

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

78.

OA 1169/2021 with MA 1063/2021

Sgt Aadesh Kumar

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Anshuman Mehrotra, Proxy Counsel
for Mr. Ankur Chhibber, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
04.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007, the applicant has prayed for the following reliefs:

- (i) Quash the impugned signal dated 05.08.2020 whereby the Application dated 26.11.2019 submitted by the Applicant seeking discharge from service on compassionate ground was rejected on ground of being devoid of merit.
- (ii) Direct the Respondents to discharge the Applicant from service on compassionate ground in terms of Para 2(f) of the AFO 16/2008 as well as on medical ground in light of the Air Force Instruction issued on 02.09.2019 as he has been categorized as

medical category A4G4 (P) making him ineligible for being promoted to the rank of Junior Warrant Officer keeping in mind the career progression and enhancement of the Applicant.

2. The applicant applied for appointment to the post of Air Craftsman in the Indian Air Force and after completing the process of selection successfully, he was enrolled as an Air Craftsman on 28.03.2006. He underwent the basic training for three months in Belgavi, Karnataka and thereafter he was posted at various places, details of which are given in Para 4.3 of the application. It is the case of the applicant that when he was posted at Air Force Station, Hakimpet, Secunderabad (Telengana), sometimes in the year 2012 while practicing a drill for the Republic Day parade he was diagnosed with low back ache and was treated in Military Hospital, Secunderabad and subsequently downgraded to a low medical category. The applicant's medical category continued in the same category and due to this, it is the case of the applicant that he does not have any avenues for promotion. In the meanwhile, the applicant's wife also got employed after completing her Ph.D as per the University Grant Commission norms and was granted Junior Research Fellowship for a period of five years in the North Bengal University, Bagdogra West Bengal, the applicant, therefore, wanted to be near his wife so that he could look after his family which consisted of his wife and two children.

3. Be that as it may, the applicant's request for posting near the family was not acceded to on administrative reasons and the applicant challenged the same before the Delhi High Court by filing a writ petition - W.P (C) 7953/2020, which was disposed of by the Delhi High Court without interfering into the matter. However, the facts in hand indicate that being faced with the situation as detailed herein above, both on family grounds i.e., compassionate grounds and medical condition of the applicant, he sought for discharge from service on compassionate ground in accordance with Air Force Instruction No. 1 Annexure A8 dated 02.09.2019 and referring to Para 15 of the aforesaid policy, it is the contention of the applicant that his case falls under Clauses (a) and (f) of the aforesaid policy. It is the averment of the applicant that when he made an application for discharge on compassionate ground, the Section Commander of the applicant's unit vide Annexure A5 on 28.11.2019 recommended the case for discharge on compassionate ground as indicated therein and the Commanding Officer of the unit also recommended for discharge of the applicant on 10.12.2019. In spite thereof, by a communication dated 05.08.2020, which is impugned in this petition the request of the applicant for discharge has been rejected on the ground that it has not been approved by the competent authority. Apart from taking us through various aspects of the matter, the policy, the conditions of the applicant both medical and family conditions, non-availability of alternate employment etc to the applicant in the Air Force and various

other aspects it was tried to argued that the applicant is entitled for discharge on compassionate grounds. It was also argued that in spite of the recommendations made by the Section Commander and the Commanding Officer by a non-speaking order without indicating any reason the competent authority has rejected the claim of the applicant.

4. The respondents have filed a detailed counter affidavit and rebut the aforesaid contentions and have come out with a case that the grant of discharge on compassionate ground is not a right. It depends upon various administrative factors, requirements of the establishment and therefore in this case for reasons indicated in the Counter Affidavit as the case of the applicant has been rejected on due consideration, no case for interference is made out.

5. We have no hesitation in holding that grant of discharge on compassionate grounds is not a right as held by the Hon'ble Supreme Court in the case of *Amit Kumar Roy v. Union of India and others* (C.A No. 4605-4606 of 2019 decided on 03.07.2019) refer to counter affidavit page 151) wherein after taking note of various aspects of the matter the Hon'ble Supreme Court in Para 15 has held that no individual has an unqualified right under Article. 19(1)(g) of the Constitution to leave service of the Air Force. In para 15, Hon'ble Supreme Court deals with the issue in in the following manner:

15. *We are unable to accept the submission of Mr Sankaranarayanan that the appellant had an*

unqualified right under Article 19(1)(g) of the Constitution to leave the service of the Air Force. The provisions of the Air Force Act, those contained in the rules and the terms of engagement of the appellant belie such an assertion. AFO 14/2008 emphasises aspects such as the criticality of the trade and the exigencies of service. They need to be verified and assessed before permission is granted. A person who has been enrolled as a member of the Air Force does not have an unqualified right to depart from service at his or her will during the term of engagement. Such a construction, as urged on behalf of the appellant, will seriously impinge upon manning levels and operational preparedness of the armed forces. With the rapid advancement of technology, particularly in its application to military operations, there has been a reconfiguration of the human and technological requirements of a fighting force. The interests of the service are of paramount importance. A balance has been sought to be drawn between the interests of the service with situations involving requests by persons enrolled to take civilian employment. This balance is reflected in the provisions contained in the Air Force orders, in this case AFO 14/2008. A person enrolled cannot assert a general right to act in breach or defiance of those orders.

Taking note of the aforesaid, we are of the considered view that as a matter of right, the applicant cannot claim release on compassionate ground and if on various reasons i.e., administrative or otherwise the respondents have rejected the same, for the present, for the reasons to follow we are not inclined to go into the merits of the matter.

6. We find that when the applicant submitted the application for grant of discharge on compassionate ground, the Section Commander of the applicant, in his recommendations made on 28.11.2019 (Annexure A5) made the following five points for consideration:

1. The air warrior has submitted a personal application for discharge from service on compassionate ground.

2. As brought out in the application, the air warrior is unable to perform his trade duties due to his present medical condition. This is causing severe manning constraints in Airframe Fit/Struct Fit trade. The air warrior was employed on sedentary jobs where again he expressed inability to perform quoting his medical problems.

3. He has expressed that the medical and professional requirements of his spouse warrants that she must continue to stay at Bagdogra. Being not able to assist his wife while staying separately at Hasimara is causing him undue stress and affecting his personal and professional life. He has been granted a total of 38 days of annual leave and 23 days of casual leave so far in the year 2019 for taking care of his personal requirements.

4. Considering the aforesaid, the air warrior cannot be employed on any duties effectively it will be in the benefit of the individual and the organization that his case may be considered sympathetically and he may be granted discharge from service on compassionate ground.

Thereafter when the matter went to the Commanding Officer on 10.12.2019, the Commanding Officer strongly recommended for his immediate discharge on the following five grounds:

1. Interviewed the air warrior and discussed the issue in detail.
2. Considering the air warrior's wife condition, he was given an option to move his family to Hasimara (Unit's new location) where required medical facilities including a gynaecologist are available within the camp area in 10 AFH. This option was not agreed to by the air warrior as his wife is unwilling to move from Bagdogra to Hasimara.
3. The air warrior is unfit to work on aircraft and is unable to discharge his trade duties. Considering his medical condition, when employed on other duties also, he displays very low level of involvement and positivity.

4. In the present scenario, his professional contribution to the service is nil and he doesn't want to part away from his family at all. This kind of attitude is in contradiction to an air warrior's conduct and service ethos. His continuation in service is not likely to pay any dividends to IAF. His presence in the organisation without any output will adversely affect the morale of the other unit personnel.

5. In view of all the above aspects, undersigned is of the opinion that the individual will not be able to discharge his duties in war.

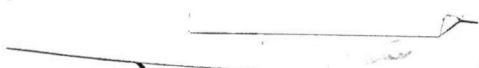
6. Strongly recommended for immediate discharge.

Once two officers under whom the applicant was working have recommended his case for grant of discharge on compassionate ground, it was incumbent upon the competent authority while taking a final decision in the matter to advert to the recommendations made by official. There is no doubt that the competent authority is well within his right either to accept the recommendations or reject it on due consideration. However, while rejecting it on such consideration, the bare requirement of law is to establish application of mind and giving reasons for the rejection was to be complied with and in our considered view while taking the impugned action, no such reasons were recorded or indicated to the applicant. Even though the respondents have tried to justify the reasons in the counter affidavit, it is not sufficient to justify so in counter affidavit, the competent authority had to address the grievance of the applicant vis-à-vis the grievance highlighted by him, after due consideration the recommendations made by his officers viz. the Section

Commander and the Commanding Officer and then take an independent decision. This having not been done, we are of the considered view that this is a fit case where the matter is to be remanded back to the competent authority to re-consider the grievance of the applicant afresh, take note of the recommendations made by the Section Commander and the Commanding Officer and as indicated herein above pass a speaking order either accepting or rejecting the claim of the applicant by showing application of mind and indicating reasons for the same. The competent authority shall take final a decision in the matter within eight weeks from the date of receipt of a copy of this order.

7. OA stands disposed of.

8. A copy of this order be provided DASTI to learned counsel for both the parties.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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