

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 139 of 2020

Thursday, this the 28th day of October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

N K Dixit
S/o Yogesh Chandra Dixit
R/o House No. 590/P/313 Royal Colony Charan Bhatta,
Charan Bhatta Road, Lucknow

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Raj Kumar Mishra &**
Ms. Upasna Mishra, Advocate.

Versus

1. Union of India, through Chief Air Marshal, Air Force Headquarters, Ministry of Defence, New Delhi.
2. Station Commander 505 SU, Air Force, C/o 56 APO.
3. Air Force Record Officer (OIC RW) (DIS), Subroto Park, New Delhi – 110010.

... **Respondents**

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

ORDER

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

- a) To quash the impugned order dated 14.02.2020 passed by respondent no. 3 contained Annexure no. 1 of the present application, in the interest of justice.
- b) To direct respondents to continue applicant's services with the original intended duration with retirement due on July 2020, the interest of justice.

- c) To direct respondents to provide retiral benefits to applicants (as per the intended due date of retirement of service i.e. July 2020).
- d) Costs and expenses of the application in favour of the applicant against all the opposite parties.
- e) Any other relief or reliefs which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be granted."

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 14.07.1997 and was discharged from service on 15.02.2020 on selection to a civil post but his terms of engagement was expiring on 13.07.2020. The applicant was posted with 505 SU and his schedule discharge from service was on 31.07.2020 vide AFRO order dated 06.06.2019. On the request of applicant by applying for a civil post, applicant was issued NOC by Station Commander on 15.07.2019, prior to one year from his schedule discharge under the provisions of AFO 16/2008 and 33/2017. The applicant applied for immediate discharge from service on being selected for a civil post on 23.12.2019. His application was recommended by Station Commander and forwarded to CAC on 26.12.2019. CAC recommended the application and was forwarded to AFRO on 30.12.2019 which was taken to AFRO personally by applicant himself. The applicant was advised at AFRO that he would not be given discharge on the date he is asking i.e. 20.01.2020 as it could not be possible to sanction discharge before 15.02.2020. In the meantime, applicant requested to his private company to extend the period of joining upto 20.02.2020 but the date of joining was not

extended by the company. Therefore, on 01.01.2020, applicant submitted an application to withdraw his discharge application on the ground that private company did not agree to extend joining time upto 20.02.2020. His application was submitted to CAC on 06.01.2020 and further forwarded to AFRO on 07.01.2020. When applicant's withdrawal application dated 01.01.2020 was in transit, applicant requested on 17.01.2020 for ink signed copy of the same to take it personally to CAC to expedite the case. Meanwhile AFRO issued discharge order dated 17.01.2020 fixing date of discharge on 15.02.2020 under the provisions of AF Rules, 1969 Chapter III, Rule 15(2)(a) "At his own request on transfer to pension establishment". His date of discharge was fixed 15.02.2020 as per para 4 (a) of Air HQ letters dated 28.02.2019 and 19.08.2019. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant applied for a civil job in a Hotel in Siliguri (WB) under the provisions of AFO 16/2008 and AFO 33/2017 and was issued a NOC for the same. Later he was selected for the job and requested for discharge from service vide letter dated 23.12.2019. The discharge date was fixed as 15.02.2020 by AFRO whereas last date for joining the civil job was on 31.01.2020, therefore, applicant submitted an application dated 01.01.2020 to withdraw his request of discharge from service as the date of discharge exceeded the last date of joining the job defeating the purpose for requesting discharge from service. The opposite parties provided applicant with a discharge certificate dated

17.01.2020 where the nature of discharge is stated as voluntary though the applicant submitted application for withdrawal of his discharge vide letter dated 01.01.2020, therefore, opposite parties had no reason for discharging the applicant from service without any reasonable ground, which is arbitrary, illegal and against the natural justice.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in ***Union of India & Ors vs. Wing Commander T. Parthasarathy***, decided on 10.11.2020 and the Hon'ble Delhi High Court in WPC 9304/2019, ***Poonam Garg vs. IFCI Venture Capital Funds Ltd through its Managing Director & Ors***, decided on 27.09.2019 and pleaded that applicant's case is similar to aforesaid judgments and therefore, his discharge order to be quashed and applicant should be provided all retiral benefits upto his actual due date of retirement of service i.e. July 2020.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was posted with 505 SU and his schedule discharge from service was on 31.07.2020 vide AFRO order dated 06.06.2019. On the request of applicant by applying for a civil post, applicant was issued NOC by Station Commander on 15.07.2019, prior to one year from his schedule discharge under the provisions of AFO 16/2008 and 33/2017. The applicant applied for immediate discharge from service on being selected for a civil post on 23.12.2019. His application was recommended by Station Commander and forwarded to CAC on 26.12.2019 which was further forwarded to AFRO on

30.12.2019 which was taken to AFRO personally by applicant himself. The applicant was advised at AFRO that he would not be given discharge on the date he is asking i.e. 20.01.2020 as it could not be possible to sanction discharge before 15.02.2020. In the meantime, applicant requested to his private company to extend the period of joining upto 20.02.2020 but the date of joining was not extended by the company. Therefore, on 01.01.2020, applicant submitted an application to withdraw his discharge application on the ground that private company did not agree to extend joining time upto 20.02.2020. His application was submitted to CAC on 06.01.2020 and further forwarded to AFRO on 07.01.2020. When applicant's withdrawal application dated 01.01.2020 was in transit, AFRO issued discharge order dated 17.01.2020 fixing date of discharge on 15.02.2020 under the provisions of AF Rules, 1969 Chapter III, Rule 15(2)(a) "*At his own request on transfer to pension establishment*". Applicant's date of discharge was fixed 15.02.2020 as per para 4 (a) of Air HQ letters dated 28.02.2019 and 19.08.2019.

6. Ld. Counsel for the respondents also submitted that since applicant's withdrawal application reached at AFRO after issue of his discharge order, AFRO did not consider applicant's request of withdrawal of his discharge application. The applicant was informed to be discharged from service on due date vide letter dated 14.02.2020. He pleaded that O.A. may be dismissed.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. It is pertinent to mention that judgments relied upon by the applicant in Para 4 referred above are not relevant in the present case being based on different facts and circumstances.

9. We find that applicant was issued NOC on his request to apply for a civil job and thereafter, on being selected for a civil job, applicant applied for discharge from service to join civil job. Accordingly, applicant's discharge order was issued by AFRO vide order dated 17.01.2020 when applicant's withdrawal application dated 01.01.2020 was in transit. AFRO issued discharge order dated 17.01.2020 fixing date of discharge on 15.02.2020 under the provisions of AF Rules, 1969, Chapter III, Rule 15(2)(a), "*At his own request*", on receipt of personal application of applicant being selected for a civil job.

10. We also find that applicant's request for withdrawal of his discharge application was not accepted by AFRO as discharge order of the applicant has already been issued on 17.01.2020 as per Air Force Rules, 1969 and as per para 4 (a) of Air HQ letters dated 28.02.2019 and 19.08.2019. Therefore, there seems no illegality or illogicality in issuance of discharge order by AFRO. Hence, the applicant is not entitled the reliefs prayed in Original Application.

11. In view of the above, the O.A. deserves to be dismissed. It is accordingly **dismissed**.

12. 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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