheltered appointment in low medical category before 31st Aug 2022 so that the applicant can join the suitable job as per his health condition secured by him in public sector bank.

(a-1) Issue/pass an order or direction to the respondents to quash/set aside the order vide letter No. 490009MP/PLMC dated 29 July 2022 {Annexure No. S-1} passed by respondent No. 5 being arbitrary and illegal.

(b) Issue/pass an order of appropriate nature to the respondents to complete all retirement formalities as applicable in PLMC cases before August 2022.

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

(d) Allow this application with costs."

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 18.08.2001. The applicant completed three and half years diploma in General Nursing and Midwifery (GNM) course on 29.02.2012. The applicant was mustered to

the trade of Nursing Technician and promoted to the rank of Naib Subedar on 01.03.2014 and Subedar on 07.02.2022. The applicant met with an accident in J&K in the year 2014 and was downgraded to low medical category P2 (P) w.e.f. 05.12.2014 for his disability '**COMPRESSION FRACTURE OF LV 2**'. The applicant applied for premature discharge from service on medical ground which was rejected by AMC records vide letter dated 16.03.2020 stating that applicant as per his undertaking cannot apply for premature retirement within 10 years from the date of completion of his diploma course of GNM, i.e. upto Feb. 2022. Thereafter, applicant submitted another application which was rejected by AMC Records vide letter dated 11.11.2021 stating that "*application for discharge from service in respect of applicant will be processed after 01.03.2022 and NOC for civil employment will be issued accordingly*". However, no action has been taken by the respondents so far to consider his discharge even after lapse of locking period of 10 years. Being aggrieved, the applicant has filed the present Original Application for grant of premature retirement.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 18.08.2001. The applicant completed three and half years diploma in General Nursing and Midwifery (GNM) course from School of Nursing, Command Hospital, Chandimandir on

29.02.2012. The applicant was mustered to the trade of Nursing Technician and promoted to the rank of Naib Subedar on 01.03.2014 and Subedar on 07.02.2022. The applicant met with an accident in J&K in the year 2014 and was downgraded to low medical category P2 (P) w.e.f. 05.12.2014. The job of Nursing Technician is very tough and makes him engaged for round the clock. Due to disability 'COMPRESSION FRACTURE OF LUMBER VERTEBRAE 2' applicant faces numerous problems while discharging assignments/duties which adversely affects his ability to stand against stress and strain of service. Therefore, applicant requested for discharge in low medical category as per provisions of Army Order 46/1980 and IHQ of MoD (Army) letter dated 15.03.2000 and Para 438 of AMC ROI 2014 but the same was denied by the respondents even after expiry of bondage of ten years to serve upto 28.02.2022. The applicant submitted his unwillingness certificate on 09.02.2019 to continue further service but the same was returned un-actioned by the respondent No. 5. Thereafter, applicant again applied but the respondents vide their letter dated 21.11.2019 stated that applicant had submitted an undertaking to serve in the Army and not to apply for premature retirement within ten years from the date of completion of GNM Diploma Course, hence, he is not eligible to apply for PMR upto 28.02.2022.

4. Learned counsel for the applicant further submitted that respondent No. 5 vide letter dated 16.03.2020 executed its discretionary power and issued a certificate of retention of applicant in service despite his low medical category status and unwillingness to accept sheltered appointment. The applicant on 19.08.2021 again requested for discharge from service w.e.f. 31.05.2022 on medical grounds as per suggestion of respondent No. 5 vide letter dated 16.03.2020 but the same was returned unactioned stating that *“the application for discharge from service in respect of the above named applicant will be processed after 01.03.2022 and NOC for civil employment will be issued accordingly”*.

5. Learned counsel for the applicant further submitted that on the basis of repeated assurances that he will be considered for discharge after 01.03.2022, applicant sought permission of his Commanding Officer to apply for civil government job and applied/selected in Canara Bank for which he was to join there by 31.09.2022 but his discharge application was not processed. Due to COVID-19, restriction imposed on PMR vide IHQ of MoD (Army) letter dated 16.10.2020 has been reviewed/improved and there is no deficiency in applicant's trade/category and so many personnel who are willing to serve in their respective trade in sheltered appointment are not being granted extension and on other hand in the case of applicant who is unwilling to

accept sheltered appointment is forcibly retained and not being allowed to get discharge from service. In reply to his unit letter dated 07.03.2022, AMC Records intimated that his discharge is not possible till 31.07.2023 whereas his similarly situated colleagues (JC-699022W Nb Sub (NT) Ram Kalyan Jat and JC-699629H Nb Sub (NT) Amesh Kumar Dalbehera) have been granted premature retirement. He also submitted that as the locking/bondage period of ten years has expired in Feb 2022 and no such financial/service liability occurs on the applicant as on date, applicant keeping in view his disability 'Compression Fracture of LV2' be discharged from service earliest after completing retirement formalities.

6. Learned counsel for the applicant placed reliance on the judgment of this Tribunal in OA No. 431 of 2019, **Jeet Singh & Another vs. Union of India & Others**, decided on 20.01.2022 and pleaded that applicant's case is squarely covered with aforesaid judgment and accordingly, applicant's premature discharge from service be sanctioned.

7. On the other hand, learned counsel for the respondents submitted that applicant completed General Nursing and Midwifery (GNM) diploma course on 28.02.2022 and was remustered to Nursing Technician accordingly. Before proceeding to course, applicant rendered an undertaking certificate dated 10.10.2008 that "*to continue*

to serve in the Army and not to apply for premature retirement within ten years from the date of completion of diploma course". The applicant was promoted to the rank of Naib Subedar (NT) on 01.03.2014 and Subedar on 07.02.2022. His present medical category is P2 (P) for disability 'COMPRESSION FRACTURE OF LV2' and will be completing his normal service limit of 28 years on 31.08.2029 in present rank.

8. Learned counsel for the respondents further submitted that applicant while serving with 37 RR sustained injury and was diagnosed a case of 'COMPRESSION FRACTURE OF LV2' and was downgraded to low medical category P3 (T-24) w.e.f. 11.06.2014 and P2 (P) w.e.f. 05.12.2014. The applicant submitted an application in Oct. 2019 for premature retirement which was replied by AMC Records vide letter dated 21.11.2019 stating that applicant is not eligible to apply premature retirement within ten years from the date of completion of GNM course. Thereafter, applicant submitted another application dated 23.01.2020 for premature retirement being unwilling to continue in service due to permanent LMC, which was examined in detail and retention in service of the applicant in LMC was considered to be in the public interest in terms of para 438 of AMC ROI 14/2014. Subsequently, applicant submitted a fresh application dated 24.08.2021 for premature retirement on medical grounds which was returned

unactioned to the unit vide AMC Records letter dated 11.11.2021 as the applicant was in locking period of ten years upto 28.02.2022.

9. Learned counsel for the respondents further submitted that due to COVID-19 pandemic, recruitment process of the Indian Army was also adversely affected which resulted deficiency in various categories and therefore, restriction in premature retirement is effective till March 2023. The unit of the applicant vide letter dated 07.03.2022 approached AMC Record Office for discharge of the applicant and to issue NOC for applying civil employment which was returned unactioned due to non receipt of certain documents from the applicant. Since the applicant is due for retirement in the present rank on 31.08.2029, he is not eligible for issuance of NOC as per para 534 of AMC ROI 21/2014, as per existing policy in vogue. Considering these facts, 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 the applicant. Hence, applicant is not entitled for grant of premature retirement from service. He pleaded for dismissal of O.A.

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

11. We have given our thoughtful consideration to the facts and rival contentions. It is not disputed that applicant is suffering from

'COMPRESSION FRACTURE OF LV2' disability for which he was downgraded to low medical category P2 (P) w.e.f. 05.12.2014. The applicant submitted an application for premature discharge from service on medical ground which was rejected by AMC records vide letter dated 16.03.2020 stating that as per undertaking given by the applicant he cannot apply for premature retirement within 10 years from the date of completion of his diploma course of GNM, i.e. upto Feb. 2022. Thereafter, applicant submitted another application for his premature retirement which was replied by AMC Records vide letter dated 11.11.2021 stating that "*application for discharge from service in respect of applicant will be processed after 01.03.2022 and NOC for civil employment will be issued accordingly*". However, no action has been taken by the respondents so far to consider his discharge even after lapse of locking period of 10 years and thereafter, when unit of the applicant approached to AMC Records to discharge the applicant w.e.f. 31.05.2022, then it was told that his case will be considered only when ceiling on premature retirement quota as imposed by IHQ of MoD (Army) is over, i.e. till 31.03.2023. This shows that authorities could not consider his case in its proper perspective and rejected the same on the grounds of 10 years locking period from completion of GNM course and restrictions imposed by IHQ of MoD (Army) on premature retirement due to COVID-19.

12. Keeping in view the aforesaid observations, we are of the view that locking period of 10 years of GNM diploma course is over w.e.f. 01.03.2022 and recruitment process in the Indian Army has also started, therefore, at this juncture, we do not find any valid reason in denying sanction of premature retirement by the respondents on extreme medical grounds.

13. We also take note of the fact that Commanding Officer of the applicant who is also a Medical Officer (Doctor) has denied sheltered appointment to the applicant to serve further keeping in view his disability/medical condition and has very strongly recommended the case of the applicant for early discharge on extreme medical grounds. Although the respondents have taken a ground of locking period of 10 years from the date of completion of GNM course and deficiency of individuals in his trade/category, we are of the view that his early discharge will not prejudice the respondents in any manner. Considering all aspects of the matter and aforesaid judgment, we are of the view that this is a fit case to issue direction to the respondents to consider the matter of premature discharge of the applicant as an extreme compassionate case.

14. Accordingly, Original Application is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to consider the prayer of the applicant for premature discharge from

service on extreme compassionate/medical grounds and issue necessary release order of the applicant from service within a period of four months from the date of communication of this order.

15. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : November, 2022
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