

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

O.A. No. 187 of 2023

In the matter of :

Sgt Dammal Chauhan

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ajit Kakkar, Advocate

For Respondents : Shri R.S. Chhillar, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs in Para 8 read as under :

- (a) Quash and set aside the impugned Signal of AFRO RO/RDD/408 dated 06.10.2022 and direct respondents to grant immediate discharge from service to the applicant. And/or**
- (b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.**

2. The facts of this case in brief are that the applicant was enrolled in the Indian Air Force on 28.03.2006 for an initial engagement of 20 years. It is the case of the applicant that on 16.11.2015, he was married to a girl who was a State Govt. of Haryana employee (posted at Gurugram), however, after some time, differences arose between him and his wife and because of their staying at different locations for their service, his married life got disturbed; the applicant was not able to spare enough time owing to his job profile in Air Force for their domestic requirements; due to continuous conflict and differences and frequent fights and could not extend the family and as the wife of the applicant failed to adjust in defence environment and calls of separation, they filed a mutual consent divorce case in Family Court, Gurgaon which announced final date of verdict on 27.10.2022.

3. As stated in the OA, the applicant, in the meantime, while posted to HQ EAC (U) w.e.f. 12.12.2022, in order to try to revive his relationship with his wife and avoid divorce and to have a good domestic environment and happiness in life and as change of posting to any other place would not resolve his domestic agony, applied on 16.08.2022 for immediate discharge from service on compassionate grounds explaining the hardships

faced by him in his day to day life, which was not approved by the Competent Authority and was rejected being 'devoid of merit' vide letter No. AFRO RRD/408 dated 06.10.2022, which was intimated to the applicant vide letter dated 10.10.2022. Thereafter, the applicant submitted an RTI application dated 12.10.2022 seeking information regarding rejection of his discharge application. The applicant also submitted a general application dated 12.10.2022 requesting for issuance of speaking order on rejection of his discharge application and the same was replied to vide HQ WAC letter No. WAC(U)/859/3/P3 dated 19.10.2022 informing him that there is no speaking order on his discharge application. In the meantime, the Family Court, Gurgaon passed the Divorce Decree dated 10.11.2022 dissolving the marriage of the applicant. Aggrieved by rejection of his premature discharge application, the applicant HAS filed the present OA.

4. The learned counsel for the applicant submitted that on the date of filing the OA, the applicant's age was 34 years and he was left with 3 years and 3 months of service and he has to look after his old age widow mother of 65 years; that the applicant has four brothers and all are living separately; that the applicant's family partition and division of land took place

on 11.04.2021 and he became the owner of properties worth Rs.2,23,80,802/-, and as the applicant is still single, no one is there to take care of the property and his absence from the place of property is causing him heavy financial loss. It is further contended by the learned counsel that the applicant's property has to be well taken care of in view of the increasing value of real estate in an around the NCR and for avoiding illegal encroachment; that as per Para 2(c) of the AFO 16/2008, which provides for 'Absence of the airman from his family will cause heavy financial loss of the family', which is a valid ground for premature discharge, the applicant is entitled to grant of premature discharge from service.

5. The learned counsel further submitted that the AFO 167/2008 Para (f), based on which the applicant applied for discharge on compassionate ground, does not explain about the cases which can be given sympathetic consideration under 'compassionate grounds', and Air HQ Human Resource policy Part I/PO/01/2018 dated 23.02.2018 recognize 'possibility of break-up of conjugal life if officers continue in service' a valid reason for discharge from service for officers; and the facts about difficulties faced by the applicant to save his conjugal life are verified by the Commanding Officer and related documents

and the respondents should not make discrimination between officers and airmen (as the applicant herein) when it comes to humanitarian ground. Apart from taking us through various aspects of the matter, the policy, the condition of the applicant's family and properties aspect, it was argued that the applicant is entitled for discharge on compassionate grounds and it was also added that in spite of the recommendations made by the Commanding Officer and without examining the applicant's personal situation, the Competent Authority, by a non-speaking order without indicating any reason has rejected the claim of the applicant.

6. In support of his contentions, the learned counsel for the applicant placed reliance on judgment of the Hon'ble High Court of Delhi in the case of **Major Rahul Shukla Vs. Union of India & Ors. [59 (1995) DLT 573 (DB)]** wherein it was held that an application for resignation may be rejected if it is not based on adequate and justifiable reasons. The learned counsel also referred to the judgment reported in **R. Vs. Windsor Licensing Justice, ex parte Hodes [(1983) 2 All E.R. 551]** wherein it was held that it is wrong to refuse an application automatically or peremptorily merely because of a policy, however exceptional it may be. The learned counsel submitted that after divorce from

his wife, the applicant, at this stage of his life, is all alone and has a widowed mother who needs to be taken care of and also the high valued property which requires constant care and vigil in view of the present real estate situations in NCR, the applicant is entitled to premature discharge from service on compassionate grounds and thus the impugned order is liable to be set aside and OA may be allowed.

7. The respondents filed their detailed counter affidavit and pointed out that before filing the present OA the applicant did not exhaust statutory remedy available to him under Section 26 of the Air Force Act, 1950 for Redressal of Grievances (ROG) of the applicant; that the discharge from service on compassionate grounds of airmen is considered on case to case basis keeping in mind the gravity of the grounds as well as the service exigencies; that Para 8 of AFT 16/2008 provides that the 'Discharge from service cannot be claimed as a matter of right and nothing in this order shall interfere with the power of the Air HQ to suspend/withhold discharge temporarily or otherwise on compassionate grounds or refuse the same in a particular case'. It is contended on behalf of the respondents that discharge of airmen prior to the completion of their engagement is bound to affect the manning level in the respective trades of IAF and have

an adverse impact on the operational preparedness of the Air Force on the whole.

8. The learned counsel for the respondents submitted that each airmen is trained for specific role and his continuance in service is essential not only to make good the expenditure incurred on him for his training but also to man all the required posts at all levels; that to achieve the stated organisational aim, administrative policies have been framed by the IAF to regulate discharge of airman before completion of initial engagement at the same time balancing service requirement and some in their personal requirements on compassionate grounds and thus airmen are permitted to seek premature discharge only in exceptional cases. The learned counsel further submitted that the applicant's discharge application dated 16.08.2022 on grounds of his marital discord was duly processed and evaluated at appropriate level in accordance with the provisions of AFO 167/2008 and the same was rejected being devoid of merit. It was further added that the applicant had earlier requested for posting to Delhi area on 'co-location grounds' and the same was granted to him and the applicant completed his full tenure there from 18.12.2017 to 11.12.2022 and thereafter he was posted to HQ EAC (U) IAF at Shillong w.e.f. 12.12.2022.

9. It was submitted on behalf of the respondents that the application seeking premature discharge of the applicant on compassionate grounds was mainly related to his marital discord which was considered at appropriate level and disposed of in accordance with the policy. The learned counsel contended that the marriage between the applicant and his wife was dissolved by the Family Court, Gurgaon by way of Divorce Decree dated 10.11.2022, hence the main contentions raised by the applicant in his application for discharge on compassionate grounds have become infructuous. With regard to the contention of the applicant about the recommendation of the Commanding Officer, the learned counsel submitted that the Commanding Officer is not the final authority to dispose of the same and the application was duly examined taking into consideration all the facts and circumstances and was disposed of accordingly and the applicant, now through the present OA, has brought the additional facts stating about the ownership of properties worth Rs. 2,23,80,208/- and this was not a part of his discharge application submitted on 16.08.2022. The learned counsel further stated that the Air HQ Human Resource Policy Part-I/PO/PR/02/2018 dated 23.02.2018, referred to by the applicant, is only applicable to the officers and their service

conditions and there are separate policies for Airmen and their service conditions and thus the same cannot be associated with each other. The learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court in the case of **UOI & Others Vs. R.P. Yadav [(2000) AIR SCW 2370]** to submit that premature discharge from service is not a matter of right; and **Union of India & Others Vs. Cpl BK Verma [S.L.P. (C) No. 16448 of 2017 decided on 07.12.2017]** wherein it was held that Courts may not be satisfied with the policy but if any modifications are to be made it is for the Air Force to take a call and the court ought not to substitute its opinion for that of the Air Force. In view of the above, the learned counsel for the respondents prayed for dismissal of the OA.

ANALYSIS

10. We have heard the learned counsel for the parties and have perused the records produced before us.

11. It is admitted that the applicant had sought premature discharge from service on compassionate grounds vide application dated 16.08.2022 on the grounds of his marital discord as explained in the application. It is also admitted that the marriage of the applicant got dissolved by way of a Divorce Decree dated 10.11.2022 passed by the Family Court, Gurgaon.

It is also the fact that the discharge application of the applicant was recommended by the Commanding Officer, however, the Competent Authority has rejected the claim made by the applicant for premature discharge on compassionate grounds. The applicant's contention is that his discharge application was rejected by the Competent Authority by way of a non-speaking order without indicating any reasons for rejection. The respondents have filed a detailed counter affidavit and rebut the contentions made by the applicant 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, 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 Vs. Union of India and others** [Civil Appeal No. 4605-4606 of 2019 decided on 03.07.2019] wherein after taking note of various aspects of the matter, the Hon'ble Apex 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.”

12. 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.

13. We find that when the applicant submitted the application for grant of discharge on compassionate ground, the Commanding Officer of the applicant had recommended the same. 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 which has been recommended by the Commanding Officer and then take an independent decision.

14. The applicant, through this OA, brought out certain facts and development in his personal life and family to the effect that after his divorce from his wife, he is single and he has to take care of his old age widowed mother all alone and that consequent to the family partition and division of land, the applicant got the ownership of properties valuation of which comes to Rs.2,23,80,208/-, in support of which the applicant has annexed valuation report/order from Tehsildar of the area, and the applicant, being single and looking after his ailing old-age mother, there is no one else to take care of the properties of the applicant but himself and absence of the applicant will cause huge financial loss considering the looking to the real estate situations and illegal encroachment in the area.

15. Although these facts were not part of the record when the applicant submitted his discharge application on 16.08.2022, however, taking note of the present facts and circumstances and practical difficulties, as explained by the applicant in this OA, we find it appropriate that the same need to be given a consideration by the authority. Accordingly, we direct the respondents to treat the instant OA as a representation of the

applicant seeking premature discharge on compassionate grounds in light of the facts and circumstances explained in the OA and the Competent Authority shall consider the same and dispose it of by way of a speaking order either accepting or rejecting the claim of the applicant and indicating reasons therefor within a period of two months from the date of receipt of copy of this order and the order so passed by the Competent Authority shall be intimated to the applicant within two weeks thereafter.

16. With the aforesaid, the OA 187 of 2023 stands disposed of.

17. There is no order as to costs.

Pronounced in open Court on this 13th day of
December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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