

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

1.

OA 1363/2020

Lt Col Jitendra Singh (Retd.) ..... Applicant  
VERSUS

Union of India and Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER  
31.08.2023

Vide our detailed order of even date; we have dismissed the OA 1363/2020. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

2. After hearing learned counsel for the applicant and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for the grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT GEN P.M. HARIZ)  
MEMBER (A)

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For Applicant : Mr. Indra Sen Singh, Advocate  
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HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER

The applicant 'Lt Col Jitendra Singh (Retd.) vide the present  
OA makes the following prayers:-

*“(a) Set-aside the impugned order dated 17.05.2019 (Annexure A-1) and the Impugned Order dated 19.02.2019 (Annexure A-2), both passed by Respondent No.2 without jurisdiction, whereby the Applicant has been forcibly retired pre-maturely w.e.f 19.05.2019 (AN), much before is actual date of superannuation on 31 July 2026;*

*(b) Direct the respondents to reinstate the Applicant into the service w.e.f 19.05.2019 (AN) when his premature release from the service has taken effect, with all consequential benefits, and treat the Applicant's service as continuance and without any break;*

*(c) Direct the Respondents to allow the Applicant to serve the Army until he reaches the prescribed age of superannuation; and*

*(d) Pass any other order(s) or direction(s) as deemed appropriate in the facts and circumstances of this case"*

2. The applicant in the instant case was enrolled as a Sepoy in the Indian Army on 06.03.1990, in 82 Armd Regt (ARMD CORPS). During the course of his tenure he was commissioned through SSB as a Permanent Commission Special List / Records Officer (PC-SL/RO) on 03.07.2004 and was promoted to the rank of Lieutenant, Captain and Major on due dates.

3. On completion of 13 years of service, i.e. on 03.07.2017, the applicant was due for the promotion to the rank of 'Lt Colonel' for which he was required to pass the promotion Pt-D Examination for which he appeared in October 2015, October 2016 and again in October 2017 but could not clear the same. The applicant thus lost seniority for promotion to the rank of 'Lt Col' and could not get the said rank on the date 30.07.2017 as he was unable to clear the Promotion Exam Part D in time.

4. On 10.08.2018, the applicant submitted an application dated 03.08.2018 seeking Pre-Mature Retirement stating therein to the effect:-

“

**SECTION-II**

*(Request of the officer indicating specific reasons)*

*I have put in 28 years of physical service in Army with 13 Years and eight months of commissioned service. I have*

*always performed my duties to the best of my capabilities keeping the interests of the Org above my own needs and reqmts. However now due to my domestic problems, I am not able to pay attention to my work. My aged parents are suffering from multiple medical complications and require personal care. My father is 82 years old and is a patient of life long Chronic Obstructive Pulmonary Disease and severe osteoarthritis and Multifocal Atrial Tachycardia (MAT) & Hypertension. The disease is progressive and is aggravating with time. He is unable to walk and needs help and assistance to carryout daily chores. He is under treatment at Command Hospital (CC), Lucknow (Medical document is enclosed) My mother is 78 years old is a patient of CHB, Hypertalemia and HTN and is unable to take care of my father. The responsibility of looking after my ailing parents solely rests on my shoulders. Owing to the poor health of my parents my ancestral property is also being neglected and is getting encroached upon. Due to above mentioned reasons, I am mentally disturbed and my personal life is severely affected. Apropos, I am unable to devote my full energy and efforts to the organization. In view of the same, I wish to look after my ailing parent at my place of residence. This will allow me to devote the much needed time and attention to them as also I would be able to concentrate on the education of my children which is getting neglected due to my engagements towards my parents. Hence, I may please be relieved from the service at the earliest."*

5. The said application was forwarded by the Commanding Officer of the applicant to the Military Secretary (Premature Retirement) Military Secretary Branch of the IHQ of MoD Army, New Delhi on 10.08.2018 stating therein that the officer was not involved in any disciplinary / administrative action including investigation by the CBI in progress or contemplated against the officer.

6. The applicant again appeared in the Promotion Examination Part-D in October 2018 and successfully cleared the said examination vide the result published on 23.01.2019. The applicant was thus promoted to the



rank of 'Lt Col' with effect from the date of passing the said exam i.e. 26.10.2018. The applicant's Pre-Mature Retirement (PMR) application was considered by the Competent Authority and was approved and the applicant was informed of the same vide letter no. 3301/4777/GS/MSPR dated 19.02.2019. The applicant submits that subsequently his father's health conditions improved and considering the providential / advantageous opportunity. the applicant wanted to withdraw his PMR application dated 10.08.2018 as he wished to continue serving the Army in the higher rank, but before the applicant could formally apply for withdrawal of his PMR application dated 10.08.2018 (*which is an erroneous date with the applicants application being rather dated 03.08.2018*), the respondent no. 2 had approved the applicant's PMR application vide the Army HQ letter dated 19.02.2019, already adverted to hereinabove, whereby it had been directed that the applicant would be relieved from his duties as early as possible, but not later than 19.05.2019 (A/N).

7. The applicant submits that much before the date of his release, i.e. 19.05.2019 as directed by the respondent no. 2 vide communication dated 19.02.2019, the applicant preferred an application dated 08.04.2019 categorically withdrawing his PMR application dated 10.08.2018 and requesting that he be allowed to continue in service and to complete his

tenure as per the age of superannuation (i.e. 57 years) prescribed under the Army Rules.

8. Vide order dated 17.05.2019 no. 3301/4777/GS/MSPR the said request of the applicant was rejected by the Competent Authority. The applicant submits that his application dated 08.04.2019 for withdrawal of the Pre-Mature Retirement application was summarily rejected by the Army HQ by the respondent no. 2 without jurisdiction, through a non-speaking cryptic order dated 17.05.2019 without due application of mind qua the points urged by the applicant. The applicant submits that pursuant to the illegal orders dated 19.02.2019 and 17.05.2019 passed by the respondent no. 2 without jurisdiction, the applicant was compulsorily retired from service pre-maturely with effect from 19.05.2019, though as per the prescribed age of retirement (57 years), he was entitled to serve up to 31.07.2026 (his date of birth being 10.07.1969).

9. The applicant submits that ever since his enrollment he had served the Indian Army with absolute dedication and sincerity and had been awarded several Honours / Awards consistently from 2001 onwards. The applicant has submitted that after receipt of the order dated 19.05.2019 and having been compulsorily retired from the service prematurely, the applicant preferred two representations, one dated 04.06.2019 and the other dated 15.11.2019 both addressed to the Army HQ, thereby requesting to cancel the compulsory retirement of the applicant and sought that he be

reinstated into service, but in as much as he had got no redressal of his grievances, the present OA had been filed.

10. Vide the said letter dated 08.04.2019 the applicant had stated as under:-

*1. Please refer to IHQ of MoD (Army), MS Branch/MS-7C (PR) letter No 33001/4777/11/GS/MSPR dated 19 Feb 2019.*

*2. I had applied for premature retirement due to medical ailment of my parents and to look after the education of my children vide my application No 4807/Pers dated 10 Aug 2018. My premature retirement has also been approved wef 19 May 2019 by IHQ of MOD (Army), MS Branch/MS-7C (PR) vide letter No 33001/4777/11/GS/MSPR dt 19 Feb 2019. Now, I would like to withdraw my PMR application due to changed circumstances as enumerated in succeeding paras:-*

*(a) Treatment of my father was undergoing in Command Hospital, Lucknow. His health has been improved and he is stable now. Therefore, I can look after my aged father while in service by continuing his periodic checkup.*

*(b) My daughter has finished her 12th with distinction and also got admission in Lady Shri Ram College, Delhi which is one of the most prestigious girls college in Delhi University. She also got selected for summer university program in Haward University, USA.*

*(c) I have been promoted to rank of Lt Col wef 24 Jan 2019 with seniority of 26 Oct 2018. I got quantum financial jump in the Pay and allces in the rank of Lt Col which will help in up keeping the education standard of my children and look after my aged parents.*

*3. In view of the above, may I request IHQ of MOD (Army), MS Branch/MS-7C(PR) to accept my application for withdrawal of premature retirement due to above changed circumstances and allow me to continue in service as per terms and engagement.*

*4. I shall be highly thankful to IHQ of MoD (Army), MS Branch/MS-7C (PR) if my request is considered favourably."*

### **CONTENTIONS RAISED**

11. The applicant submits that the impugned orders dated 17.05.2019 and 19.02.2019 are contrary to the law laid down by the Hon'ble Supreme Court in the case of *Hav Dharam Pal Singh vs UoI & Ors* (2007) 15 SCC 720, wherein the applicant thereof had been held entitled to withdraw his PMR application, where subsequent to preferring the PMR application or approval thereof, he was approved for the promotion to the next higher rank whilst also observing that a government employee, in the absence of a statutory rule or regulation to the contrary, has the right to withdraw his option exercised for premature retirement any time before the actual date for his premature retirement.

12. The applicant also submits to similar effect is the verdict of the Hon'ble Supreme Court in *UoI & Ors vs Wg Cdr T. Parthasarathy*, (2001) 1 SCC 158, wherein the Hon'ble Supreme Court had ruled that an officer shall be entitled to withdraw his PMR application any time before the date fixed for his release / retirement. Inter alia the applicant places reliance on the order dated 06.01.2020 of the AFT(PB) New Delhi in OA 988/2019 in the case of *Lt Col Ajay Sangwan vs UOI & Ors* with specific reliance on observations in Para 9 and 10 thereof to the effect:-

"9. In *Dharam Pal Singh (supra)*, the Hon'ble Supreme Court observed that even before the effective date i.e. 31.05.1988, the appellant had expressed his willingness and desire to continue if promoted as JCO. The term of the appellant therein as Havildar unless further extended was to expire on 31.05.1988, the unwillingness to continue as

*Havildar was expressed more than a year earlier L.e. on 27.01.1987. it was a formal unwillingness in view of the rules. The unwillingness to continue as Havildar beyond 31.05.1988 does not imply unwillingness to be promoted or unwillingness to continue as JCO. The Hon'ble Supreme Court further observed therein that denying the relief of promotion, though a notional promotion at this stage, the appellant already having reached the age of superannuation, would be placing a premium on the wholly incorrect and contrary to record stand taken by the respondents. It was also noticed by the Hon'ble Supreme Court that the appellant therein was not informed that although he was selected to be promoted, but he cannot be given the promotion as had given unwillingness for extension of the service as Havildar. Accordingly, the respondents were directed to grant the appellant therein the consequential relief i.e. the pensionary benefits treating him to be in service,*

*10. The decision in Wg Cdr Parthasarathy (supra) dealt with a situation where the officer had stipulated a future date with effect from which his premature retirement would become effective. However, before the Application for retirement was accepted, he withdrew his request and it was only thereafter tat Air HQs accepted his original application and communicated the decision to retire him from service. In the case on hand, the appellant gave two more applications before the acceptance of his first application dated 10.08.2018, the outcome of which was not intimated to the applicant nor did they take a decision on his application dated 10.08.2018."*

13. The applicant also places reliance on the policy / instructions issued by the Army HQ (AG's Branch). The applicant submits vide their note bearing no. B/10012/AR11(2/MP3) dated 17.09.2018 wherein it has been stated clearly therein that in view of the rulings given by the Hon'ble Supreme Court that an individual is entitled to withdraw his PMR request even one day prior to the date fixed for his release / discharge which policy has also been promulgated to the Records Office by the Directorate GEN

Mech Forces (Mech Infantry), Army HQ vide their letter no. A/00520/PENSION/GS/MF persons (Mech Inf) dated 04.10.2018.

14. Inter alia the applicant places reliance on Rule 16 B of the Army Rules, 1954, which authorizes the Central Govt alone i.e. respondent no. 1 to sanction the Pre-Mature Retirement of an officer as well as to cancel such sanction of Pre-Mature Retirement. The applicant submits that there is no provision in the Army Rules 1954 to sub-delegate this power of the Central Govt to a lower authority and thus the applicant submits that the PMR sanction issued by the Army HQ i.e. respondent no. 2 i.e. by the Chief of the Army Staff IHQ of MoD Army vide order dated 19.02.2019 as well as the order dated 17.05.2019 whereby the applicant's request for withdrawal of his PMR was rejected are both without jurisdiction and *non-est* being *void-ab-initio*.

15. The applicant has further submitted that the Army HQ / MS Branch has issued a policy letter bearing number 04588/MS Policy dated 30.04.2010 to give effect to Army Rule 16 B which too permits withdrawal of PMR application 30 days before the due date of the discharge / PMR. The applicant submits that he had applied to withdraw his PMR request / application well before the said 30 days period.

16. Inter alia the applicant submits that he has an absolutely unblemished record of service and given his long experience in the operational areas, he is still useful for the organization as a trained and

experienced officer. The applicant submits that he is entitled to serve in the Indian Army till 31.07.2026 when he will complete 57 years of age which is the prescribed age of retirement on superannuation in the rank of Lt Colonel for the SL- Commissioned officers. The applicant submits that the impugned act of the respondents whereby he has been forcibly retired from the Indian Army despite his application for PMR having been withdrawn by him, is contrary to the various judicial pronouncements.

17. The applicant places reliance on the following judgments:-

- i. Balram Gupta vs UOI & others (AIR 1987 SC-2354)*
- ii. UOI vs Gopal Chandra Mishra (Full Bench)-AIR 1978 SC-694*
- iii. Punjab National Bank vs P K Mittal (AIR 1989 SC-1083)*
- iv. JN Srivastava vs UOI & Others (1998) 9 SCC 559*
- v. Shambhu Murari Sinha vs P&D India Ltd (AIR 2002 SC-1341)*
- vi. Ex Hav Ram Pal Yadav vs UOI & Others (AFT (PB) judgment dated 02.04.2013 in OA 135/2013)*
- vii. Dharam Pal Yadav vs UOI & Others (Mil L J 2003 SC 148).*
- viii. Ex Nk (TS) Narinder Kumar vs UOI & Others AFT RB Chandigarh in TA 72/2010 (arising out of CWP 5433/2010) dated 28.05.2013.*

18. Inter alia the applicant submits that there is no statutory rule or regulation which prohibits the applicant from withdrawing his PMR application before it has been sanctioned and further submits that the impugned order of retirement on PMR which has the effect of taking away the livelihood of the applicant is violative of Article 21 of the Constitution of India. The applicant submits that the refusal of the respondents to permit the withdrawal of the applicant's PMR application to allow him to enjoy the benefit of the promotion to the rank of Lt Col and subsequent benefits



is also arbitrary and illegal, being violative of Article 15 and 16 of the Constitution of India. The applicant also submits that the refusal of the respondents to defer / cancel his premature retirement is also arbitrary and whimsical and violative of Article 14 of the Constitution of India.

19. The respondents on the other hand contend that Army Rule 16 B read with para.105 of the Regulations for the Army (Revised Edition, 1987) deals with Resignation/Retirement of an officer at his own request and submit that the resignation / retirement of an officer at his own request is subject to the approval by the Central Govt. It is also submitted by the respondents that vide the Ministry of Defence letter no. 19(11) 2001- D (MS) dated 14.08.2001, the government has delegated administrative powers to the Army Headquarters in respect of various subjects and that the Military Secretary has been delegated the power to approve for premature retirement of officers up to the rank of Brigadier.

20. It is also submitted by the respondents that the premature retirement and resignation of officers (excluding AMC, ADC and MNS) is governed by the policy promulgated vide Military Secretary's Branch letter dated 25.02.2009 of which para 29 deals with the withdrawal of the application for premature retirement and resignation, which is as under:-

*"29. Decision of competent authority on a request for PR/resignation is final and a request for withdrawal will not be entertained. However, if an officer, whose application for PR/resignation from the Army has been accepted, wishes to withdraw his application due to changed circumstances, he may apply to IHQ of MoD*

*(Army), MS Branch, at least 30 days prior to his date of PR, duly recommended by the Cdrs in chain i.e, IO, RO and SRO and his request will be decided on merit."*

The contents of the said policy dated 25.02.2019 are as under:-

*"29. Decision of competent authority on a request for PR/resignation is final and a request for withdrawal will not be entertained. However, if an officer, whose application for PR/resignation from the Army has been accepted, wishes to withdraw his application due to changed circumstances, he may apply to IHQ of MoD (Army), MS Branch, at least 30 days prior to his date of PR, duly recommended by the Cdrs in chain ie IO, RO and SRO and his request will be decided on merit. Requests for withdrawal of PR/resignation application and cancellation of order for PR/resignation will be submitted alongwith the undertaking at Appendix B to this letter."*

21. The respondents further submit that to clarify the aspect governing the withdrawal of the application for premature retirement / resignation, the Military Secretary's Branch vide its policy dated 30.04.2010 laid down detailed guidelines for submitting requests for withdrawing PR /resignation application and the respondents place specific reliance on Para 6 of the said policy, which lays down guidelines to be adhered to before applying for withdrawal of premature retirement application and processing the same at intermediate HQs.

22. The policy on withdrawal of Premature Retirement application no. 04588/ MS Policy dated 30.04.2010 is as under:-

*"2. There has been a steady increase in requests for withdrawals of premature retirement (PR) applications with uncorroborated or unsubstantiated reasons. Officers seek withdrawal of PR application whilst these are being processed, or once the PR orders are issued."*

3. Withdrawal of PR application is permitted, only in exceptional circumstances when the conditions on which PR has been applied for have changed. PR applications can be withdrawn at two stages in the entire process. They are:-

(a) PR application while in process.

(b) After PR orders issued.

4. **PR Application While in Process.** PR application can be withdrawn while the application is in process, by submitting a personal application duly recommended by IO, RO and SRO.

5. **After PR Orders Issued.** A similar application as above can be given to seek withdrawal of PR orders through proper channel. However, attention of the officers is drawn to AR 16-B(2), AR 16-C(2) and DSR para 105-H to be read in conjunction with Policy Letter on PR issued vide 04588/MS Policy dated 25 Feb 2009 (Para 29).

6. The following guidelines to be adhered to before applying for withdrawal of PR application and processing the same at intermediate HQS:-

(a) The officer seeking withdrawal, must clearly state the reasons for change of circumstances necessitating the request for the withdrawal. The reasons should address all issues on which PR was sought.

(b) The officer will forward an undertaking duly countersigned by his IO to the effect that he shall be debarred from applying for PR for a period of four years.

(c) The officer seeking withdrawal must clearly establish that issues which compelled him to ask for PR are no longer valid and they have been adequately addressed.

(d) All the Cdr's in chain (IO, RO and SRO) must examine the reasons put forth by the officer for the withdrawal and satisfy themselves that conditions for which the PR was asked, have changed since the application, before recommending the case."

23. The respondents submit that the applicant's application dated 03.08.2018 seeking premature retirement had been duly recommended by the Commanders-in-chain in which the applicant had carved out looking after his old parents and looking after his ancestral property as the main grounds for submitting the application for premature retirement and after due consideration, the Competent Authority had approved his PR application and had informed the applicant of the same vide letter dated 19.02.2019 that he would be relieved from his duties not later than 19.05.2019 (AN).

24. The respondents thus submit that the applicant vide the present OA is challenging the very said order which was issued on the applicant's own request. The respondents also submit that the applicant's application dated 08.04.2019 duly recommended by the Commanders in chain requesting for withdrawal of his application for premature retirement in which he brought out the changed circumstances like improvement of his father's health, daughter finishing 12th, he being promoted to the rank of Lt Colonel and improvement in his finances, was duly considered by the Competent Authority on merits and as per the extant policies and after due application of mind was rejected.

25. The respondents vehemently denied the allegations of arbitrariness and illegality or of any violation of any constitutional rights in the rejection of the application filed by the applicant for withdrawal of his premature

retirement. Inter alia the respondents submit that under the Army Rule 16B, it is the discretion of the Central Govt to accept or reject applications for withdrawal of premature retirement, based on the merits of the case which applications are examined as per guidelines and parameters laid down in letter no. 04588/MS Policy dated 25.02.2009 and 04588/ MS Policy dated 30.04.2010. The respondents further submit that the applicant cannot claim withdrawal of the premature retirement application which has already been duly accepted as a matter of right.

26. The respondents further submit that the judgments relied upon on behalf of the applicant are wholly distinguishable from the facts of the instant case. The respondents further submit that the livelihood of the applicant has not been taken away and rather he had applied for premature retirement of his own will. The respondents also submit that the applicant is in receipt of pension and all other retirement benefits.

27. The applicant vide his rejoinder dated 26.03.2022 has reiterated the submissions made through the OA and that the PMR application has been arbitrarily rejected on extraneous considerations. The applicant further submits that as per the terms of his engagement, even in his present rank, the applicant was entitled to serve up to **57 years ( as applicable to SL commissioned officers)** of age which he would complete on 31.07.2026 and thus it is no solace for him that he is getting pension which he would have got in any case even after serving his full prescribed terms up to

31.07.2026. The applicant submits that pension is only 50% of the salary which the applicant could have withdrawn had he continued in service up to 31.07.2026.

28. Inter alia the applicant submits that he would also have been entitled to consideration for further promotion up to the rank of Colonel / Brigadier. The applicant submits that since the respondents had claimed through their counter affidavit that the applicant's application for withdrawal of his PMR was duly considered by the Competent Authority which the applicant denies, it was imperative that for a just and proper adjudication of the case the original record pertaining to the case maintained by the office of the respondents be requisitioned for perusal at the time of the final hearing of the case to verify the claim made by the respondents through their counter affidavit.

29. During the course of submissions made on behalf of either side, the respondents placed on record the regulation MoD letter no. 19(11)2001-D(MS) dated 14.08.2001 and also submitted on record the copy of the letter dated 3/8/2001 of the MoD. The original records qua the applicant were also produced by the respondents on 04.07.2023 which were retained by us and have been perused and considered.

#### ***ANALYSIS***

30. At the outset, it is essential to observe that the contention raised by the applicant that the order dated 19.02.2019 whereby the application of

the applicant for premature retirement was acceded to by the respondents, and the order dated 17.05.2019, whereby the application filed by the applicant for withdrawal of his premature retirement application was rejected, have both been issued and passed by the respondent no. 2 without jurisdiction in terms of the Army Rule 16 B of the Army Rules, 1964 as only the Central Government i.e. the respondent no. 1 has the power and authority to sanction the premature retirement of an officer, cannot be accepted.

31. This is so though undoubtedly the applicant has placed reliance on the judgment dated 30.05.2003 of the Hon'ble Single Bench of the High Court of Punjab and Haryana in *Ex Maj Dipinder Singh vs Union of India and another* in CWP No. 12138 of 1995, (which was affirmed by the Hon'ble Division Bench of the High Court of Punjab and Haryana in *Union of India and another vs Ex Maj Dipinder Singh* 2005 SSC Online P&H 1346 : (2005) 2 SLR 835 (DB) ) relates to a case in which the Army officer had sought premature retirement from service which had been approved on 26.02.1993 and of which the said officer had sought withdrawal on 23.03.1993 in which the said officer had stated circumstances, on which he had sought change which request was strongly recommended by the Brigade Commander but was rejected by the Competent Authority vide order dated 21.04.1993 and the questions framed by the Learned Single Judge as referred to in judgment dated



30.05.2003 were adverted to vide para 4 of the verdict of the Hon'ble

Division Bench dated 07.02.2005 as under:-

*"4. On the pleadings of the parties, as culled out above, learned Single Judge framed following questions for adjudication*

*(1) Whether the request for premature retirement made by the petitioner, an Army Officer, can be withdrawn after its approval but before it became effective?*

*(2) Whether the Army Headquarters can be said to be the competent authority to reject the request for withdrawing the premature retirement, in exercise of its delegated powers under Section 8(2) of the Army Act, and the instructions dated 6.3.1993?*

*(3) Whether the impugned order rejecting the request for premature retirement in any case is arbitrary inasmuch as all the relevant factors in the decision making process have not been taken into account?"*

qua which it was observed vide para 7 of the same verdict to the effect:-

*"7. While considering the second proposition of law, as formulated and mentioned above, learned Single Judge, while relying upon Rule 16-8(2) of the Army Rules and Section 8 of the Army Act as also instructions dated 6.3.1993 and judgments of Hon'ble Supreme Court in Roop Chand v. State of Punjab, AIR 1963 SC 1503, Datta Ria v. State of Bombay, (1952) 1 SCC 372: AIR 1952 SC 181 and Chitar Lekha v. State of Mysore, AIR 1964 SC 1823, held as under:*

*"Therefore, question No. 2 as framed is answered by holding that the power to consider the request for withdrawal of application for premature requirement in respect of the Army Officer is vested in the Central Government and in the absence of any statutory provisions or rules to the contrary that power cannot be delegated to the Army Headquarters and that too by issuance of administrative instructions."*

to which contentions on behalf of the Union of India were referred to inter alia to the effect:-

"10. We have already mentioned in the very beginning of the judgment that Mr. Mohan Parasaran, learned Additional Solicitor General, who appears in support of this appeal, has not challenged any of the findings, either of the parties or for that matter, the findings on the plea raised by the appellant pertaining to delay and laches."

with it having been observed by the very beginning of the judgment of the Hon'ble Division Bench dated 07.02.2005 in *Union of India and another vs Ex Maj Dipinder Singh* (supra) to the effect:-

"Without touching the judgment of learned Single Judge on the issues that came to be focussed by learned Single Judge and on which decision was rendered, the same is yet called in question on the basis of two decisions of Hon'ble Supreme Court in *Bank of India v. O.P. Swarnakar*, (2003) 2 SCC 721 [2003 (1) SLR 1 (SC)] and *Punjab & Sind Bank v. S. Ranveer Singh Bawa*, (2004) 4 SCC 484: [2004 (4) SLR 9 (SC)], on the ground that the petitioner in original lis and respondent in the present Letters Patent Appeal filed under Clause X of the Letters Patent is estopped by his conduct to challenge the impugned orders accepting his voluntary retirement despite the fact that the said request was withdrawn before it could be accepted. Before, however, the solitary ground seeking setting aside the order passed by learned Single Judge dated 30.5.2003, allowing the writ petition and setting aside impugned order prematurely retiring the petitioner is examined, it would be useful to give factual matrix of facts constraining the petitioner to invoke writ jurisdiction of this Court under Article 226 of the Constitution of India in successfully challenging orders dated 26.2.1993, Annexure P-2, 21.4.1993, Annexure P-4) and 26.5.1993, Annexure P-6."

32. It is apparent that the said observations in *Ex Maj Dipinder Singh vs Union of India and another* (supra) dated 30.05.2003, the Hon'ble Single Judge of the High Court of Punjab and Haryana related to the rejection of the application of the Army officer thereof seeking withdrawal

of the premature application filed by him which was rejected on 21.04.1993.

33. The respondents have placed before us the Delegation of Administrative Powers to Service Headquarter vide letter no. 19(11)2001-D(MS) dated 14.08.2001 as issued by the government approving delegation of administrative powers to the Army headquarters, stating therein to the effect as scanned :-

No. 19(11)2001-D(MS)  
Government of India  
Ministry of Defence

*Resp*

South Block, New Delhi,  
Dated the 14<sup>th</sup> Aug. 2001.

To, The Chief of the Army Staff

Subject:- Delegation of Administrative Powers to Service Hqrs.

I am directed to say that Govt. has approved delegation of administrative powers to Army Hqrs in respect of various items, in matters of personnel and administration, which relate to cases submitted by Army Hqrs to MoD through D(MS). These items and the approving authority for each of these items are listed in the annexure.

2. Orders in respect of cases falling under these items which were heretofore issued by the Ministry of Defence, in the form of Government letters in the name of President, will now be in the form of service notes to be issued by any Army officer dealing with the subject, or otherwise empowered to issue, (including the approving authority himself), in the name of COAS and/ or the approving authority listed in the annexure. Wherever necessary, SoPs may be formulated for the implementation of these delegated powers. Copies thereof may be forwarded to this Ministry for records.

3. This issues with the concurrence of Defence(Finance) vide their Dy. No. 830-PA dated 14.08.2001.

Yours faithfully,

*Gurdial Singh*

(Gurdial Singh)

Under Secretary to the Govt. of India

Copy for info to:-

Addl. FA(T)

Dir (Fin/NS)

Dir (GEMTS)

As per the same, the delegation of administrative powers to the Army headquarters is depicted as under:-

Ministry of Defence letter No 19(11)/2001/D(MIS) dated 14.8.2001

Delegation of administrative powers to the Army Headquarters

S. N. o.	Subject	Approving Authority	Issuing authority
1	Premature retirement of officers upto the rank of Brig. on all grounds	Military Secretary	AMS/DAMS
2	Deputation of officers upto the rank of Brig. to Central/State Government Orgns./PSUs within the sanctioned strength	-do-	-do-
3	Permanent absorption of officers upto the rank of Brig. to Central /State Government orgns./PSUs	-do-	-do-
4	Grant of all types of commission including honry. Commission to PROR	-do-	-do-
5	Grant of permission to the officers upto rank of Brig. to seek civil/commercial employment	-do-	-do-

34. Significantly the said delegation of Administrative powers to the Army Headquarters was pursuant to a letter dated 03.08.2001 by the Director (C+MIS) from the Ministry of Defence on the subject of delegation of administrative powers to Service Headquarters, which reads to the effect:-

*"It is intimated to all concerned that the listed administrative powers (as enclosed) have been approved by Raksha Mantri to be delegated to Service Head Quarters.*

*2. Concerned Wings / Branches / Sections in the Ministry of Defence are requested to issue individual orders after following the required procedure on the subjects, relevant to them."*

pursuant to which concerned Wings / Branches / Sections in the Ministry of Defence were requested to issue individual orders after following the required procedure on the subjects relevant to them vide the same at serial no. 10 ,it is reflected as under:-

“

<i>S. no.</i>	<i>Subject</i>	<i>Approving Authority</i>	<i>Authenticative Authority</i>	<i>Remarks</i>
10.	<i>Premature retirement of officers upto the rank of Brig and equivalent on all grounds.</i>	<i>MS/COP/AOP</i>	<i>Dy Dir/Astt Dir /AMS/DAMS</i>	

”

The said delegation of administrative powers to service headquarters as addressed to the Chief of the Army Staff was on approval of the Government of India, which has to be read as being the approval of the Central Government requisite for compliance for necessary action in terms of Rule 16 B and Rule 16 C of the Army Rules, 1954, which read as under.

*“16B. Retirement of an officer at his own request.— The retirement of an officer at his own request before he becomes liable to retirement under rule 16A shall require the sanction of the Central Government.*

*(2) An officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request. The Central Government may, at its discretion, grant such withdrawal of his application.*

*16C. Registration of Commission.—*

*(1) An officer shall have no right to resign his commission but may submit an application to the Central Government to resign his commission. He shall not be relieved of his*

duties until the Central Government has accepted his resignation.

*(2) An officer whose application to resign his commission has been accepted may, before he is relieved of his duties, apply to the Central Government for withdrawal of the said application. The Central Government may, at its discretion, grant withdrawal of his application."*

35. Furthermore, it is essential to observe that vide the judgment dated 30.05.2003 in *Ex Maj Dipinder Singh vs Union of India and another* (supra), it was observed vide para 30 thereof to the effect:-

*"The second question that requires consideration is regarding the competence of the Army Headquarters to reject the request for withdrawing the application for premature retirement. A reference to Rule 16-B(2) of the Army Rules shows that an Officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request and that the Central Government may at its discretion grant such withdrawal on his application. Therefore, evidently the power to grant request for withdrawal of application for premature retirement vests with the Central Government. However, the perusal of the order dated 21st April, 1993 (Annexure P-4) whereby the request of the petitioner for withdrawal of premature retirement is said to have been considered and rejected, is issued by the Army Headquarters and not by the Central Government. The learned standing counsel for the Union of India, had taken time to produce the file of the case to show whether the consideration process for rejecting the request for premature retirement was considered by the Central Government or not. However, after taking time and seeking instructions, he stated that the file is not traceable and has in all probability been destroyed in January, 1995 in respect of which he has received instructions. Therefore, he is not in a position to state whether the request for premature retirement had been considered by the Central Government as enjoined by Rule 16-B(2) of the Army Rules. Shri Rathee, has however, contended that in any case the Central Government had delegated the powers to the Army Headquarters to consider the cases for premature retirement." ...*

Thus, apparently, in the said case relied upon on behalf of the applicant, the Union of India was not in a position to state whether the request for premature retirement had been considered by the Central Government as enjoined by Rule 16 B(2) of the Army Rules 1954.

36. Reliance has been placed in that case on behalf of the Union of India on Section 8 of the Army Act, 1950, qua which it was observed vide para 32 thereof to the effect of the said judgment to the effect:-

*"(32) Therefore, in my view, Section 8 of the Army Act does not give the power to delegate the authority to Army Headquarters to consider request for application for withdrawal of premature retirement made by Army Officer in terms of Rule 16-B of the Army Rules."*

Significantly, the same is not the contention raised on behalf of the respondents in the instant case and rather the respondents in the instant case have produced the records qua the applicant which indicate that the application for withdrawal of the premature retirement was considered by the authority to whom the power was so delegated vide the delegation of Administrative Powers to Service headquarters by the Government of India, vide the communication dated 14.08.2001, i.e. by the Military Secretary of the Indian Army, and was then also considered by the Chief of Army Staff.

37. Furthermore, it is essential to observe that in the case of *Ex Maj Dipinder Singh vs Union of India and another* (supra) dated 30.05.2003, the letter dated 06.03.1993 which had been issued by the Ministry of



Defence in relation to premature retirement of Army officers contained in clause 5:-

*"5. Army Headquarters are, therefore, requested to issue suitable instructions to all echelons on the subject. Further, Army Headquarters should also reject such applications at their own level without referring the same to the Government, unless there are solid compelling reasons for doing so, which should be specifically mentioned."*

in relation to which it was observed vide para 34 of the said verdict to the effect:-

*"34...  
The Central Government in terms of Rule 16-B(2) of the Army Rules exercises delegated or subordinate legislation is to rule out arbitrariness, provide consistency and crystalise the rights of the employees concerned..."*

As has been observed hereinabove, the delegation of administrative powers to service headquarters in relation to the Acts, in relation to the acts delegated have been so issued by the Government of India, which has to be termed in the circumstances to be the Central Government.

38. The delegation of administrative powers to service headquarters dated 14.08.2001 does not contain the embargo on the Army Headquarters to refer the matters to the government, as was in the case of the letter that of the Army instructions dated 06.03.1993. Furthermore, it cannot be overlooked that the said delegation of powers by the Ministry of Defence on 14.08.2001 is considered by the Hon'ble Supreme Court vide observations in para 13.3 of its verdict in *Union of India through its*

*Secretary, Ministry of Defence, DHQPO, New Delhi and others vs Wg*

*Cdr Subrata Das* dated 29.01.2019 reported in (2020) 12 SCC 784 vide

para 13.3 thereof which reads to the effect:-

*"13.3 Premature separation from service is governed by the Human Resources Policy formulated by the Air Headquarters under powers delegated to it by the Ministry of Defence on 14.08.2001."*

39. It is also essential to advert to paragraphs 13.1, 13.2 and 13.4 thereof which are as under:-

*"13.1. Service in the Indian Air Force is on the grant of a commission by the President of India. The tenure of every member of the service is subject to the Air Force Act, 1950 and is at the pleasure of the President."*

*13.2. Rule 13 of the Air Force Rules, 1969 provides for the release of a member, subject to the Air Force Act, 1950 and in accordance with the rules, orders or instructions made in that behalf by or under the authority of the f Central Government."*

*13.4. The policy seeks to achieve a convergence of individual aspirations and interests of the service."*

which were contentions raised on behalf of the Union of India, in relation to which it was observed vide para 23 to 34 of the verdict of the Hon'ble Supreme Court to the effect:-

*"23. The Air Force Headquarters' Human Resource Policy was notified on 5-8-2011. The policy has been issued in pursuance of powers delegated to it by the Ministry of Defence on 14-8-2001. The policy seeks to lay down comprehensive guidelines for premature separation from service by officers of the Air Force, other than those from the medical and dental branches. The object of the policy is to bring about a balance between requests made by officers of the Air Force to leave*

service and the interests of the Air Force. The policy, in Para 1. provides thus:

*"Officers on active service may wish to leave the Air Force for varied personal reasons. It is the endeavour of the Personnel Branch and Air HQ to give due consideration to all such requests, on the merits of each case and seek convergence of individual aspirations and service interests. This Human Resources Policy (HRP) on Premature Separation from Service (PSS) aims to provide more clarity in the PSS policy. For the purpose of HRP, total service, whether mentioned, would imply commissioned service in the IAF excluding ante-date or any previous service."*

24. Para 3 of the policy requires that PSS applications from officers be "considered on the merits of the case and requirements of service". The grounds on which requests for PSS can be considered are, inter alia,

- (i) cases where officers have been permanently passed over (PPO) or superseded;*
- (ii) extreme compassionate grounds;*
- (iii) better employment in civil life; and*
- (iv) lack of career prospects.*

*These grounds have been explained as follows in Para 3:*

*"(a) Permanently passed over (PPO)/Supersession-Officers who submit an application for PSS on grounds of being PPO will be considered for release from service. Officer superseded in the select ranks may also be considered for release. In such cases, decision by Air HQ would be based on the officer's record of service, future promotability prospects and service exigencies.*

*(b) Extreme compassionate grounds. Requests on extreme compassionate grounds would be considered after the facts presented by the officer are verified, to the extent possible, by this headquarter. Such verification is necessary to ensure that the grounds are genuine.*

*Domestic problems such as the need to look after ailing parents, inheritance problems, need to look after business,*

serious illness of wife/children's ailments requiring officer's 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. Applications with medical issues will be routed through the Dte of Medical Services and interviews/counselling conducted by them.

(c) Better employment in civil life. If a service officer applies for PSS within a period of one year before the due date of superannuation for obtaining employment in private sector, the request would normally be acceded to. For employment under public sector, Government controlled corporation, municipal corporations, etc. requests within a period of two years from superannuation would be considered as a measure of rehabilitation assistance to the officers. All applications for employment outside will, however, be submitted through proper channels so that Service HQ has sufficient notice of the intentions of the officers in this regard (Refer HRP 04/09). Officers who have been permitted to apply for civil/commercial employment as per HRP 04/09, will be required to put up an application for PSS. Officers are to carefully consider these aspects before applying for civil/commercial employment.

(d) \*\*\*

(e) Lack of career prospects (LCP). A person seeking a career in the Air Force is expected to be aware of his career progression at every stage of his career. During his career, if an officer feels that he has no prospects for advancement in service, he may apply for PSS. However, the lack of career prospects of an officer will be ascertained by the 'P' branch."

Where officers are trained in specialised courses, requests for PSS can be considered only upon the expiry of the minimum period indicated in the policy.

25. Para 4 of the policy provides for eligibility criteria and the categorisation of officers seeking PSS. Para 4 provides thus:

"4. The organisation requires a dedicated pool of officers, who are motivated and willing to work towards organisational goals and at the same time fulfil their personal aspirations,

*which may be dynamic and may be influenced by external factors. In an attempt to address both, its goals and the individual's aspirations, the organisation needs to fine-tune its policies. The thought processes, which have gone into formulating the eligibility criteria, which are enumerated in the subsequent paragraphs, are as follows:*

*(a) There is a large shortfall of officers in the junior ranks (up to that of Squadron Leader) in all branches.*

*(b) Below ten years of commissioned service, an officer should be discouraged as far as possible as even the cost of training would not have been recovered in full.*

*(c) Beyond 24 years of commissioned service, PSS cases would be favourably considered subject to service exigencies.*

*(d) Therefore, in the critical seniority group of up to about 21 years of commissioned service, the organisation has to be circumspect of the number of departures that can be permitted, in order not to set the manning levels or its operational efficiency. At the same time one cannot deny a genuine case*

*(e) With the implementation of the AVSC II proposals, an officer would have a fairly clear picture of his career prospects by about 20-22 years of commissioned service, as select grade would eventually start at 17.5/19.5 years for flying/ground duty branches respectively. Therefore, allowing superseded officers of separate from service beyond about 21 years would allow for better promotion ratios and the same time allow superseded officers to seek avenues in the civsector at a relatively young age."*

*26. Para 5 classifies officers seeking PSS into four categories:*

*(i) Officers with more than 24 years of commissioned service and those who have been permanently passed over (PPO);*

(ii) Officers between 21 and 24 years of commissioned service;  
and

(iii) Officers between 10 and 21 years of commissioned service; and

(iv) Officers with less than 10 years of commissioned service.

27. Para 6 envisages the constitution of the Board of Officers in March and September. The "jurisdiction period" has been planned to provide officers proceeding on PSS adequate time to complete their formalities. Para 8 provides for submission of applications for PSS, Para 9 for the procedure for officers on deputation and Paras 10 to 13 for the processing of applications. Para 15 provides that applications for separation from service by officers with less than 21 years of service for reconsideration of an earlier request will not be considered before a lapse of one year from the non-acceptance of the previous application by the Board of Officers unless the grounds have changed substantially. Para 17 contemplates that one change of the effective date of PSS may be permitted.

28. Para 18 provides for the withdrawal of a request for PSS. Para 18 is in the following terms:

"18. Withdrawal.-A request for withdrawal of approved PSS application would be permitted only as an exception under extreme compassionate grounds (except in case the officer has undergone a pre-release course, in which he/she would not be permitted to withdraw). The officer would be debarred from submitting a fresh application for one year from his proposed date of PSS."

Para 18 of the policy indicates that:

(i) A request for withdrawal of a PSS application which has been approved can be permitted only by way of an exception;

(ii) A request for withdrawal can be permitted only under "extreme compassionate grounds";

(iii) *An officer who has undergone a pre-release course will not be permitted to withdraw the request; and*

(iv) *A fresh application cannot be submitted for a period of one year from the proposed date of PSS.*

*One of the grounds for submitting an application for PSS is "extreme compassionate grounds". The policy, in Para 18, uses the same expression. The grounds in Para 18 would evidently be based on events which have taken place after the submission of an application for PSS and its approval. The expression "undergone" would mean completed or finished. Under Para 18, no withdrawal from PSS is permitted where an officer has undergone the pre-release course. However, even if an officer has not "undergone" the pre-release course, there is no unqualified or absolute right to withdraw an application for PSS. Para 18 permits an officer to submit a request for the withdrawal of a PSS application. and the grant of such a request is subject to the approval of the competent authority. There is no unilateral right to withdraw from a request for PSS once it has been approved.*

*29. Para 20 stipulates that while individual aspirations are borne in mind to the extent feasible, the requirements and interests of the service are paramount. Para 20 is in the following terms:*

*"20. Seeking PSS is an important decision in the career of an officer. At the Personnel Branch, no efforts are spared to ensure that individual aspirations are favourably considered. However, service requirements/ interests remain paramount and cannot be overlooked. The intent of this HRP is to provide on all related aspects regarding PSS to an officer at a critical juncture of his service."*

*30. The provisions of the Air Force Act, 1950 govern the persons who are subject to it. Clauses (a) to (d) of Section 2 define the categories to whom the Act applies. Once a person is subject to the Act, its provisions continue to govern them until the individual is duly retired, discharged, released, removed, dismissed or cashiered from the service under the provisions of the Act. Induction into the service under Section*



10 is upon the grant of commission as an officer by the President or by appointment as a warrant officer of the Air Force. The tenure of service of every person subject to the Act is during the pleasure of the President. Matters of retirement, release or discharge from service are governed by the prescriptions contained in the Rules.

31. The provisions of the Air Force Act, 1950 are a necessary concomitant of the intent of Parliament to establish the Air Force as an armed force of the Union. As members of an Armed Force, those who are subject to the provisions of the Act are governed by the rigour and discipline of the Force. Indeed, that is the rationale which underlies Article 33 of the Constitution which empowers Parliament by law to restrict or abrogate the provisions of Part III in their application inter alia to the members of the Armed Forces. The purpose of these restrictions is to ensure the proper discharge of duties and the proper maintenance of discipline.

32. Entry into and departure from the service of the Air Force is in terms of the above provisions and is not a matter which lies at the sweet will of a member of the Air Force. The provisions contained in the Act for commissioning, tenure and cessation of service reflect the need to maintain the discipline and efficiency of the Air Force. The organisational efficiency of the Armed Forces of the Union is of paramount importance. It is in this background that the provisions which are contained in the Human Resource Policy must be evaluated.

33. The policy has been formulated in pursuance of the powers delegated to the Air Headquarters by the Ministry of Defence. As we have noticed earlier, Rule 13 of the Air Force Rules, 1969 stipulates that a person subject to the Act may be released from the Air Force in accordance with the rules, orders or instructions made by or under the authority of the Central Government. The Human Resource Policy which was notified on 2-8-2011 seeks to bring about a convergence of individual aspirations and the interests of the service.

34. The policy has enunciated comprehensive guidelines for premature separation. It defines the grounds on which premature separation can be contemplated. It lays down a categorisation of officers based on the length of years of

*service for considering applications for PSS. It enunciates the manner in which their proposals would be evaluated. The policy contemplates a Board of Officers to consider requests for PSS in the months of March and September every year. The policy enunciates a time schedule for the submission of applications and of the modalities to be followed in the issuance of release orders. The policy defines the manner in which PSS applications are processed. Significant among them is the need to counsel individual officers after ascertaining the full details of each case, while keeping current manning constraints in mind. Details of the interview and recommendations of the Command Headquarters have to be annotated while forwarding the case for consideration to the Air Headquarters."*

40. Thus in the instant case we hold that the orders dated 19.02.2019 approving the application of the applicant seeking premature retirement and the order dated 17.05.2019 rejecting the applicant's application dated 08.04.2019 seeking withdrawal of the premature retirement application cannot be held to be arbitrary or illegal.

41. The other contention raised by the applicant was to the effect that in terms of the premature retirement policy dated 04.10.2018 itself it has been provided to the effect that a person can withdraw his PMR application even an hour prior to his discharge in as much as in terms of the Hon'ble Supreme Court verdict, a person can withdraw his request for PMR anytime before it becomes operative and effective and it was in the said circumstances to facilitate implementation of the Hon'ble Supreme

Court directions and save time and last minute action, it had been decided to allow the OIC records to sanction withdrawal of PMR application in respect of persons who had reported to the Regimental Center for discharge drill.

42. It has thus been submitted on behalf of the applicant that in as much as the applicant had submitted his application dated 08.04.2019 seeking withdrawal of the premature retirement application much before the date his premature retirement was to take effect in terms of the impugned letter dated 19.02.2019 with effect from not later than 19.05.2019 (A/N), the applicant, despite the acceptance of his application dated 03.08.2018 seeking premature retirement (which application the applicant repeatedly refers to as being dated 10.08.2018, which however is the date of the forwarding of his application dated 03.08.2018), was entitled to withdraw the application seeking premature retirement and was entitled to continue in service.

43. The applicant has thus placed specific reliance on the observations of the Hon'ble Supreme Court in the case of *Dharam pal Singh* (supra) dated 13.03.2003 in which case the appellant therein a Havildar in the Indian Army, who had been given his last extension upto 31.05.1988 and who was entitled to be considered for promotion to the rank of Junior Commissioned Officer having passed JCO promotion cadre on 04.12.1985 and was considered for promotion to said posts in the year 1986 and 1987

but on the basis of his Annual Confidential Reports was not found fit for promotion and who submitted his unwillingness certificate for extension of service on 27.01.1987 with effect from 31.05.1988 who subsequently on being considered by the Screening Board for promotion to the rank of 'Nb Sub' (JCO) on 12.04.1988 was informed thus that he had been found fit for promotion by the Screening Board, pursuant to which he sent a telegram dated 20.04.1988 expressing his willingness to serve beyond 31.05.1988 in case he was promoted as JCO, he was informed by the respondents on 24.04.1988 that since he had already been proceeded on discharge from service on completion of terms of engagement, the question of his granting any further promotion to him did not arise. That appellant was at that stage not even informed of having been selected for promotion as 'Nb Sub' and thus retired as Havildar on 31.05.1988.

44. That appellant learnt of his having been selected for promotion as a JCO only when a counter affidavit was filed in the Writ Petition which had, however, been dismissed on the ground that the option for unwillingness certificate once given could not be changed, and that it was not permissible for the appellant to change his option, and that he was entitled to further extension only if he had exercised his option to continue beyond 31.05.1988. The Letters Patent Appeal filed by the appellant was also dismissed. It was observed thus by the Hon'ble Supreme Court in the

case of *Dharam pal Singh* (supra) vide paras 6, 7 and 9 of the said verdict to the effect :-

"6. It is not in dispute that if promoted as JCO the appellant could continue in service up to 30-6-2002. Learned counsel for the appellant relies upon the decision of this Court in *Union of India v. Wing Commander T. Parthasarathy* holding that a request of premature retirement which required the acceptance of the competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before it became so complete. It is all the more so in a case where the request for premature retirement was made to take effect from a future date. Reliance has also been placed on *Shambhu Murari Sinha v. Project & Development India* where this Court while referring to the earlier decisions in *Balram Gupta v. Union of India*, *J.N. Srivastava v. Union of India* and *Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia* reiterated that the resignation, in spite of its acceptance, can be withdrawn before the effective date. The contention of the learned counsel is that the aforesaid principles are fully applicable to the present case.

7. The learned Additional Solicitor General, on the other hand submits that the post of Havaldar being a tenure post the decisions in which question of resignation or voluntary retirement came up for consideration by this Court are not applicable as the tests laid therein are different. We are unable to accept this submission. The facts of the present case show that the case of the appellant is rather on a strong footing than the aforesaid decisions by the learned counsel for the appellant. Even before the effective date i.e. 31-5-1988, the appellant had expressed his willingness and desire to continue if promoted as JCO. The term of the appellant as Havaldar unless further extended was to expire on 31-5-1988. The unwillingness to continue as Havaldar was expressed more than a year earlier i.e. on 27-1-1987. It was a formal unwillingness in view of the rules. The unwillingness to continue as Havaldar beyond 31-5-1988 does not imply unwillingness to be promoted or unwillingness to continue as JCO. The position was just opposite. In fact, even in response to his telegram the

respondent by reply dated 24-4-1988, instead of informing him about the proceedings of the Screening Board above-referred, wrote to him that since he has already proceeded on discharge from service on completion of terms of engagement the question of granting any further promotion to him does not arise. Reference to the completion of terms of engagement in this letter was the post of Havaldar. The subject title of the letter dated 24-4-1988 also is "Promotion ... Havaldar to N. Subedar". Further, even when statutory appeal was filed he was informed that he was neither considered nor selected by DPC held in 1988. As above-noticed, he learnt about his selection only when the counter-affidavit was filed by the respondent in the writ petition. Under these circumstances, denying the relief of promotion, though a notional promotion at this stage the appellant already having reached the age of superannuation, would be placing a premium on the wholly incorrect and contrary-to-record stand taken by the respondents. The appellant was not informed that although he had been selected to be promoted but he cannot be given promotion as he had given unwillingness for extension of the service as Havaldar. The fact that the appellant's papers for discharge as Havaldar with effect from 31-5-1988 had been processed is of no consequence insofar as the appellant's entitlement to be promoted as JCO after his due selection by the Screening Board. If informed of his selection as JCO, the appellant would have been fully justified in withdrawing his unwillingness.

9. For the aforesaid reasons, we set aside the impugned judgment of the High Court. Allowing the writ petition of the appellant, we direct the respondents to grant to him the consequential relief i.e. the pensionary benefits with effect from May 1988 treating the appellant to be in service as JCO. The arrears of the pensionary benefits calculated in this manner shall be paid to the appellant within three months. The appeal is accordingly allowed with costs."

45. It is significant to observe that the facts of the said case relied upon on behalf of the applicant are not in *pari materia* with the facts of the

instant case. This is so in as much as in the case of *Dharam Pal Singh* (supra), the application expressing willingness to serve beyond 31.05.1988 in case that appellant was promoted as a JCO was made before he was informed on 24.04.1988 by the respondents that as he had already been proceeded on discharge from service on completion of terms of engagement, the question of granting any further promotion to him did not arise.

46. In the instant case, the applicant's application dated 03.08.2018 which the applicant terms is dated 10.08.2018 had been allowed on 19.02.2019 and the applicant chose to seek withdrawal of his PMR application only on 08.04.2019 much after the acceptance of his application for premature retirement.

47. The verdict of the Hon'ble Supreme Court in *UoI & Ors vs Wg Cdr T. Parthasarathy* (supra) relates to a case in which the appropriate authority had accepted the request of the respondents therein for premature retirement a day after he withdrew his request for premature retirement.

48. As held by the Hon'ble Supreme Court in *Union of India through its Secretary, Ministry of Defence, DHQPO, New Delhi and others vs Wg Cdr Subrata Das* (supra) relied upon on behalf of the respondents, which relates to a case of Wing Commander of the Indian Air Force, it has been specifically stipulated therein, in which the facts of which bring forth that the Air Force Headquarters Human Resource Policy was notified on



05.08.2011 which had been issued in pursuance of powers delegated to it by the Ministry of Defence on 14.08.2001 (which is the same delegation of powers as in the instant case relied upon on behalf of the respondents.)

The observations of the Hon'ble Supreme Court in para 38 and 39 of the said verdict have essentially to be adverted to. It is stipulated therein thus by the Hon'ble Supreme Court, that it has been submitted with justification that the right to withdraw a request for premature separation from service (PSS) from an Armed Force, *is not absolute or unconditional*, and that para 18 of the Human Resource Policy in that case of the Indian Air Force conditioned the withdrawal of an approved PSS application by a stipulation that such a request can be permitted only as an exception and under extreme compassionate grounds, and that para 18 contemplates that a request for withdrawal of a PSS application, in order to be effective, needs to be permitted, and that the use of the term *permitted* is indicative of the fact that a withdrawal of a request is not a matter of right.

49. In the instant case also it is brought forth through the Premature Retirement and Resignation Policy in respect of Army Officers (excluding AMC, ADC and MNS) dated 25.02.2009 no. 04588 /MS Policy in relation to the Army officers vide para 29 thereof to the effect:-

**"Withdrawal of Application**

*"29. Decision of competent authority on a request for PR/resignation is final and a request for withdrawal will not be entertained. However, if an officer, whose application for PR/resignation from the Army has been accepted, wishes to withdraw his application due to changed circumstances, he may apply to IHQ of MOD (Army), MS Branch, at least 30 days prior to his date of PR, duly recommended by the Cdrs in chain ie IO, RO and SRO and his request will be decided on merit. Requests for withdrawal of PR/resignation application and cancellation of order for PR/resignation will be submitted alongwith the undertaking at Appendix B to this letter."*

50. The Policy on Withdrawal of Premature Retirement Application No. 04588/MS Policy dated 30.04.2010, issued by the Military Secretary's Branch IHQ of MOD Army also stipulates categorically vide paras 6 and 7 thereof to the effect:-

*"6. The following guidelines to be adhered to before applying for withdrawal of PR application and processing the same at intermediate HQS:-*

*(a) The officer seeking withdrawal, must clearly state the reasons for change of circumstances necessitating the request for the withdrawal. The reasons should address all issues on which PR was sought.*

*(b) The officer will forward an undertaking duly countersigned by his IO to the effect that he shall be debarred from applying for PR for a period of four years.*

*(c) The officer seeking withdrawal must clearly establish that issues which compelled him to ask for PR are no longer valid and they have been adequately addressed.*

*(d) All the Cdr's in chain (IO, RO and SRO) must examine the reasons put forth by the officer for the withdrawal and satisfy themselves that conditions for which the PR was asked, have changed since the application, before recommending the case."*

7. *The request for withdrawal of PR application, will be processed at the MS Branch for sanction by the competent authority, keeping in mind organizational interest."*

51. It is apparent there from that the request for withdrawal of the Premature Retirement application is to be processed at the MS Branch for sanction by the competent authority, keeping in mind organizational interest. A perusal of the records put forth by the respondents of the consideration of the application of the applicant make it apparent that the applicant had requested for the PMR to take care of his parents who was suffering from various age-related diseases and to focus on the education of his children and submitted vide his application dated 08.04.2019 that his father was now stable after treatment, that his daughter, after completing her 12th standard, had got admission in Lady Sriram College, and that the officer had also been promoted to the rank of 'Lt. Col' with effect from 24.01.2019, in relation to which it was observed by the Chief of Army Staff to the effect:-

“

- (i) *There are not sufficient grounds for acceptance of offr's plea.*
- (ii) *His father's ailment was treatable, why did CGBD not go into the case in question in greater detail?*
- (iii) *Not approved, officer to proceed on PMR as requested by him*  
*Sd - 14.05.2008."*

52. There were further observations in relation to the said consideration also that the officer did not mention in his application seeking withdrawal of the PMR application as to what he stated about his mother's condition, even if his father was better. The records produced by the respondents also indicate that the applicant suffered from Bronchial asthma and was an officer in LMC P2 (permanent) with employment restrictions.

53. It is also essential to observe that in the case in relation to Hon'ble Supreme Court in *Union of India through its Secretary, Ministry of Defence, DHQPO, New Delhi and others vs Wg Cdr Subrata Das* (supra) it has been observed vide para 45 and 46 of the verdict to the effect:-

"45. The judgment in *Parthasarathy*, therefore, dealt with a situation where the officer had stipulated a future date with effect from which his premature retirement would become effective. However, before the application for retirement was accepted, he withdrew his request and it was only thereafter that Air Headquarters accepted his original application and communicated the decision to retire him from service. It was in this background that a two-Judge Bench of this Court held that: (SCC p. 164, para 8)

"8.... On the other hand, not only the acceptance of the request by the headquarters, the appropriate authority, was said to have been made only on 20-2-1986, a day after the respondent withdrew his request for premature retirement but even such acceptance in this case was to be effective from a future date, namely, 31-8-1986. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any

rate before 31-8-1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective."

46. The facts of the case and the above extract clearly make the judgment of this Court in *Parthasarathy* distinguishable. In *Parthasarathy*, the officer withdrew his request for premature retirement before the effective future date had arrived. He was sought to be retired prematurely thereafter by the Government despite the request having been withdrawn before it was accepted. The next aspect of the judgment which merits emphasis is the observation that nothing in the form of any statutory provision or rule had been brought to the notice of the court which would impede or deny the right of the employee to withdraw a resignation before the date on which the resignation could have become effective. Evidently, the two-Judge Bench was not dealing with a provision akin to Para 18 of the Human Resource Policy dated 5-8-2011 which is involved in the present case. It was in that background that the Court held that there was nothing to impede or deny the right of the employee to withdraw from the resignation. The judgment of this Court in *Parthasarathy* is, therefore, distinguishable."

54. Thus it is apparent that the facts of the instant case of the applicant in OA 1363/2020 are not identical to the facts of the case in *Wg Cdr T. Parthasarathy* (supra) and fall within the ambit of the facts of the case put forth in in *Wg Cdr Subrata Das* (supra), as observed by the Hon'ble Supreme Court vide para 43 of the said verdict to the effect:-

"43. The above observations indicate that the unrestrained choice of an employee to withdraw a resignation may yet be constrained if the employee had made arrangements acting on the resignation or letter to make another employee available for the job."

55. It is essential to observe that the records produced by the respondents in the instant case make it apparent to bring forth that pursuant to the application filed by the applicant seeking premature retirement which had been accepted, the respondents in the instant case too had made arrangements as brought forth (through the records produced) of deputing another officer in his place vide communication dated 30.01.2019.

### **CONCLUSION**

56. In the circumstances thus of the instant case in as much as the right to withdraw the application for premature retirement, is neither absolute nor unqualified and as on a perusal of the record, we find that there has been a considered application of mind by the then Chief of Army Staff to the prayer made by the applicant for withdrawal of his application for premature retirement, which has since been rejected, which has been made on a final determination based on the needs and exigencies of the service, we hold that there is no merit in the prayer made by the applicant.

The OA 1363/2020 is thus dismissed.

Pronounced in the Open Court on the 31<sup>st</sup> day of August, 2023.

**[LT GEN P. M. HARIZ]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

/AP/