

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

T. A. No. 397 of 2010

Writ Petition (Civil) No. 9265 of 2009

Sunu Rachel Koshy

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Harshan V. Hameed, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S. DHILLON, MEMBER.

JUDGMENT

19.12.2011

S.S. Dhillon, Member:

1. This petition has been filed by the Petitioner seeking directions to the Respondents to accept her application to retire prematurely from service.

2. The brief facts of the case are that the Petitioner was commissioned in the Military Nursing Service as a Lieutenant on 21st August 1998 and at the time of filing this petition in May 2009, she had completed 10 years and 6 months of service and had attained the rank of a Captain. The last unit in which she had been working was Military Hospital (CTC), Pune. It was argued that at the time of entry in service a bond had been executed by the Petitioner whereby she could not resign from the job within a period of five years from the date of commencement of service and that period of five years had expired on 20th August 2003. Accordingly, as per the Petitioner she has

no obligation to continue in service thereafter since she had completed the terms and conditions as mentioned in the bond.

3. On 17th October 2005 the Petitioner applied for premature retirement from service on account of the illness of her mother, who was a patient of hypertension, diabetes mellitus and arthritis with CAD. Since she needed constant medical attention and care, the Petitioner had decided to resign from service and look after her mother. However despite a very positive recommendation by the Commandant Military Hospital (CTC) Pune, the Respondents rejected her request for premature retirement on 4th September 2006 without assigning any reason. Since the medical condition of her mother continued to deteriorate the Petitioner again submitted an application for premature retirement on 28th May 2008, which again was duly recommended by her Commanding Officer, who even stated that the reasons for premature retirement given by the Petitioner were genuine. However this second application for premature retirement was also rejected by the Respondents on 17th October 2008. It was argued that during the last week of February 2009 the condition of the Petitioner's mother deteriorated and she was admitted in Arumana Hospital Thiruvananthapuram. Petitioner, therefore, by this petition has appealed that she may be permitted to retire prematurely from service.

4. The facts were vehemently denied by the Respondents who argued that the Petitioner had not come to the Tribunal with clean hands. The fact of the matter is that since 18th April 2009 i.e. for a period of almost 2 years and 9 months the Petitioner has been absent without leave and had been declared a

deserter from military service. A movement order had been issued to her by Military Hospital (CTC) Pune on 5th January 2009 granting her leave with instructions to report to Military Hospital Bakhloh on expiry of the said leave. This was a lawful order which had been disregarded by the Petitioner and accordingly she had been declared a deserter and was still absent without leave.

5. Learned counsel for the Respondents placed a copy of the bond signed by the Petitioner at the time of her induction into the Military Nursing Service on record. Paragraph 3 (d) of the bond merely stated that if a stipendiary probationer nurse, after grant of permanent Commission/Short Service Commission, applies for release from service within four years of grant of said Commission she would refund the cost of training including stipend. The relevant paragraph of the bond is extracted below:

“3(d) That if a Stipendiary Probationer Nurse after grant of permanent Commission/Short Service Commission applies for release from service within four years of grant of said Commission for any reason mentioned in sub para 3(b) above including marriage or on any other ground and provided her release is sanctioned by the Government as per rules in force, she shall be relieved only after she has refunded the amount mentioned in para 3(b) above.”

6. It was argued that this bond was signed between the Petitioner and the Government of India in order to admit her for Diploma Course in General

Nursing and Midwifery Course at the Armed Forces Hospital. By so doing the Petitioner was exempted from payment of tuition fees, boarding and lodging charges and would be awarded stipend every month with a view to grant her Permanent Commission/Short Service Commission as a Nursing Officer in the Regular Army provided she is considered suitable. Paragraph 3(d) was the prohibitory paragraph that if she wishes to leave services within four years of completion of the Diploma Course, she would have to refund the expenditure incurred on her by the Government of India. However, in the bond does it stipulate that the Petitioner's service as a Commissioned Officer is restricted to five years only and that she is free to leave the service thereafter.

7. We have perused the bond. There is no such clause restricting her services to five years after completion of the Diploma Course. Learned counsel for the Respondents further argued that if her tenure is restricted to five years only then there was no necessity for the Petitioner to seek premature retirement. The agreement/bond executed by the Petitioner on selection as a stipendiary probationer nurse simply states that should she resign from service on any account within five years after grant of Permanent Commission or Short Service Commission she would have to refund the amount spent on her for training including stipend, and in no manner indicated that thereafter she was free to leave services whenever she wanted.

8. Learned counsel for the Respondents also argued that the authorities had formulated a comprehensive policy for premature retirement/resignation of Military Nursing Service Officers vide their letter of 31st December 1999.

Vide this letter it was clearly mentioned that when a premature retirement request was received for the sickness of a spouse or a dependant member the medical certificate and documents were required to be submitted from a Service/Government Hospital. Since such certificate was not received, the request of the Petitioner was rejected. Relevant para of the policy letter is as extracted below:

“(e) Contents of para (e) are wrong, false to the knowledge of the petitioner and hence vehemently denied. It is submitted that the respondents have formulated a policy vide letter No. B/700030/DGMS-4A dated 31st December 1999 in order to provide guidance to the competent authority laying down the valid grounds and conditions under which a request for resignation/premature retirement of an MNS officer can be considered favourably. A true copy of the said letter dated 31/12/1999 is Annexure R-3 hereto. As per para 4 (b)(iii) read in conjunction with para 18(c) of the ibid policy letter while citing ailment of parents as main ground for resignation/premature retirement, the application is required to be along with the following supporting documents:

(i) if the parents are dependent on the applicant, medical documents of the patient from a service hospital. Otherwise, the medical documents shall be from a civil hospital endorsed by the Civil Surgeon/CMO.

(ii) The ailment shall be so grave which requires constant attendance of the officer provided there are no other family member(s) to look after the ailing

parent(s). Otherwise details of brothers/sisters including their age, employment and location and with reasons why they can't look after the parents."

The petitioner's request for resignation from service submitted in March 2006 was on the ground of sickness of her widowed mother. However, she did not forward appropriate medical document of her mother to substantiate her averment. Hence, her case was not covered under the provisions of the policy letter dated 31st December, 1999 (already annexed as R-3) and accordingly did not find favour with the competent authority.

9. Counsel for Respondents urged that there was no clause in the bond which permitted her to relinquish service/seek premature retirement after five years of service and that her request for premature retirement had been duly perused and rejected after due application of mind and that premature retirement cannot be demanded as a matter of right, the Respondents took a well considered and judicious view which conforms to the uniform standard for premature retirement as applicable to all Military Nursing Service Officers. Learned counsel for the Respondents also argued that there was no provision under which a person who is a proclaimed deserter can seek premature retirement during the period of such unauthorised absence and doing so was grossly illegal and contemptuous.

10. Considering the above facts and especially the fact that the Petitioner is still a deserter, we do not find any substance in this petition, hence it is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
December 19, 2011
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