

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 28 of 2024

Monday, this the 18th day of November, 2024

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

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

Hav/AA Bindu Mahesh Jaladi (No. 15417066M), Son of Vinkateshwarlu Jaladi, permanent resident of Varagani, Guntur (Andhra Pradesh)-522235, presently posted at Military Hospital, Golconda, PIN-900398, C/O 56 APO (lastly posted at Army Medical Corps Records, Lucknow).

.... Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi-110001.
2. Director General of Medical Services (Army), Integrated Headquarters of the Ministry of Defence (Army), Adjutant General's Branch, 'L' Block, New Delhi-110001.
3. Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow, PIN-900450, C/O 56 APO.
4. MG Medical, Headquarters Dakshin Bharat Area, PIN-900432, C/O 56 APO.
5. Commanding Officer, Military Hospital, Golconda, PIN-900398, C/O 56 APO.

... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**, 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:-

- (a) *Issue/pass an order setting aside the letter/order dated 19.03.2023 issued on behalf of the Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow rejecting the case of the applicant for premature discharge from service, after summoning the relevant original records.*
- (b) *Issue/pass an order directing the respondents to re-consider and grant the applicant pre-mature discharge on own request with consequential service benefits from due date.*
- (c) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allowing this Application with cost.*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Army Medical Corps (AMC) of Indian Army on 22.03.2003. The applicant applied for premature discharge from service on compassionate grounds on 28.01.2022. His application was recommended by higher officers in the chain but the same was rejected by the competent authority vide AMC Records letter dated 18.04.2022 assigning the reasons of deficiency of persons in the trade of the applicant, requirement of his service in organizational interest and

restrictions imposed by higher headquarters on pre-mature retirement till 31.03.2023. The applicant sought interview/personal meeting with the Col Commandant of Army Medical Corps Centre & College to ventilate his grievance vide application dated 27.06.2022. The aforesaid application was forwarded through proper channel with the remarks of the Commanding Officer that *"The individual concerned is genuine. He and his family have met me and are in constant stress. Recommended and forward for favourable consideration"* but even then the applicant could not get any favourable outcome regarding his premature discharge. Thereafter, applicant submitted another application dated 11.02.2023 for premature discharge from the service on compassionate ground which too was rejected vide order/letter dated 19.03.2023 on the ground of policy limitations, deficiency of manpower and organization requirement. 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 applicant was enrolled in the Indian Army on 22.03.2003. The applicant is suffering with 'Osteoarthritis', 'Survical Spondylosis" and 'PIVD L1-L2' and as such feeling difficulty to perform his military duties with full potential and upto the mark. The applicant is also suffering from mental stress due to family circumstances. He has the responsibility to take care of his aged and ailing father, grandfather and father-in-law as there is no male member to take care of them. The applicant also has to take care of his wife and two minor and school going children. The applicant's father is a patient of

‘Moderate Depressive Disorder, ‘Diabetes Mellitus’ and Osteoarthritis Both Knees’, thus he is hardly able to move on his own and needs an attendant even for performing his daily routines. Similarly, his aged grandfather is suffering from various old age ailments and there is no male member in his family to take care of them. The applicant’s mother and grandmother have already expired, and now there is no lady in his house at the native place to even cook food for them. The applicant’s wife is facing difficulty to manage the children along with aged and ailing parents. The applicant’s in-laws are residents of a neighbouring village having no male child and they are fully dependent on the applicant. The father-in-law of the applicant is a chronic heart patient (operated Coronary Artery Bypass Grafting) and also some other diseases. He further submitted that the applicant is residing at his current place of posting along with his wife and two minor children. His mother had expired at a very early age of about 33 years in 1994 when the applicant was aged about 11 years, and his only brother was of 12 years of age. At that stage, the applicant was brought up and taken care of by his maternal grandparents. The distance between the native place of the applicant and that of his maternal grandparents is about 22-23 Km. The brother of the applicant got associated with bad elements and had left home in the year 1996, he was educated upto VIII standard only and is unmarried. He occasionally visits home, but never took responsibility of taking care of his parents. On the contrary, he has been in the habit of harassing the family members/parents. The applicant’s father is residing in the native village

was initially being taken care of by the applicant's uncle residing in the neighbourhood, but subsequently, the uncle refused to take care of the applicant's father who is a Psychiatric patient since 2021. The applicant has also responsibility to look after his maternal grandparents as there is no one except the applicant in the maternal home. The maternal grandmother of the applicant died after prolonged illness in August, 2022 as she had been suffering from CANCER, and after her death the maternal grandfather, aged about 80 years is alone, suffering with various old age related health challenges including reduced vision and difficulty to walk on his own. Hence, the applicant is under constant stress due to the perils of his domestic problems and personal life while performing his duties in the Army.

4. Learned counsel for the applicant further submitted that due to aforesaid reasons of health issues of self and family members and to look after them, applicant is unable to perform his military duties properly and effectively and therefore, applicant applied for premature discharge from the service on compassionate grounds on 28.01.2022 and his application was recommended by the higher officers in chain but the same was rejected vide AMC Records letter dated 18.04.2022 stating the reasons that there is deficiency of personnel in his trade and also restrictions imposed by the higher formations on grant of premature retirement till 31.03.2023. Thereafter, the applicant submitted another application dated 11.02.2023 for premature discharge from the service on

compassionate grounds which too was rejected by the respondents vide letter dated 11.02.2023.

5. Learned counsel for the applicant also submitted that the applicant has completed more than 20 years of service with utmost dedication and complete satisfaction of his superiors but he is having genuine family problems due to his ill health and ill health of his family members and therefore, no bar should be applicable for premature retirement in the present circumstances and he should be prematurely discharged from service granting pensionary benefits. He placed reliance on the judgment of this Tribunal 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 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 Apex Court judgment in **Sanjay Jain vs. Union of India**, Civil Appeal No. 7822 of 2011 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 **Major Rahul Shukla vs. Union of India & Ors** (1995) 34 DRJ 399 (DB) and pleaded that applicant's case is squarely covered with aforesaid judgments and accordingly, keeping in view his personal difficulties for the pressing and challenging circumstances being faced by him in performing his military duties, his ill health and problems of wife and children and other family members and all other difficulties of routine activities, it has become very difficult for him to perform his duties

with full potential and upto the marks 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 Indian Army (AMC) on 22.03.2003 and presently posted with Military Hospital, Golconda since 25.06.2021. He was promoted to the rank of Naik on 17.01.2019 with seniority with effect from 01.01.2019 and promoted to the rank of Havildar on 30.04.2021 wef 19.04.2021. After filing of Counter Affidavit, the applicant has cooked up the story in the Rejoinder affidavit for his pre-mature retirement. On scrutiny of the service records of the applicant, name of his brother Mr. J. Suresh Babu was found recorded therein. The applicant's present medical category is SHAPE-1 and the applicant's disability 'Osteoarthritis' has already been treated under the supervision of concerned medical authorities at service hospitals and he will be completing his normal service limit on 31.03.2027 (Afternoon) in his present rank. The applicant submitted an application dated 28.01.2022 for premature retirement from service on compassionate ground citing his as well as health issues of his family members, and to look after/provide assistance & support to his aged parents and other family members. His application was processed and was examined in detail by AMC Records but the competent authority has not agreed to sanction premature retirement as per the merit of the case based on deficiency of his trade in the Corps, essential requirement of his services to meet organization

interest and restriction imposed by IHQ of MoD (Army) on premature retirement till 31.03.2023 due to adverse impact of COVID-19 pandemic on recruitment in Indian Army. The ceiling of 0.5% for grant of premature retirement to JCO/ORs has been further extended by the competent authority till 30.06.2024 vide IHQ of MoD (Army) letter dated 06.04.2023.

7. 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. Besides this, AMC is providing medical treatment to all dependents of serving personnel and many multispecialty service hospitals are located across the country to provide required treatment and to ensure good health of serving soldiers and their dependents. The applicant can utilize the medical facilities available at service hospitals at his duty station as well as at nearest military hospital of his native place. The applicant's trade is 'Ambulance Assistant', hence deficiency of a Ambulance Assistant will result in compromise with the life and limb of a patient and it may affect optimal functioning of a hospital. The applicant had wilfully accepted promotion to the rank of Havildar on 30.04.2021 wef 19.04.2021, hence his revised term of engagement/service is 24 years or 49 years of age, whichever is earlier. Besides this, there is a restriction in granting premature retirement to JCOs/OR till 30.06.2024 due to COVID-19 pandemic and non recruitment

in the Army and therefore, premature discharge may affect the operational commitments and preparedness of the Army.

8. Learned counsel for the respondents further submitted that premature retirement from service at own request is being dealt with as per guidelines issued by IHQ of MoD (Army) from time to time and only genuine cases are recommended after verifying the merit of the case and Corps manpower state. He also submitted that applicant signed a contract for 20 years of colour service and 03 years of reserve liabilities as per terms and engagement contained in the Enrolment Form signed by him at the time of enrolment in the Army and his present term of service/engagement in the rank of Havildar is upto 31.03.2027. The respondents' refusal for grant of premature retirement from service is wholly just, proper and in accordance with law and there is no illegality in the said order. Hence, keeping in view the deficiency in Corps manpower and limitations imposed by the competent authority on premature retirement, it will not be feasible to consider premature retirement of the applicant at this juncture. He pleaded for dismissal of O.A. being devoid of merit and lacking substance.

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

10. We have given our thoughtful consideration to the facts and rival contentions. The applicant has submitted two applications on 28.01.2022 and 11.02.2023 for premature discharge from service on medical grounds/ill health of family members and other challenging domestic

problems as the applicant is facing personal difficulties in performing his assigned task/military duties. 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 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.

11. 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 ill health of his family members.

12. We find that respondents have cited deficiency of personnel in the 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 Ambulance 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 ill health of members of his joint family.

13. 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 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.

14. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 18 November, 2024

AKD/-