

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

**O.A. No.125 of 2010 with M.A. No.288 of 2010**

**IN THE MATTER OF:**

**Col. Sandeep Singh** .....**Applicant**  
Through: Mr. Riju Raj Jamwal, Counsel for the applicant

Versus

**Union of India & Anr.** .....**Respondents**  
Through: Mr. 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: 04.02.2011**

1. The applicant has filed present O.A. challenging return/refusal order dated 07.01.2008 (**Annexure P-A**) of his application for premature retirement and has prayed that his premature retirement application be allowed and the respondents be directed to release him from service. Notice

of this application was issued to the respondent side and they filed their counter affidavit.

2. Brief facts of the case are that the applicant was commissioned in the organisation on 11.06.1988. He was selected for a United Nations Mission from 25.03.2005 to 25.03.2006. On return from United Nations Mission, he continued his services with the armed forces. The applicant further contends that he is the only son of his aged parents. He has a duty to attend to his ailing mother, who is a Cancer patient who after recovery from the Breast Cancer had again been diagnosed with Colon Cancer in September, 2005. The applicant contends that he is living separately from his wife since 2004 as she is training abroad. The applicant has only one child, who is at present 13 years of age and staying with his wife. Due to these extreme compassionate reasons the applicant had applied for premature release from service twice in November, 2007 and September, 2008. His requests were not accepted and were returned. The applicant contends that the chain of command and the

Controlling Directorate recommended his case as there is no shortfall in the strength of full Colonel rank officers in the army and that there was no operational necessity. The applicant contends that he also undertook to fully accept any financial liability that the army may impose for releasing him from service. It was further contended that his request for premature release was turned down by the Defence Secretary on the ground that as per policy there is a service liability of five years for those who have served in the United Nations Mission as per Para 7 of the amendment in policy No.04588/MS dated 24.01.2002. The applicant also requested the authority to waive that clause for family compassionate grounds. He also states that the same relaxation was given in cases of IC-52510 Maj. Roopak Bhatnagar and IC-39059 Lt. Col. K.B.S. Sirohi. Their applications were allowed, while the service liability clause was prevailing, but in the applicant's case he has been discriminated against. The applicant contends that he made several statutory complaints and the last one dated 21.10.2009 is still pending. His requests were not acceded

to. A prayer was made for releasing the applicant from armed force services by waiving the balance period of 5 years bond on compassionate grounds.

3. The respondents in their reply submitted that the applicant had served as Military Observer in United Nations Mission in Congo from March, 2005 to March, 2006. He has a service liability after going on a foreign assignment, which was laid down in the appointment letter under which premature retirement is being sought and the applicant also signed an undertaking when he proceeded on for the UN assignment. The applicant is, therefore, debarred from seeking premature retirement from service during the period of his service liability of five years till March, 2011. The applications filed by the applicant in November, 2007 and September, 2008 seeking premature retirement from service were returned on 07.01.2008 and on 20.10.2008, respectively, due to that reason. It was also pointed out that the statutory complaint dated 21.10.2009 filed by the applicant was submitted to Central Government on

04.03.2010. The same is pending for decision. In reply it was also contended that the applicant did not meet any criteria mentioned in para 34 of the policy No.04588/MS dated 22.11.2001. His application was not accepted. It was replied that there was no provision for waiver of said term in the policy and accordingly, waiver was not granted. Each case is to be considered on its own merit and the applicant is not entitled for premature release. The respondents contended that the applicant has approached the Tribunal without waiting for the outcome of the statutory complaint dated 21.10.2009. It was prayed that the application of the applicant be rejected.

4. The applicant has filed a rejoinder reiterating the grounds stated in the Original Application.

5. We have heard the arguments and perused the record. During the course of arguments again learned counsel for the applicant drew our attention towards the representations made by the applicant from time to time and submitted that due to compassionate grounds he has prayed

for premature release. He has also prayed that the service liability clause of five years be waived. It was also stated that respondents had relaxed the same clause in the cases of IC-52510 Maj. Roopak Bhatnagar and IC-39059 Lt. Col. K.B.S. Sirohi. The applicant has been discriminated against. His last representation was filed long ago on 21.10.2009, but the same has not been dealt with. A prayer was made that the service liability clause be waived off and the application for premature release be accepted.

6. Learned counsel for the respondents submitted that at the time when the applicant proceeded for an assignment to United Nations Mission, an undertaking was given by him to abide by the terms of the assignment and under that term he was debarred from submitting an application for premature release before expiry of five years period i.e. till March, 2011. It was also contended that the applicant was aware of his domestic problems at the time of foreign assignment and also the service liability placed on accepting the said assignment. The previous representations were duly

considered and returned un-actioned and the last representation was pending and awaiting consideration. It was also contended that each case is to be considered and decided on its own merits and the applicant cannot claim advantage of the cases of the IC-52510 Maj. Roopak Bhatnagar and IC-39059 Lt. Col. K.B.S. Sirohi.

7. We have considered rival contentions of the parties. Admittedly, the applicant has voluntarily applied for foreign assignment and at that time he was aware of his domestic problems as well as terms of the assignment signed by him. Apparently, there is no provision for waiver in the policy, but the applicant has cited the cases of IC-52510 Maj. Roopak Bhatnagar and IC-39059 Lt. Col. K.B.S. Sirohi. In those cases, the respondents seem to have been somewhat liberal in relaxing the terms of assignment. Without going into the waiver clause in this particular case the service liability period of the applicant is going to expire by the end of March 2011. The applicant's contention is that he is the only son of his old aged parents and his mother is suffering from cancer. From

the record it is also revealed that his father is 74 years of age and is unable to properly attend to his ailing wife. It is also borne out from the record that the applicant's wife is completing her training abroad and their son is also staying with her. Keeping all these facts in mind we observe that the applicant deserves a sympathetic consideration while deciding his statutory complaint dated 21.10.2009 since pending with MoD for premature release. In the fitness of things the said representation should be sympathetically considered, keeping in view the domestic problems of the applicant and relaxation given to other above mentioned officers. Further taking into consideration the facts and circumstances, the applicant may file a representation averring the statement that his premature release may be made effective from April, 2011 so that the barrier for refusing him premature release on the ground of service liability may not come in his way.

8. On the basis of the aforesaid discussion, the present application is dismissed with the observation that the



representation filed by the applicant be considered sympathetically. The applicant is free to move a separate representation for grant of premature release with the averment that his premature release may be made effective from April, 2011 onwards.

9. With the aforesaid observation, the application is dismissed. No orders as to costs.

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

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

**Announced in the open Court**  
**on the day of 04<sup>th</sup> February, 2011**