

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

1.

OA 3935/2024 with MA 4139/2024

Cpl Sandeep Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Garima Sachdeva, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
15.10.2024

Heard learned counsel for the parties on the question of admission. Invoking the jurisdiction of this Tribunal u/s 14, applicant has filed this application and the prayer made in para 8 reads as under:

- a. To direct the Respondents to bring on record all the Documents pertaining to the Applicant's case with an advance copy to the Applicant.*
- b. To grant discharge to the Applicant with all consequential (if any) and pensionary benefits.*
- c. To direct the respondents to not take any apprehensive actions against the Applicant.*
- d. To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

2. Grievance of the applicant is that an application submitted by him seeking premature discharge vide Annexure A-1 dt 26/12/2022 has not been taken up for consideration and he has not been discharged. Referring to the averments made in para

4.3 and 4.4 of the prayer, it is the case of the applicant that his father is 62 years old is suffering from severe medical issues due to traumatic injury to his spine. He was paralysed on account of fall from high altitude stairs on 04.06.2022 and admitted to the hospital after being diagnosed with spine injury. He was operated upon and it is stated that he is suffering from Diabetes Mellitus as well and is bed ridden.

3. The applicant's family consists of his parents, two elder sisters and a younger brother. The applicant is in the Indian Air Force and younger brother is serving in the Indian Army. It is the case of the applicant that immediately after his father suffered the ailment he submitted the application for discharge on compassionate grounds. The same is not been considered as per the policy and therefore, he seeks discharge from service. When the matter was taken up on 01.10.2024, respondents represented by learned counsel, Ms. Garima Sachdeva informs this Tribunal that the applicant is unauthorisedly absent for about two years and on account of unauthorised absence of the applicant he cannot be granted discharge until and unless he physically appears in the unit and the statutory procedure laid down for discharge is completed. On 01.10.2024 when such an objection was raised we had requested the counsel for the applicant to seek instructions and to inform us why the applicant cannot report to the unit so that after proceedings in accordance with rules and regulation after he reports for duty after a long period of

unauthorised absence, the respondents can take action for considering his case for premature discharge from service.

4. Today, on instructions, learned counsel for the applicant argue that looking to his father's condition, the applicant cannot report for duty. In case if he reports for duty, because of his absence the respondents may take action against him and therefore, it may go adverse to the applicant. Learned counsel for the applicant submits that the applicant's application for premature discharge be considered as per the policy and he be granted premature discharge looking to his family condition on compassionate grounds. Learned counsel for the respondents vehemently opposed the aforesaid and argued that as per the rules, the absence of the applicant without permission and without obtaining leave is an offence u/s 38 and 39 of the Airforce Act i.e. desertion and absence without leave and the case of applicant for discharge in accordance with the Airforce Act and Rules cannot be processed in the absence of the applicant's physically appearing in the unit and thereafter subjecting him for action in accordance with the rules his case can be considered for premature discharge. Learned counsel submits based on the judgement of the Hon'ble Supreme Court that premature discharge is not a matter of right. A member who joins the Armed Forces is bound by the Terms and Conditions of the appointment and his premature discharge cannot be considered as a matter of right, and should be evaluated based on the rules

and regulations. Attention is invited to the law laid down by the Hon'ble Supreme Court in the case of *Amit Kumar Roy Vs UOI & Ors.* Civil Appeal Nos 4605-4606 of 2019 to say that the applicant does not have any unqualified right to leave the service of the Airforce. He should abide by the rules and regulations and when he appears, his case for premature discharge will be considered as per the statutory provisions. Learned counsel for the applicant rebutted the aforesaid and argued that on account of the situation in the family, the case of the applicant be considered as an exceptional case and appropriate directions be issued.

5. This Tribunal is the creation of the statute and has to implement the provisions of the statutory rules and regulations in the matter of granting relief to the applicant and for assessing any grievance which is brought to the notice of this Tribunal by invoking this jurisdiction u/s 14 can not be contrary to the laid down Statutory Acts, Rules and Regulations and the Policies applicable. This Tribunal cannot issue any directions to the respondents in the manner as prayed for. No discretion in this regard to bypass the rules and regulations and issue directions in the case of a man in uniform governed by the Armed forces Rules and Regulations can be granted. It is for the Competent Authority to consider the grievance of the applicant in accordance with the rules and regulations and as per discretion if any available, take appropriate action in this matter. This Tribunal in contravention

to the procedural rules and regulations cannot issue any direction as sought for. That being so we find no case made out for interference into the matter. The applicant may approach the highest authority in accordance with the statutory provisions in the matter. This Court finds no grounds to make any interference in the matter of granting relief to the applicant as the same would amount to violating or by-passing the Statutory Rules and Regulations applicable in the matter. Accordingly, finding no case to interfere in the matter, the application is dismissed with the aforesaid observation.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[LT GEN C.P. MOHANTY]
MEMBER (A)**

/kt/