

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 1033 of 2023

Thursday, this the 7th day of November, 2024

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

Hon'ble Lt. Gen. Anil Puri, Member (A)

Hav Jadeja Pruthvirajsinh Jayubha (15425587P), S/o Shri Jadeja Jayubha C, R/o Presently posted at Military Hospital Dhrangadhra, Dharangadhra Military Cantt, Surendra Nagar, PIN Code – 363310.

..... **Applicant**

Ld. Counsel for the : **Sri Manoj Kumar Awasthi, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi – 110011.
2. The Chief of the Army Staff, South Block, New Delhi 110001
3. Senior Records Officer, Army Medical Corps Records Office, Pin 900450 C/o 56 APO.
4. Commanding Officer, Dharangadhra, Dharangadhra Military Cantt Surendra Nagar, PIN Code – 363310.

..... **Respondents**

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

ORDER

1. This Original Application (OA) has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the following relief(s):-

- “(a) To direct the respondents to quash/set-aside the impugned orders dated 16.09.2022.*
- (b) To pass the directions to consider and grant discharge from service to the applicant.*
- (c) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”*

2. In nutshell, the facts of the case are that the applicant was enrolled in Army Medical Corps on 20.10.2007. He applied for premature retirement from service on 25.07.2022 through proper channel on domestic ground. His application duly recommended was forwarded to competent authority. His prayer for premature retirement was rejected vide order dated 26.10.2022 on the ground that higher Headquarters has imposed restrictions on premature retirement till 31.03.2023 and essential requirement of service in organisational interest. Being aggrieved, the applicant has filed instant Original Application for grant of premature discharge from service.

3. Learned counsel for the applicant submitted that applicant is only son of his parents and with the increasing age of his parents, the dependency and requirement towards the care of his parents have increased. The presence of the applicant at his home is utmost important.

Wife of the applicant is single daughter of her parents and it is duty of applicant and her wife to take care of his in-laws along with his own parents. Applicant's wife is forced to travel to her parents place for maintaining and taking care of them. Since the applicant is away from family, education of children of the applicant has affected. Due to service conditions, the applicant is unable to properly look after his parents and in-laws. The applicant has no option except to seek premature discharge from service as he has to look after his family and his in-laws. In view of the aforementioned compelling circumstances, the applicant moved an application for premature retirement from service which was turned down vide order dated 26.10.2022 stating therein that the competent authority is not agreed to due to deficiency of personnel in respective trade and essential requirement of their service to meet out the organisational interest.

4. Further submission of learned counsel for the applicant is that the applicant had completed minimum period of qualifying service required to earn pension as provided under Regulation 132 of Pension Regulation for the Army 1961 which stipulates that minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years and that there is no embargo on release of individuals on compassionate grounds and as such, order impugned in the Application, is palpably wrong and is not legally sustainable in the eyes of law. Learned counsel has also cited number of judgments in

support of claim of the applicant wherein the prayer for pre-mature retirement was accepted by saying that the similar relief(s) may also be granted in his case as well. Learned counsel for the applicant prayed that order rejecting prayer for grant of premature retirement be quashed and respondents be directed to grant premature discharge to the applicant.

5. On the other hand, learned counsel appearing on behalf of the respondents submitted that respondents have contested the claim of the applicant by filing a detailed Counter Affidavit wherein they have stated that the applicant was enrolled in Army Medical Corps on 20.10.2007 and presently he is posted with Military Hospital Dharangadhra since 12.12.2021. He was promoted to the rank of Havildar on 21.05.2013 and granted Modified Assured Career Progression Naib Subedar with effect from 21.05.2021. His medical category is SHAPE-1. He will be completing his normal service limit on 31.10.2031 in his present rank.

6. They have further stated that to cease the spread of COVID-19 pandemic in India, a country wide lockdown was announced by Government of India with effect from 25.03.2020. This has resulted in abrupt suspension of all activities which had also adversely impacted the recruitment process of the Indian Army. 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. To mitigate the impact, the competent

authority vide Integrated Headquarters of Ministry of Defence (Army) Adjutant General's Branch vide Note No B/10190/MP-3 dated 10 Mar 2021 had conveyed the approval regarding ceiling for premature retirement quota with respect to Junior Commissioned Officer/Other Rank at 0.5%.

7. They have added that in terms of Section 13 & 14 of Army Act, 1950 the applicant got enrolled voluntarily in the Army Medical Corps and signed a contract for 20 years of colour service and 03 years of reserve liabilities as per terms of engagement contained in the enrolment form, which is the legal contract between the individual and the state. They have further stated that the applicant had willingly accepted promotion to the rank of Havildar, which has automatically been revised his terms of engagement to 24 years of service with colour extendable by 2 years by screening or 49 years of age, whichever is earlier in terms of Government of India, Ministry of Defence letter dated 03rd September, 1998. After affirming the pensionable service in the said rank, the applicant is seeking discharge from service, which is not justified.

8. The respondents in their Counter Affidavit have also cited para 163 (a)(ii) of Regulations of the Army 1987 (Volume-1) which provides that "Retirement of Havildars of all arms of service, who opted for revised terms operative from 01 Dec 1976, is compulsory on completion of 24 years pensionable service or 49 years of age, whichever is earlier. Lastly, the respondents have stated that the order, impugned in the Application,

is perfectly legal and valid and the same does not suffer from any infirmity or illegality.

9. Learned counsel for the respondents submitted that the applicant submitted an application dated 25.07.2022 for premature retirement from service on compassionate grounds reflecting domestic and health issues of aging parents, which was scrutinised in conjunction with relevant rules and policy on the subject. After consideration all aspects and limitations imposed the competent authority considered the prayer of the applicant and decision of competent authority was conveyed to unit concerned of the applicant vide letter 26.10.2022. Order impugned in the Application, is perfectly legal and valid and the same has been passed after due diligence and also taking into account the relevant rules and regulations on the subject and as such there is no infirmity or illegality in the impugned order, hence O.A. is liable to be dismissed.

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

11. The short question involved in this O.A. is whether the request of the applicant for pre-mature retirement from service has been validly rejected by the respondents or it requires reconsideration?

12. The facts as projected by the applicant have not been disputed by the respondents.

13. From the facts and circumstances of the case narrated hereinabove, it is crystal clear that the applicant initially moved an application for pre-mature retirement in the year 2022, which was rejected by the respondents on the grounds, mentioned hereinabove. From the perusal of the impugned order, it would reveal that the respondents have rejected the applications of as many as 8, employees including the applicant by one stroke by saying that "Higher Headquarters has imposed strict restrictions on PMR till Mar 2023". In other words, it can be safely said that the respondents while rejecting the application of the applicant has not dealt with the points raised by him in his application, but in a mechanical and stereo type manner.

14. It is trite law that if order entails civil consequences, then the order must be reasoned and speaking one. In the case, in hand, the respondent has rejected the claim of the applicant without detailing the grounds/points raised by the applicant in his representation and in a cursory manner they have rejected the claim of the applicant along with others. Apart from that, the order, impugned in the Application, is also not a reasoned order, which would suggest that the respondent while rejecting the claim of the applicant has applied its mind on each grounds/points as raised by the applicant in his representation. In absence thereof, the order as passed by the respondent cannot be said to be a legal and valid order.

15. 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 application of the applicant is required to be decided keeping in view rules and regulations.

16. We may also observe that respondents have stated the deficiency of personnel in applicant's trade as a ground for rejecting his request. But considering all aspects of the matter, we are of the considered 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 aged parents of the applicant as well as other domestic affairs.

17. In view of the facts and circumstances stated above, order dated 26.10.2022 is set-aside in so far as the applicant is concerned. O.A. is **disposed off** finally with the directions 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 within a period of four months from the date

of receipt of certified copy of this order. The decision so taken shall be communicated to the applicant forthwith.

18. There shall be no order as to costs.

19. Pending Misc. Application(s), if any, shall also stand disposed off.

(Lt. Gen. Anil Puri)
Member (A)

Ukt/-

(Justice Anil Kumar)
Member (J)