

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

116.

OA 1420/2022

In the matter of :

LAC Prem Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ram Niwas Bansal, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P MOHANTY, MEMBER (A)

ORDER

15.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking premature discharge (hereinafter 'PMR') from the Indian Air Force. Aggrieved by the rejection of his application for grant of PMR, the applicant has approached this Tribunal. Therefore, it is necessary to indicate certain facts of the case before considering the issue in question.

2. The applicant was enrolled in the Indian Air Force in the trade of LGS ASST on 27.06.2007 for an initial

engagement of 20 years, scheduled to expire on 26.06.2007 presently posted at HQ WAC (New Delhi) and applied for PMR on 29.12.2021 seeking discharge on compassionate (medical) grounds, which was not approved by the Competent Authority being 'devoid of merit' vide letter no. AIR HQ/40802/3/PA-I dated 13.05.2022, and subsequently applicant was informed vide signal no. RO/RDD/22 dated 17.05.2022. Thereafter, the applicant preferred this OA against the rejection of the aforesaid application.

3. Referring to medical documents, Learned Counsel for applicant states that the applicant is in LMC A4G4(P) which is the lowest medical category and is affecting his service tasks as well as his routine life, and due to employability restrictions, he is not able to perform his trade duties, with no further scope for promotion as well.

4. Stressing on the humanitarian consideration, Ld. Counsel for applicant raises the point that due to medical condition, he is unable to perform his routine military duties efficiently which is not only detrimental to the requirements of the Air Force but also harmful to his own health, while further stressing that respondents are denying him discharge in

absolute disregard to the medical advice of the Senior Medical Officer and his own Commanding Officer.

5. Per Contra, Learned Counsel for the Respondents submits that the discharge from service on compassionate grounds in respect of airmen are considered on case to case basis by the competent authority keeping in mind the gravity of the problems being faced by the applicant as well as service exigencies.

6. In this case the stand of the respondents is that the Paragraph 8 of AFO 16/2008 stipulates that the discharge from service cannot be claimed as a matter of right, and it depends on the competent authority to accept or reject such application.

7. Stressing on the organisational loss, Learned Counsel for Respondents submit that the indiscriminate acceptance of PMR applications of service personnel would be a loss to the organisation due to outflow of trained manpower leading to deficiency of such trained service personnel.

8. We have heard the Learned Counsels for both the parties in length and perused the material available on record. We find it essential to record that while enrolling a person to the service in the Forces, certain terms and conditions are laid down

in the offer of appointment and the individual joins the service in the Forces after accepting the said terms and conditions. An individual who joins the Forces is governed by the terms and conditions of appointment and it is a well-settled principle of law that grant of premature retirement is not a right but it is done on the basis of various circumstances prevailing in the environment. The requirements of service are of paramount importance and grant of premature retirement is normally taking into account various administrative and executive reasons.

9. In **Union of India Through its secretary versus Wg Cdr Subrata Das, Hon'ble Supreme Court [(2020) 12 SCC 784]** opined as under:

"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."

10. In **Union of India v. R.P. Yadav (2000 AIR SCW 2370)**, while considering the right of an employee to seek premature retirement, the Hon'ble Supreme Court has made the following observations:

"An incidental question that arises is whether the claim made by the respondents to be released from the force as of right is in keeping with the requirements of strict discipline of the Naval

Service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time according to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon the security of the nation. It has to be borne in mind that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the Nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in Regulations like Regulation 217 and 218 that persons who in the opinion of the prescribed authority, are not found permanently fit for any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right, release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high degree of expertise and skill for which substantial amounts are spent from the exchequer."

11. Even in the case of premature retirement, the same principle is applicable. The applicant has sought premature retirement because of his medical condition. The respondents have considered the same and held it to be devoid of merit. As grant of premature retirement is not a right but is a factor to be considered based on administrative requirements and organisational necessity, when in such cases, the scope of judicial review is limited, interference by Court can be made only in exceptional circumstances. It is pertinent to mention if the

circumstances pointed out by the applicant for seeking premature retirement are balanced in the backdrop of the administrative requirements indicated, particularly with reference to shortage of manpower on the technical side, the Court cannot exercise judicial review in such matters.

12. However, we may point out that if a person is suffering from several disabilities, which are creating a substantial amount of hindrance in his daily routine, it is essential that the acceptance of PMR, as in the case in hand, has to be dealt keeping in view the organisational requirements, and not to be dealt in a mechanical manner, specifically when a person is extremely inefficient for the tasks assigned due to his medical conditions, which result only in a burden on the respondents, with the larger impact on the efficiency of the organisation that is substantially reduced.

13. Furthermore, recognition of such an opportunity to take a compassionate view by acceptance of the PMR and provision of an opportunity to do so, is an effort to implement and afford protection to the right to every person, the mandate of the provisions of the Constitution, the International Covenants and the spirit of the statutes set out above.

14. In the aforesaid backdrop, it is pertinent to refer to the case of ***Major Rahul Shukla Vs Union of India & Ors. 59(1995) DLT 573 (DB)***, wherein the Hon"ble High Court has observed as under:-

"An application for resignation may be rejected if it is not based on adequate and justifiable reasons. The over-riding consideration is whether the officer's continuance in service for a specific period is necessary to meet exigencies in a service and alternative arrangements cannot be made. Even in such a case the application for resignation cannot be rejected. It can only be held in abeyance. In the case at hand it is not the case of the respondent that the facts stated by the petitioner in his application for resignation were false or were not adequate or not justifiable. That finding could not have been arrived at inasmuch as the Colonel Commanding Officer having personally reviewed the application, was satisfied of the validity thereof. Any higher authority to form an opinion different from the one expressed by the Colonel Commanding Officer must have been possessed of material concrete enough to form a different opinion which it is not so."

15. Therefore, taking note of the fact that the applicant is in the lowest medical category LMC A4G4, and his balance engagement period is about 3 years, and the same being recognized as reasonable grounds under Para 2 (f) of the AO 16/2008, a compassionate view is required to be taken on the issue, purely on humanitarian grounds.

16. Therefore, we direct the respondents to consider afresh the application of the petitioner seeking premature discharge from service in the light of the above discussion. The

respondents are directed to give effect to such reconsideration within a period of one month from the receipt of this order.

17. Consequently, this OA 1420/2022 is allowed subject to the conditions specified above.

18. Pending application if any, also stands disposed of.

19. No order as to costs.

(RAJENDRA MENON)
CHAIRPERSON

(C.P. MOHANTY)
MEMBER (A)

/ps/