

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 118 of 2021**Thursday, the 21st day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Army No. 14678461K Nk (Auto Tech [B Veh] Arvind Kumar Tripathi,
S/o Rajesh Tripathi, presently posted at 880 Field Workshop
Company, 659 EME Battalion, PIN-906601, C/o 56 APO, Permanent
Resident of Vill- Pratapatti, PO–Harahua, PS-Baragain, Tehsil-Pindra,
District– Varanasi, Pin No. 221105 Uttar Pradesh.

..... Applicant

Ld. Counsel for the : **Shri Rajiv Mishra**, Advocate.
Applicant

Versus

1. The Union of India through Secretary, Ministry of Defence (Army) South Block, New Delhi -110010.
2. Chief of the Army Staff, IHQ MOD (Army) South Block, New Delhi.
3. Officer in Charge, EME Records, Pin No 900453, C/o 56 APO.
4. Commanding Officer, 880 Fd Wksp Coy EME, PIN 900880, C/o 99 APO.
5. Commanding Officer, 659 EME Battalion, Pin-900453, C/o 99 APO.

.....Respondents

Ld. Counsel for the : **Shri Pushendra Mishra**, Advocate.
Respondents. Central Govt. Counsel.

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) *To issue/pass an order or directions to set-aside/quash the order vide letter dated 1535/T-10/CAN/CA-2(MP) dated 24.12.2020 passed by respondent No.3 where applicant's name is mentioned as serial No. 199 of Appx'A' for cancelling the discharge order No. 1535/T-1D/158/CG/CA-2(MP) Dated 08.10.2020 by which applicant is proposed to be discharge on dated 31.01.2021*

(b) *To issue/ pass an order or directions to the respondents to discharge the applicant in lieu of discharge order No.1535/T-1D/158/CG/CA-2(MP) Dated 08.10.2020 and grant all consequential benefits to the applicant.*

(c) *To issue/pass an order or directions to the respondents to grant service pension to the applicant after his discharge in lieu of discharge order No. 1535/T-1D/158/CG/CA-2(MP) Dated 08.10.2020.*

(d) *To issue/pass an order or directions to the respondents to not to harass the applicant by his superior authorities and not to take any strict/coercive/harsh action against the applicant.*

(e) *To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*

(f) *To allow this original application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Army on 07.03.2005 and after completion of his 15 years of service he submitted an application for premature discharge from service in the month of September 2019, with the requisite documents, on compassionate grounds to take care of his ailing mother. In the aforesaid premature discharge application, various anomalies were observed by EME Records and the application was re-

submitted duly rectified on 14.03.2020, but discharge order was kept pending and premature discharge order was issued on 08.10.2020 in which his premature discharge date was fixed as 31.01.2021 and he was required to report Depot Battalion for discharge drill on 03.01.2021 to be struck of strength w.e.f. 31.01.2021. Thereafter, his premature discharge from service on compassionate ground was cancelled vide order dated 24.12.2020 and 09.12.2020. Hence this O.A. has been filed.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army on 07.03.2005 and after completion of 15 years of pensionable service he represented, by way of an application in the month of September 2019, for premature discharge from service in order to take care his ailing mother, who was suffering from a chronic disease and for which she was undergoing treatment at Shreyansh Medical Hospital, Varanasi. She was also admitted at aforesaid hospital from 06.01.2021 to 08.01.2021. Learned counsel for the applicant submitted that reply to applicant's representation was delayed by the respondents by issuing premature discharge order on 08.10.2020. Counsel for applicant further submitted that applicant's premature discharge order dated 08.10.2020 was cancelled vide order dated 24.12.2020 to harass the applicant. Applicant's father is also an old person and unable to take care of himself due to prolonged sickness of applicant's mother and thereby whole family is disturbed. His submission is that applicant's premature discharge from service has been rejected in an illegal and arbitrary manner. He pleaded that applicant be permitted to proceed on premature discharge w.e.f. the date as mentioned in his earlier application submitted in the month of September 2019.

4. On the other hand, Ld. Counsel for the respondents pleaded that applicant's application, along with advance pension documents for premature discharge from service on compassionate grounds were received on 27.11.2019, but same was required to be rectified due to observation/anomalies noted vide EME Records letter dated 20.01.2020. Thereafter, 880 Field Workshop Company EME resubmitted the pension documents duly rectified vide letter dated 14.03.2020, but dispensation certificate and discipline certificate were not provided which was observed vide EME Records letter dated 16.06.2020 and reminder dated 07.06.2020. On receipt of the same documents premature discharge order was issued vide order dated 08.10.2020. Therefore, there was no delay in issuing the premature discharge order of the applicant, in which his date of discharge was fixed on 31.01.2021. Further submission of the learned counsel for the applicant is that in the mean time, due to national lockdown because of COVID-19 announced by the government on 25.03.2020, resulted in abrupt suspension all activities and further fresh recruitment process was also impacted. In this regard Adjutant General's Branch, MP-3 letter dated 16.10.2020 issued following directions for granting premature retirement for the period from 01.01.2021 to 31.01.2023 that:-

- (a) PMR (Premature Retirement) to be approved by COAS.
- (b) The PMR not to exceed 0.5% of authorised/held (whichever is less) in any trade.
- (c) The PMR of individual which was already approved to be deferred by one year.

5. It was also directed that all premature retirement applications are to be submitted through department channel for the period from 01.01.2021 to 31.03.2023 and only genuine applications are to be forwarded to EME Records for approval by the DGEME. According all premature discharge orders issued earlier were cancelled vide EME Records letter dated 24.12.2020 and a fresh PMR order was issued vide EME Records letter dated 31.12.2020 in which applicant's date of discharge was fixed 28.02.2022 and he was requested to report to Depot Battalion on 03.02.2022 for discharge drill formalities when he was to be finally struck of strength from EME Corps. He pleaded for dismissal of the O.A.

6. Heard the Learned counsel for the parties and perused the material placed on record. We have also gone through the rejection order of premature discharge from service.

7. In view of the fact and averments of both parties, we find that the premature discharge from service of the applicant was rejected due to national lockdown announced by the government on 25.03.2020 in which there was an abrupt suspension all activities which effected fresh recruitment in the Army. In this regard directions were issued by Adjutant General's Branch, MP-3 vide letter dated 16.10.2020 for granting Premature Retirement for the period from 01.01.2021 to 31.01.2023 as follows:-

- (a) PMR (Premature Retirement) to be approved by COAS.
- (b) The PMR not to exceed 0.5% of authorised/held (whichever is less) in any trade.

(c) The PMR of individual which was already approved to be deferred by one year.

8. According, to the above directions authorities have issued afresh premature discharge order dated 31.12.2020 in which applicant's retirement date is fixed for 28.02.2022.

9. In view of the above, we find that since a considerable time has lapsed on account of COVID-19 pandemic resulting in delay in Premature Retirement of the applicant, therefore, we are of the view that applicant could be discharged from service w.e.f. 28.02.2022, as this delay was beyond the control of the respondents.

10. A conspectus of aforesaid observations is that O.A. deserves to be allowed, hence **allowed**.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: October, 2021
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