

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A. No. 203 of 2012

Lt Col Hardeep Sandhu

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Sanjeev Kumar Kakkar, Advocate

For respondents: Mr. R. Balasubramanian, ASG with Lt Col Maneesh Kumar

CORAM:

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

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

ORDER

18.07.2012

By Chairperson

1. Petitioner vide this petition has prayed to set aside the impugned order/letter bearing no. 33002/898/MSPR dated 11.05.2012 passed by the respondents and to direct the respondents to accept the resignation dated 10.02.2012 and to release the petitioner from service. It is also prayed that respondents be directed to release the petitioner from his present station i.e. New Delhi.
2. The petitioner was commissioned in the Army on 07.12.1996 as Second Lieutenant and was allotted the Corps of Engineers after successful training at NDA and IMA. He qualified in Degree Engineering Course in Electrical Engineering from College of Military Engineering, Pune and at present has no service liability for which he has to mandatorily serve in the Army. Petitioner earlier filed OA No. 15 of 2011 thereby assailing the various arbitrary, discriminatory and illegal acts of the respondents whereby the requests of the petitioner for resignation/Pre Mature Release (PMR) were repeatedly rejected by the respondents between the years 2006 to 2010. He

placed copies of Writ Petition (Civil) No. 3639 of 2011 filed before the Hon'ble Delhi High Court as well as order passed by the Hon'ble Delhi High Court on 25.05.2011 and order dated 03.02.2012 passed by this Tribunal in OA No. 15 of 2011 on record. This Tribunal vide order dated 03.02.2012 passed in OA No. 15 of 2011 remanded the matter back to the respondents for consideration while observing that *"applicant is at liberty to apply afresh for PMR or his resignation within two weeks of this order. We direct that his case may be decided in the light of our observations and directions of the Government of India dated 10.06.2011. The application should be disposed off within 90 days of the receipt of the application by the respondents. The orders rejecting the applicant's applications filed earlier will not come in the way of disposal of the fresh application, if so made."*

3. In pursuance of above directions, petitioner submitted application for resignation dated 10.02.2012 along with annexures on the grounds of break up of conjugal life with a divorce case in court, sickness of father, responsibility of looking after family landed property and court cases which was strongly recommended by his seniors after verifying the genuineness of the grounds for releasing the petitioner on extreme compassionate grounds. It is alleged that respondents arbitrarily and illegally rejected the application for resignation vide their letter dated 11.05.2012 which is in violation of directions given by this Tribunal on 03.02.2012 whereby this Tribunal directed to respondents to dispose of the application for PMR in the light of their observations and directions of the Government of India dated 10.06.2011. The petitioner vide this petition has challenged the rejection order dated 11.05.2012 passed by the respondents.

4. Learned counsel for the petitioner has strenuously urged before us that the impugned order, whereby the application of the petitioner for resignation has been rejected, is totally arbitrary and illegal and the reasons given by the authorities are not germane to the issues.

5. The impugned order dated 11.05.2012 has scrutinized the four grounds on which the petitioner sought resignation i.e. break up of conjugal life with a divorce case in court, sickness of father, responsibility to look after family landed property and court cases. The circular issued by Ministry of Defence dated 20.01.1979 deals with criteria for Premature Retirement/Resignation of Defence Services Officers and extreme compassionate grounds have also been summarized in the said circular. The relevant paragraphs of the circular dated 20.01.1979 reads as under;

“(b) Extreme compassionate grounds : Request on extreme compassionate grounds will be considered after the facts represented by the officer are verified, to the extent possible, by the Service Headquarters. Such verification is necessary to ensure that the grounds are genuine. Domestic problems such as need to look after ailing parents, inheritance problems, need to look after family business, serious illness of wife requiring officers presence at home, possibility of break-up of conjugal life if the officer continues, in service etc. would be treated as compassionate grounds depending on the circumstances of each case.”

6. This is the main criteria for permitting premature retirement which includes domestic problems such as need to look after ailing parents, inheritance problems, need to look after family business, serious illness of wife requiring officers presence at home, possibility of break-up of conjugal life if the officer continues, in service etc. These are some of the compassionate grounds which have been categorized in the circular dated

20.01.1979 issued by the Ministry of Defence. As mentioned above, petitioner has made four grounds for his application for resignation. These four grounds were examined by the Army HQ.

7. The first ground taken by the petitioner i.e. break up of conjugal life with a divorce case in court. This ground has been examined by the authorities on the basis of material placed before them and after examination, it has been observed that petitioner in his previous applications as well as in the present application for release has not disclosed that his wife is working in the private sector at Gurgaon. It has been further observed that since the marriage of petitioner in 2004, he had continuously been posted at peace stations, namely, Pune, Nasirabad, Dehradun and Delhi except for a tenure of 01 year 03 months at Kupwara. During his posting at Nasirabad, the daughter of the petitioner was staying with him whereas his wife continued to serve in Gurgaon. The officer was posted at Delhi at his own request since June 2008. The divorce petition was filed during February, 2011, shortly before his tenure at Delhi was to be over. It has also been pointed out that petitioner has been posted at such stations where he could have conveniently stayed with his family (wife), however he and his wife did not stay together for whatever reasons. Therefore, this ground raised by the petitioner for resignation did not find favour with the authorities.

8. The second ground taken by the petitioner i.e. sickness of father. While considering this ground, respondents observed that petitioner's father is a patient of Cervical Spondylitis since 2005 and as per letters written by his father, he has been leading an active life. More over, documents submitted by the officer do not disclose that condition of the father has further deteriorated on account of Spondylitis. His father has already been treated for Prostrate.

The mother of the petitioner is a medical practitioner and having her own clinic in Chandigarh. She can better look after her husband. Petitioner will not be able to stay with his parents at Chandigarh, if he wants to stay with his wife at Gurgaon. Therefore, this ground did not favour with authorities.

9. The third ground taken by the petitioner is responsibility to look after family landed property i.e. of agricultural land. It has been observed by the authorities that 50% share in the land located at Amritsar is held by co-owners located at the same place and officer has not given any reasons why the land cannot be looked after by co-owners and by the petitioner himself only while being in service. This ground also did not find favour with the authorities.

10. The last ground taken by the petitioner is of defending two court cases. It has been observed by the respondents that first case has been filed by his mother, in respect of the property taken on rent where she is running a clinic. The other court case is the writ petition filed by the petitioner along with 23 other persons jointly in respect of flats purchased by them. The officer has not been able to bring out the requirements which he cannot meet while in service. Therefore, this ground of the petitioner was rejected by the authorities. It has also been observed by the authorities that there is acute shortage of officers in the rank of Lt Col and below in the overall cadre of Corps of engineers. In the service bracket of the petitioner, the Corps of Engineers is having approx 21% deficiency. The Corps of Engineers also has shortage of 177 officers qualified in Electrical Engineering. In this background, looking to the larger interest of the organization due to the shortage of officers in the corps of Electrical Engineering to the number of 177, the authorities rejected the application of the petitioner for resignation of commission.

11. Aggrieved by this order of respondents dated 11.05.2012, petitioner has preferred the present petition before this Tribunal.

12. A detailed reply has been filed by the respondents in which they have covered all the grounds taken by the petitioner in his petition. In addition to that, they have given a detailed difference about the total authorized strength of officers. It is pointed out that against authorization of 4050 officers in the Engineers, there are 3347 officers, thus creating a deficiency of 18%. This includes shortage of 177 officers qualified in Electrical Engineering. It was also pointed out that over the years, intake of offices in the Corps of Engineers has also decreased. The application of the petitioner dated 10.02.2012 for resignation of commission was duly examined on merits in the light of observations of order dated 03.02.2012 of this Tribunal, however none of the grounds, individually or collectively made out a case of extreme compassion justifying acceptance of resignation. As such, looking to the larger interest of the organization and exigencies of service, application of the petitioner for resignation was rejected. We directed respondents to file additional affidavit mentioning details of shortage of officer in the Corps of Electrical Engineering and the same has been filed by the respondents on record. It has been pointed out that authorized strength of Corps of Engineers is 4050 in various disciplines. Among this 608 is strength of electrical engineers. As on date, 431 electrical engineers are working and there is shortage of 177 electrical engineers.

13. We have heard both the learned counsels for the parties at length and gone through the record.

14. Learned counsel for the petitioner has tried to persuade us that petitioner's family life will be jeopardized if he is not granted PMR. It is true

that one of the important grounds mentioned in the circular of Ministry of Defence dated 20.01.1979 is the family life specially the conjugal life. But as far as present petitioner is concerned, it is well known that the officer is subject to posting at various parts of the country. Both the parties while entering into the wedlock in 2004 knew the service condition of the petitioner. The divorce petition was filed during February, 2011, shortly before his tenure at Delhi was to be over. Petitioner did not disclose to the authorities that his wife is working in private sector at Gurgaon. She never stayed with him while he was posted at peace stations at Pune, Dehradun, Delhi and Nasirabad. She continued to serve in Gurgaon. Petitioner joined the Army in 1996 and his marriage was solemnized in 2004 and this divorce petition was filed in 2011. The service condition was very well known to the petitioner and his wife and their family members. The filing of divorce petition cannot be a ground for seeking PMR. This ground can be raised by any of the army officer for seeking PMR. Therefore, this has to be examined very closely.

15. In this connection, learned counsel for the petitioner has cited number of cases before us. All those cases depend upon their peculiar facts. Suffice it say that Hon'ble Supreme Court in the case of **Shakul Tyagi Versus Union of India & Ors. (Civil Appeal No. 4197 of 2006)** vide order dated 19.09.2006 rejected the PMR of one air force officer. In this case, petitioner approached the Hon'ble Supreme Court against the order of Hon'ble Delhi High Court whereby his writ petition for pre mature retirement was dismissed. The Hon'ble Supreme Court upheld the findings of the Hon'ble Delhi High Court and dismissed the appeal.

16. If the persons like the petitioner are permitted to be released due to break up of conjugal rights then no incumbent will be able to serve in the

Army. Nobody can stay at particular place in order to protect his conjugal life. An individual has to be posted some time in peace area and some time in field area as per service conditions. Therefore, these transfers and posting are part of their service. Apart from this it has been pointed out by the respondents in their reply and additional affidavit that against authorization of 4050 officers, there are 3347 officers, thus creating a deficiency of 18%. This includes shortage of 177 officers qualified in Electrical Engineering.

17. In the present case, after examining all the facts, we are of the opinion that no case is made out for grant of PMR on the basis of break up of conjugal life. This is only a ground to seek PMR on account of break up of conjugal life. The interest of the nation is paramount than any other consideration. We regret to say that we cannot accept this contention of the petitioner and uphold the view taken by the respondents.

18. The second ground taken by the petitioner of sickness of father. Petitioner's father is a patient of Cervical Spondylitis since 2005 and has been leading an active life. His father has already been treated for Prostrate. These are the old age diseases. The mother of the petitioner is a medical practitioner and having clinic in Chandigarh. She can better look after her husband. Therefore, this ground of the petitioner has no legs to stand.

19. The third ground taken by the petitioner is responsibility to look after family landed property. The 50% share in the landed property is located at Amritsar is held by co-owners located at the same place and they can better take care of the land. Petitioner himself can take care of his share in land while being in service. His constant presence is not required. Therefore, this ground also has no legs to stand.

20. The last ground taken by the petitioner is of defending two court cases. First case has been filed by his mother against the landlord, in respect of the property taken on rent where she is running a clinic. The other court case is the writ petition filed by the petitioner along with 23 other persons jointly in respect of flats purchased by them. In both cases, the presence of the petitioner does not require constantly. Therefore, this ground also has no legs to stand.

21. Apart from these, the interest of the organization is paramount than that of any other consideration. National duty requires the services of the petitioner who has been serving since 1996. Looking to the larger interest of the organization and considering the shortage of officer in the Corps of Electrical Engineering, petitioner cannot be granted PMR on these flimsy grounds and his useful services cannot be easily dispensed with.

22. Consequently, we do not find any merits in the case. Same is accordingly dismissed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 18, 2012
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