

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 701 of 2023**

**Thursday, this the 5<sup>th</sup> day of October, 2023**

**Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)**

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

B. Sivaram (No. 15425044H Hav/NA), aged about 35 years, son of Bandi Lakshmaiah, presently posted at Command Hospital (Northern Command), PIN-901131, C/O 56 APO

**.... Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Director General of Medical Services (Army) Integrated Headquarters of the Ministry of Defence (Army), Adjutant General's Branch, 'L' Block, New Delhi-110011.
3. Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow, PIN-900450, C/O 56 APO
4. Commandant, Command Hospital (Northern Command), PIN-901131, C/O 56 APO

**... Respondents**

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,  
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 setting aside the order/letter dated 09.10.2022 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 case of the applicant for 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 Indian Army (Army Medical Corps) on 03.06.2006 and presently posted with Command Hospital Udampur. His present medical category is S1H1A1P3(P)E1 for diagnosis ‘Seizure Disorder’. He has not been awarded any punishment during entire service and will be completing his normal service limit on 30.06.2030 in present rank. Due to placement of the applicant in permanent low medical category (Seizure Disorder), he gave unwillingness to continue in service on medical ground and applied for premature retirement from service which Respondents have denied the same after thoughtful consideration vide their letter dated 09.10.2022 . The reason of denial is

that there is an overall deficiency of manpower in the Army, hence competent authority has decided to retain the applicant in service in larger interest of the organisation. Army Medical Corps Records also intimated that higher Headquarter has imposed strict restrictions on grant of premature retirement till 30 Jun 2024. Being aggrieved, the applicant has filed the present Original Application for grant of premature retirement on medical ground as well as on compassionate ground.

3. Learned counsel for the applicant submitted that applicant while posted at 408 Field Hospital, a High Altitude posting in Leh (J&K), for the first time suffered with Seizure disorder on 24.08.2021. He was immediately admitted in the Military Hospital. On the very next day i.e, on 25.08.2021 another episode of Seizure disorder took place during hospitalisation. Due to this ailment his medical category was downgraded. After the last episode on 28.09.2021, recurrence of Seizure disorder took place on 19.02.2022, 02.08.2022 and 23.12.2022.

4. Learned counsel for the applicant submitted that due to said disease, applicant is feeling difficulty in performing his routine official duties. He feels drowsiness all the time due to intake of medicines prescribed for the disease he is suffering with. The applicant feels himself imbalanced and fearful to move alone from one place to another. He has also the responsibility to take care of his old aged parents, wife and two minor school going children residing at his native place. His mother is a patient of CAD with Hypertension/Diabetes Mellitus and needs regular follow up. There is no male member in his family to take care of them.

5. Due to above problems, the applicant submitted an application for unwillingness to serve in the Army. He also applied for premature retirement from service through proper channel. The application was forwarded to the competent authority duly recommended but the same was denied assigning the reasons of deficiency of persons in the trade and requirement of his service in organisational interest and restrictions imposed by high Headquarters on premature retirement till 30.06.2024.

6. Learned counsel for the applicant further submitted that the applicant had suffered with Seizure disorder six times within a span of about one and half years and due to ill health he is feeling great difficulty in performing his official duties but still he is not being given discharge from service inspite of recommendation of the Commanding Officer. Ld. Counsel for the applicant submitted that while rejecting his case for premature retirement the respondents have acted in a mechanical manner without application of mind to the prevailing facts and circumstances of the case. The applicant had rendered more than mandatory service of 15 years, he is in permanent low medical category, not found fit for sheltered appointment and also having family problems due to ill health of his parents, no bar should be applicable for premature retirement in the present circumstances and he should be prematurely discharged from service granting pensionary benefits being a similar case as decided by this Tribunal in OA No. 517 of 2021, **Hav Mukesh Kumar vs. Union of India & Others**, decided on 03.12.2021.

7. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Indian Army (Army Medical Corps) on 03.06.2006 and presently posted with Command Hospital Udhampur. He got voluntarily enrolled in the Army having understood all the constraints of service conditions as per terms of engagement contained in the enrolment form which is the legal contract between the individual and the state. Further he accepted the rank of Havildar and in terms of policy in vogue had submitted the mandated certificate regarding acceptance of terms and conditions of service applicable to the rank of Havildar i.e, 24 years of service extendable by 02 years by screening or 49 years of age, whichever is earlier. His present medical category is S1H1A1P3(P)E1 for diagnosis 'Seizure Disorder'. He has not been awarded any punishment during entire service and will be completing his normal service limit on 30.06.2030 in present rank. He submitted 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 had 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 had conveyed the approval for premature retirement quota to 0.5% for the period from 01.07.2023 to 30.06.2024 with respect to Junior Commissioned Officer/Other ranks for discharge on medical, discipline, compassionate grounds and other unforeseen reasons.

8. Ld Counsel for the Respondents submitted that notwithstanding the above, his application for premature discharge from service on medical grounds as well as compassionate ground citing old age related ailments of his parents was examined in detail and same was not agreed to by the competent authority due to substantial deficiency in his trade to which the applicant belongs to as well as due to restriction imposed by the competent authority. He further submitted that premature retirement from service at own request is being dealt with as per guidelines issued by IHQ of MoD (Army) and the competent authority in light of alarming deficiency state of manpower has now restricted considering premature retirement to 0.5% for the period 01.07.2023 to 30.06.2024 vide ADG MP (MP-3) AG's Branch, IHQ of MoD (Army) New Delhi letter dated 06.04.2023.

9. In view of the above, O.A. filed by the applicant is misconceived; hence not tenable in law. The action taken by the respondents are in accordance with law and there is no need of interference. He submitted that Hon'ble AFT may please dismiss the present O.A. out rightly due to its being devoid of merit and lacks of substance.

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. The applicant submitted an application for premature discharge from service on medical ground and domestic problems. The authorities could not consider his case in its proper perspective and

rejected the same on the ground of restrictions imposed by IHQ of MoD (Army) due to deficiency in applicant's trade and COVID-19 pandemic.

12. 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 certain grounds. Therefore, the applicant cannot be blamed if he has filed such an application on medical ground and also family problems due to ill health of his parents.

13. We find that respondents have cited deficiency in applicant's trade as a ground for rejecting his request. We are, however, of the view that his early discharge from service will not prejudice the respondents in any manner. Considering all aspects of the matter i.e., improved Covid Pandemic situation and recommencement of recruitment in the Army, we are of the view that applicant's case needs re-consideration and review by the competent authority for grant of premature retirement on medical as well as on compassionate grounds.

14. Accordingly, Original Application is disposed off finally with direction to the respondents to review and reconsider the prayer of the applicant for premature retirement from service on medical as well as 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 this order and communicate the decision to the applicant accordingly.

15. No order as to costs.

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

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

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : Oct, 2023  
dds