

**COURT NO. I, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A NO. 2060 OF 2017

Cdr Vishal Bhargava

.. Applicant

Versus

Union of India and others

.. Respondents

For Applicant : Mr. Ankur Chhibber, Advocate

For Respondents : Mr. S.P Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON

HON'BLE LT. GEN. SANJIV LANGER, MEMBER (A)

Dated: 20th December 2017

ORDER

The applicant has come up before this Tribunal aggrieved by the fact that while he had applied for premature retirement from Navy on 11.07.2016 with effective date being 11.07.2017, the request of which was acceded to by the respondents on 02.11.2016, the applicant has, due to personal reasons, requested for extension of his date of premature retirement from 11.07.2017 to 31.12.2017 (request being agreed to by the respondents), however, thereafter has sought to withdraw his application for premature retirement on 01.09.2017, which withdrawal has been refused by the respondents on 12.10.2017.

2. The applicant, a Commander in the Indian Navy, was commissioned as a Sub Lieutenant on 01.06.1996 and subsequently

in the Submarine Branch rose to that of a Commander in August 2009. He has been considered for promotion to the rank of Captain and has been unsuccessful in that Board. The applicant chose to apply for premature retirement to seek better re-settlement opportunities outside Naval service. The step for seeking premature retirement having been taken, the applicant has now sought to withdraw the request for premature retirement, since he claims no worthwhile/viable options outside the service exist at this point of time. While this case was taken up at admission stage itself, the arguments of the counsel centred around the interim relief that had been sought in this case, which is as follows:

"stay the operation of the impugned order dated 12.10.2017 as well as 17.3.2017 whereby it has been stated that the applicant will be released on 31.12.2017 and allow the applicant to continue in service till the pendency of the present O.A."

3. We have heard the learned counsel for the parties.
4. The counsel for the applicant has relied heavily on the decision of the Hon'ble Supreme Court in *Union of India and another v. Wg. Cdr. T. Parthasarathy* (2001) 1 SCC 158. He has also brought to fore the decision of a coordinate Bench of this Tribunal in *Cdr. C.S. Joshi v. Union of India and others* (O.A No. 238 of 2016 decided on 17.03.2017) in this regard. He asserted that based on the ratio of the decision in *Parathasarathy* (supra) and followed in *Cdr. C.S Joshi*

(supra), the central principle is that wherever the relationship between the employer and the employee has not been severed, the right of the employee remains to withdraw his request for resignation/premature retirement at any stage. He claimed that this is an unfettered right and can definitely be exercised, and the respondents are duty bound to retain the individual. The decision in *Cdr. C.S Joshi* (supra) has followed the same ratio.

5. In case *Parathasarathy* (supra), acceptance of a request for premature retirement had only occurred a day after the applicant in that case withdrew his request for premature retirement. The Hon'ble Supreme Court thereafter laid down the principles, in which the rights of an individual as an employee have been specified. We find in the order of the coordinate Bench in *Cdr. C.S Joshi* (supra) that the issue related to a different fact situation, whereby, after filing the application, the applicant in that case realized that he could have served for two more years of service, due to a MoD notification and in order to avail of that notification, he sought to withdraw his earlier request for premature retirement. In another order of the same coordinate Bench, using the ratio in *Parathasarathy* (supra), the Bench has taken a different view in the light of the fact situation and held that the decision in *Parathasarathy* (supra) would not apply to

the facts of that case. This was again a case of withdrawal of premature retirement request.

6. In the present fact situation, it is evident that the applicant applied for premature retirement to seek better opportunities outside the Navy. He thereafter having received a date, requested for extension of the date of separation of service, which was acceded to by the respondents. Thereafter, having got a date of his choice, the applicant, realizing that he did not have viable or suitable employment opportunities outside the service, chose to seek withdrawal of his application for premature retirement. This was not agreed to by the respondents. The fact situation reveals a distinct set of steps. What emerges at this stage is the fact that in a disciplined service, such as the Armed Forces, can an officer seek and choose his voluntary separation from service at his will and pleasure? Having made up his intention and then getting a waiver to extend his period of service to seek options outside the service, can he now be permitted to withdraw the option to leave from the service, which he has voluntarily chosen for better avenues outside, and thereafter expect the Navy to still hold him in high regard to permit him to serve, presumably till he finds better opportunities outside? However, this aspect, we leave it open for our discussion at the relevant stage, as at present we are dealing with the issue of interim relief only.

7. More significantly, the officer was intimated on 12.10.2017, that his case for withdrawal of request for PMR had been rejected. He has filed thereafter no statutory or non-statutory appeal. In this situation, we think it necessary to refer to Section 21 of the Armed Forces Tribunal Act, 2007, which states:

"21. Application not to be admitted unless other remedies exhausted— (1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules and regulations--

(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.

Admittedly, the applicant has not availed of the legal remedy available to him under Section 21 of the Act, despite adequate time to respond. The applicant, on the contrary, has chosen to approach this Tribunal vide this O.A on 15.12.2017. The justification that he

was waiting for issues to be resolved by his command chain, do not impress us much, on the face of it, since he is a highly educated and qualified Cdr in the Navy, with more than two decades of service. We, still have put the respondents to notice to have their detailed response on this aspect as well as the other grounds carved out by the applicant in his O.A for the main relief.

8. In the present fact situation, we, definitely, are not inclined to grant him any interim relief. As such, the prayer for interim relief is declined.

9. Since in the main O.A, notice has already been issued to the respondents and the matter stands adjourned to **30.01.2018** for completion of pleadings, it shall be taken up on the date fixed for further consideration. Priority shall also be given to this case, over and above the other cases.

(VIRENDER SINGH)
CHAIRPERSON

(SANJIV LANGER)
MEMBER (A)

20th December 2017
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