

**COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 104 of 2010**

**IN THE MATTER OF:**

**Maj. Rahul Kesar**

**.....Applicant**

Through Mr P.D.P Deo, counsel for the applicant.

Versus

**Union of India & Ors**

**.....Respondents**

Through: Col (Retd) R Balasubramanian, counsel for the respondents.

**CORAM:**

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER**

**HON'BLE LT GEN Z.U. SHAH, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 27/09/2010**

1. The applicant has filed O.A No 104/2010 in the Armed Forces Tribunal challenging the order of Govt of India dated 27/10/2009 rejecting his statutory complaint against the requesting of pre-mature retirement and further praying that respondents be directed to consider his application for premature release from the Army on compassionate/humanitarian grounds.

2. The applicant was commissioned in the Army Air Defence on 07/12/1986. He attended the LGSC Course from 13/04/2003 to 13/03/2004 and had liability to serve for five years in the Army after the

course. The officer also attended a course in USA from 27/12/2000 to 27/05/2005 (liability to serve three years after completion of the course). The officer also contends that he has an outstanding record of service and has completed his post course liability period.

3. The officer states that during the period 04/02 onwards he has been confronted by acute family problems. His parents are suffering from serious medical problems. His father is suffering from “**bipolar disorder**” and his mother from “**diabetes and leukaemia**”. This had left no choice with the applicant but to apply for premature release on 04/01/2007 (Annexure P-1). His application was rejected on 31/05/2007 (Annexure P-5). The officer rendered another application on 29/12/2007 (Annexure P-6). This was also rejected on 01/12/2008. The officer submitted a statutory representation on 15/01/2009 (Annexure P-12). This was rejected on 27/10/2009 (Annexure P-13).

4. The officer contends that in his application/statutory representation he had mentioned that he was prepared to reimburse the entire cost of training incurred on him. The officer also contends that he was selected for Defence Services Staff College but withdrew his nomination on 16/05/2007 since that it would have come in his way from seeking premature release.

5. The parents of the applicant applied to the COAS and the Raksha Mantri on 01/12/2008. Both applications were rejected on 04/12/2008 (Annexure P-7) and 27/10/2009 (Annexure P-8) respectively. The officer also sought an interview with Military Secretary (Annexure P-11). This did not render any results. The officer on 27/12/2009 filed an RTI application asking for reasons for rejection of his request for premature release on compassionate grounds. The officer contends that he received an unsatisfactory reply from HQ 614 (I) Mech AD Brigade (Annexure P-14).

6. The applicant submits that the respondents have not realised that he was prepared to pay the entire cost incurred by the Government on his training and also was ready to forego his pensionary benefits. He had made the extreme sacrifice of withdrawing his nomination from the DSSC Course. All these sacrifices were made because of pressing compassionate reasons because of the acute ill health of his parents. Applicant has cited judgement given in the case of **K.S. Bhimal (Lt. Col) Vs Union of India (1999(4) SLR Page 630 (Delhi High Court)** in support of his contentions.

7. The respondents in his counter affidavit have stated that the grounds given by the officer for seeking premature retirement, that is looking after his ailing parents, parents in law and attending court cases

in land disputes, of parents in law, are not sufficient grounds for seeking premature retirement.

8. The respondents maintained that the applicant has an outstanding record of service and is likely to raise high in the profession. The applicant was nominated for DSSC-63 commencing on 18/06/2007 but he withdrew his nomination. The applicant was granted an interview of Additional Military Secretary on 15/09/2008 wherein he was asked to submit an application for a compassionate posting. The applicant did not avail this opportunity.

9. The father of the applicant is a heart patient since 1973 and the officer by remaining in service can get treatment for his parents in well equipped Army Hospitals. Several requests of the officer have been rejected because of organisational interest due to acute shortage of officers. His case was also considered under the relevant policy, but due to above mentioned reasons could not be allowed. The respondents have recommended that the application be rejected. The respondents have cited following judgements in support of their contentions:-

(a) Shakti Tyagi Vs Union of India Civil appeal No 4197 of 2006 decided by Apex Court on 19/09/2006.

(b) Major Gaurav Bhandari Vs Union of India CW No 6435 of 2008, Hon'ble Delhi High Court on 03/09/2008,

10. In a rejoinder affidavit the applicant has stated that the rejection of his requests, due to shortage of officers, is an eye wash which has been advanced by the respondents from many decades. The applicant contends that a compassionate posting will only provide him temporary respite. He will be frequently out of station on duty and will not be able to give complete attention to his ailing parents, both of whom have psychiatric problem and his full time presence with them is essential. The applicant states that he has been informed by the respondents that he can apply for premature release after he renders 15 years service. His compulsion however does not permit him to wait any longer.

11. We have heard the arguments and perused the relevant policies, records and judgement cited by both parties. The officer was commissioned on 07/12/1996 and has approximately one year and three months to complete the period (15 years) after which the Army HQ has intimated that he can apply for premature release vide letter dated 01/12/2008 (Annexure P-10). Despite the shortage of officers in the Army we feel that requests from officer with compelling domestic problem, which can not be disputed, must be taken note off. The officer has made the extreme sacrifice of surrendering his nomination for DSSC Course. He has also completed the mandatory period of service after completion of the course attended by him. The applicant last request for

premature retirement dated 15/06/2009 was rejected vide order dated 27/10/2009. Thereafter his domestic problems have been compounded and were the reason why even an offer of a compassionate posting was not utilised by him. The judgement cited by the applicant given in the case of K.S. Bhimal (Lt Col) Vs Union of India (Supra) supports the case of the applicant. On the other hand the judgements cited by the respondents do not support the contentions raised by them.

12. On the basis of aforesaid observations we consider it a fit case for reconsideration of the officer's request for premature retirement for which he should apply afresh. The respondents are directed to consider the request "de novo" without being influenced by their previous orders. This exercise should be completed within a period of three months from the date of receipt of the application.

13. Application partially allowed. No costs.

**Z.U.SHAH**  
**(Administrative Member)**

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open court**  
**Dated: 27/09/2010**