

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

OA 2060 / 2017

Cdr Vishal Bhargava

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Ankur Chhibber, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant 'No. 41845-A Cdr Vishal Bhargava' vide the present OA makes the following prayers:-

"(a) Quash the impugned order dated 12.10.2017 issued by the respondents whereby the request of the applicant for withdrawal of premature retirement has been rejected.

(b) Issue a direction to the respondents to allow the applicant to continue in service till the normal age of superannuation as if he had never put in an application for premature retirement with all consequential benefits.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

2. At the outset it is essential to observe that the applicant has since prematurely retired from the Indian Navy with effect from 31.12.2017. The

applicant an E-SM officer was commissioned in the Indian Navy with effect from 01.01.1996 and was promoted to the rank of Lieutenant Commander on 16.12.2004 and Commander on 16.08.2019. On 12.07.2016 he requested for grant of Premature Retirement (PR) with effect from 11.07.2017 on grounds of lack of career prospects for advancement in service, stating to the effect that he had been rejected for selective promotion to the rank of Captain twice by the Promotion Boards 2B/14 held in August 14 and 2/15 held in July 2015 and that he had completed 20 years of commissioned service on 31.12.2015 and wanted to pursue direct employment in the corporate sector, as indicated vide Annexure R1 annexed to the counter affidavit dated 27.02.2018 filed on behalf on behalf of the respondents.

3. The said application dated 12.07.2016 was approved vide letter no. RS/2502/PR/16 dated 02.11.2016 by the IHQ of MoD (Navy) Directorate of Personnel with his request for premature retirement having been approved with effect from 31.07.2017. The applicant, however, requested for extension of his premature retirement till 31.12.2017 stating that he understood that HQ ATVP was expected to open some vacancies for recruitment in the month of April / May 17 with interview scheduled in 2017 and thus he sought an opportunity to enable for a seamless transition in case of his selection for the DRDO / HQ ATVP cadre, which request of the applicant was approved vide letter no. RS/9685/PR/16 dated 17.03.2017 and the applicant's request for deferment of

the date of retirement was acceded to, which was deferred from 31.07.2017 to 31.12.2017 (A/N) on which date the applicant has since been prematurely retired on his own request.

4. The applicant submits that despite the deferment of his premature retirement date and completion of the resettlement course, the applicant found himself in a situation where owing to his field of specialization i.e. a nuclear reactor operator in the Submarine, he had lack of avenues in the civil side and thus made a request on 01.09.2017 for withdrawal of his application for pre-mature retirement and sought to be allowed to continue in service stating therein that though he had requested for deferment in view of certain DRDO / ATPV vacancies likely to be advertised in July / August 2017, the said DRDO vacancies did not open up and that in view of the limited scope of employment in the Civil side he had decided to continue in service wherein his specialized training could be suitably utilized and sought to continue in service and sought to withdraw his request for premature retirement vide an application dated 01.09.2017.

5. This application dated 01.09.2017 of the applicant was not acceded to by the respondents and he was informed of the same vide letter no. RS/9685/PR/16 dated 12.10.2017 which is impugned in the present OA stating that his request had been considered by the Competent Authority and it was regretted that it had not been found feasible to accede to his request and that the applicant would

retire as per PR order issued vide letter no. RS/9685/PR/16 dated 17.03.2017. The applicant submits that it is settled law that an application for pre-mature retirement can be withdrawn at any date before the actual date of premature retirement and that the impugned letter dated 12.10.2017 has rejected his request for withdrawal of premature retirement prior to the date of actual release i.e. 31.12.2017 without giving any reason.

6. The applicant places reliance on the verdict of the Hon'ble Supreme Court in *UOI & Ors vs Wing Cdr. T Parthasarathy* 2001 (1) SSC page 158 to submit to the effect that it has been held therein "*a request for premature retirement which required the acceptance of the competent or appropriate authority will not be complete till acceptance 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 as in this case.*"

7. *Inter alia* the applicant submits that the Head of the Nuclear Safety Submarine (IGNS) wrote a letter to the COP to re-examine the matter and to consider the request of the applicant. The applicant submits that pursuant to that letter, he was informed that his request for withdrawal of premature retirement was being considered favorably and would be accepted. The applicant submits further that as the date of release of the applicant was 31.12.2017, the Naval Pay Office requested him to complete his pension formalities which came as a shock

to him. The applicant submits that the office of the IGNS had also issued a letter dated 30.11.2017 to the Naval Pay Office informing them that the applicant had moved an application for withdrawal of his premature retirement and it was understood to have been accepted by the office of the COP and that the pre-formalities at the Naval Pay office may not be initiated in the case of the applicant.

8. The applicant submitted vide the present OA instituted on 15.12.2017 that the respondents were proceeding to initiate the pre-formalities for release of the applicant on 31.12.2017, and the OA was taken up for consideration on 18.12.2017. Vide order dated 20.12.2017 of this Tribunal, the prayer made by the applicant seeking a stay of the operation of the impugned order dated 12.10.2017 as well as 17.03.2017, whereby it had been stated that the applicant would be released on 31.12.2017 and seeking also that he be continued in service till the pendency of the OA, was declined. Significantly, vide order dated 20.12.2017, though notice in the OA was issued, it was specifically observed to the effect that despite the officer having been intimated on 12.10.2017 by the respondents, that his case for withdrawal of the request for premature retirement had been rejected, the applicant filed no statutory or non statutory appeal and did not seek adequate legal redressal in terms of Section 21 of the AFT Act 2007.

9. Reliance was placed on behalf of the applicant during the course of submissions made *inter alia* on the verdict of this Tribunal dated 12.01.2011 in

the case of *Naik Ravinder Singh vs Union of India and Others* in OA 447/2010 in which case the applicant thereof had submitted that he had been coerced into submitting an application requesting for premature discharge on 09.08.2008 and on 04.09.2008 submitted an application requesting to withdraw his earlier application dated 09.08.2008 and that the Record Office, Parachute Regiment issued the discharge order on 27.11.2008. In that case, the applicant thereof submitted another application dated 10.02.2009 requesting for cancellation of his discharge order and the order of his discharge was cancelled on 20.02.2009 due to intervention of Colonel of the Parachute Regiment, but another order of discharge was passed on 27.02.2009, and that applicant was discharged on 28.02.2009. In that case, it had been observed to the effect:-

"11. We have heard the arguments and perused the record. The legal position is very clear, in that a request for premature retirement can be withdrawn at any stage before the discharge becomes effective. The applicant was discharged on 28/2 / 2009. However before the discharge became effective the applicant had submitted two applications dated 4/9 / 2008 and 10/2 / 2009 requesting that his earlier request for premature discharge be cancelled. He was legally entitled to withdraw the same and should not have been discharged. In view of the judgements cited by the applicant order of discharge is not sustainable and the applicant is entitled to relief. We therefore direct that the applicant be reinstated immediately with all consequential benefits. The orders by the respondents dated 27/11 / 2008 (order of discharge) and 11 May 2010 (rejection of petition) be set aside. Application is allowed.

No costs."

and that applicant was directed to be reinstated with all consequential benefits.

10. On behalf of the respondents it has been submitted to the effect that after the applicant had applied vide application dated 12.07.2016 for grant of

premature retirement with effect from 11.07.2017, the applicant had also forwarded his application for Pre Release Courses (PRC). *Inter alia*, the respondents submit that the Pre Release Courses are extremely sought after taking into consideration the limited seats available *vis-a-vis* the number of applicants and that the applicant was deputed to undergo 'Resettlement Training Course' at MDI, Gurugram from 26.12.2016 to 17.03.2017. The respondents have submitted that the concept of PRC is to help service officers to resettle in civil life after retirement from the Armed Forces and to ensure better career prospects after having served in the Indian Navy for two decades in the instant case.

11. The respondents placed reliance on the Navy Order 07/12 (NO 07/12) to submit that Para 1 thereof stipulates to the effect:-

"Applications from officers for premature voluntary retirement or permission to resign their Commission are considered on merit, subject to exigencies of the Service. The Government/Integrated Headquarters of Ministry of Defence (Navy) has the sole prerogative to accept or reject the application for premature retirement/resignation of Commission of an officer. It can, at its discretion, reject the application of the officer without assigning any reason".

12. The respondents have further submitted through Para 6 of their counter affidavit that the request of the applicant for withdrawal of the PR application was considered and not acceded on the following grounds:-

"(i) That the officer had already been given an opportunity to ascertain and assess the job situation in the civil sector by deferring his date of PR from 31 Jul 17 to 31 Dec 17.

(ii) That the officer had undergone the prestigious Pre- Release Course (PRC) from 26 Dec 16 to 17 Mar 17 at MDI Gurugram. It is also pertinent to mention that the officer, while submitting his PR application in Jul 16, had given an undertaking stating that he had considered all factors involved and would not withdraw his PR request at a later time'. (R-1)

(iii) That in accordance with Para 16 of NO 07/12 (R-7) "An officer will not be permitted to withdraw, barring exceptional circumstances, his PR/resignation or to advance/postpone the date of his retirement/resignation once the same has been approved." (R-7)

(d) The officer applied for cancellation of his PR after 14 months of submission of his PR request and 10 months since the approval of the same by the Competent Authority and that too at the belated stage after availing the benefit of PRC at the cost of other aspirants.

(e) The vacancy being, created by officer's PR has already been factored in manpower induction calculations for the Indian Navy, with more officers being inducted, the E (SM) specialization to which the officer belongs is now overborne (R-9)."

The respondents submit that there is no provision in the Navy Order 07/12 which confers any right on the applicant to withdraw or revoke PMR once it has been accepted/approved by the Competent Authority. The respondents further submit that having regard to the onerous duties and the sacrosanct functions which the members of the Armed Forces perform, the applicant has to behave in a manner which enhances the confidence of the people in the Defence forces and has to abide by certain fixed principles and self-imposed restrictions, so that, if he decides to resign / take voluntary retirement from his office, he must do it after due care and should not be allowed to withdraw the same.

13. The respondents submit in as much as the services of the applicant stood terminated on the date on which the letter of premature retirement was accepted,

the applicant's request for withdrawal of voluntary retirement cannot be accepted.

14. Reliance was placed on behalf of the respondents on the order dated 07.02.2018 in OA 1265 of 2017 in the case of the **Commander Rachit Bhatnagar vs UOI** with it having been submitted on behalf of the respondents that it has been stated therein vide para 16 to the effect:-

"in case of a government servant/or functionary/who cannot under the conditions of his service/or officer, by his own unilateral act of tendering resignation, give up his service/or office tenure terminated when it is accepted by the Competent Authority".

and on the order of this Tribunal in TA 81 of 2009 in the case of **Cdr Alok K Pathak vs Union of India and others**, wherein the request for withdrawal of voluntary retirement were not accepted. **The respondents have submitted to the effect that the case of premature retirement of the applicant had attained finality with the acceptance of the same by the Competent Authority and by the applicant availing of the benefit of the Pre Release Course at MDI Gurugram.** The respondents submit that the reliance placed by the applicant on the verdict of the Hon'ble Supreme Court in **UOI & Ors vs Wing Cdr. T Parthasarathy** (supra) is misplaced. The respondents reiterate that the applicant chose to withdraw his request for premature retirement after 14 months of his initial request for premature retirement and after 10 months of approval of the same.

15. The respondents have further submitted that the vacancy created by premature retirement of the officer has already been factored in manpower planning and that the case of premature retirement of the applicant had attained completion with the approval of the same by the Competent Authority in November 2016.

16. The respondents further submitted that the overall management of Naval Officers rests with the Directorate of Personnel in consultation with the DMPR with regard to number of exits in a year and that the E-SM cadre is already over borne with 272 officers against the existing Government Sanction of 265 officers and the officer's request for withdrawal of request was routed through the office of Nuclear Safety Submarine (IGNS) being in the officer's channel of work, but the same cannot be executed/accepted as the same was in contravention with the extant norms of premature retirement.

17. *Inter alia*, the respondents submit that the Competent Authority in this regard is the Directorate of Personnel i.e. the Chief of Personnel (COP). The respondents have also denied that the applicant was never informed by the Directorate of Personnel that his request for withdrawal of premature retirement was being considered favorably and that rather he had been informed by office letter dated 12.10.2017 that his request for withdrawal of premature retirement had not been agreed to and he was required to process his release formalities in

accordance with the letters dated 02.11.2016 and 17.03.2017 and that the IGNS had no authority in this regard.

18. The respondents further submit that rather the Competent Authority had shown leniency and had allowed deferment of the applicant's premature retirement from 31.07.2017 to 31.12.2017, and that the applicant had himself submitted vide his certificate dated 12.07.2016 that he had submitted his application for premature retirement after consideration of all factors involved and that he would not withdraw his request, and that thus he cannot be allowed to withdraw his request for premature retirement after 14 months of his premature retirement application dated 12.07.2016 especially when the matter had attained finality with the approval of his premature retirement application by the Competent Authority and completion of Pre Release Course at the MDI Gurugram.

19. Reliance was also placed by the respondents on the observations in ***Director General ESIC vs Purushottam Malani*** (CA 4611/2008) to submit that it has been held therein:-

"if the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revokes the same at his sweet will. This cannot be permitted. The Rule mandates that there should be a specific approval of the appointing authority. Clearly, the Rule provides that the appointing authority can certainly approve or disapprove a request for withdrawal of notice of voluntarily retirement".

The respondents further submit the reliance placed by the applicant on the order dated 17.03.2017 in OA 238/2016 of this Tribunal in the case of *Cdr CS Joshi* is wholly misplaced for in that case the applicant had requested for withdrawal of his premature retirement application before the same was approved by the Competent Authority and thus he had valid reasons to seek withdrawal of the same before acceptance by the Competent Authority, **but the applicant in the instant case withdrew his premature request application after more than one year when the same had been approved by the competent authority and he had also availed the benefit of the prestigious pre release course at the MDI at the cost of other aspirants.** The respondents thus seek that the OA be dismissed.

20. Through the rejoinder filed by the applicant, submissions made through the OA have been reiterated.

ANALYSIS

21. It is essential to observe that in the instant case, the applicant had initially requested for premature retirement wef 11.07.2017 for release which was accepted with effect from 31.07.2017 vide IHQ MoD (N) letter No Rs/2502/PR/16 dated 02.11.2016 of the respondents and on the applicant's request for deferment of his release, the date of release was further extended to 31.12.2017 on the request of the applicant dated 21.02.2017 vide letter no. RS9685/PR/16 dated 17.03.2017 to the date 31.12.2017.

22. The applicant's application for withdrawal of premature retirement was filed thereafter on 01.09.2017, but after his application for premature release was accepted on 02.11.2016 and his request for deferred premature retirement was accepted vide letter dated 17.03.2017. Significantly, vide the letter dated 01.09.2017, whereby the applicant sought to withdraw his application for premature retirement, he also admitted having undertaken the resettlement training course from 26.12.2016 to 17.03.2017.

23. It is essential to observe that in the case of *UOI & Ors vs Wing Cdr. T Parthasarathy* (supra), before the application for premature retirement was accepted that employee had withdrawn his request and it was only thereafter that the Air Headquarters had accepted his original application and communicated the decision to retire him from service. *The facts of the said case relied upon on behalf of the applicant as well as in the case of Cdr CS Joshi (supra) are wholly distinguishable from the facts of the instant case as has already be delineated hereinabove that the applicant's application for Premature retirement dated 12.07.2016 was accepted on 02.11.2016 with his request for premature retirement having been conceded to with effect from 31.07.2017 and his further request for deferment of the premature retirement made was acceded to till the date 31.12.2017 vide approval accorded on 17.03.2017 and it is only thereafter that on 01.09.2017 the applicant sought to withdraw his*

application for premature retirement after even having undergone the Pre Release Courses during the period 26.12.2016 to 17.03.2017.

24. In the circumstances of the instant case, the observations of the Hon'ble Supreme Court in the case of *Union of India Through its Secretary, Ministry of Defence DHQPO, New Delhi & Ors. vs Wg Cdr Subrata Das* (CA 10953/2014 dated 29.01.2019) are wholly applicable wherein it was observed by the Hon'ble Supreme Court vide paragraphs 43, 45, 46 thereof as under:-

"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.

44...

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."

(emphasis supplied)

25. It is essential to observe that in the instant case too the respondents have categorically stated that the vacancy created by the premature retirement of the applicant has already been factored in manpower planning and that the E-SM cadre is already over borne with 272 officers against the existing Government sanction of 265 officers and that the Competent Authority in this regard is the Directorate of Personnel i.e. the Chief of Personnel (COP) and that the applicant can now not be permitted to withdraw his request for premature retirement after

its acceptance after a lapse of 10 months of the approval thereof by the competent authority and the vacancy having been factored in manpower planning.

26. As observed by the Hon'ble Supreme Court in *Wg Cdr Subrata Das* (supra) in paragraphs 38 and 39 thereof, wherein it has been stipulated by the Hon'ble Supreme Court that in that case (the principle of which would be equally applicable here) that it had 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 the request can be permitted only as an exception and on extreme compassionate grounds and that a request for withdrawal of PSS application in order to be effective, needs to be permitted itself indicates that the use of the term permitted is indicative of the fact that a withdrawal of a request is not a matter of right.**

27. We are fortified in this view that we take in view of the order dated 31.08.2023 in OA 1363 of 2020 of this Tribunal in the case of *Lt Col Jitendra Singh (Retd.) vs UOI & Ors.*

CONCLUSION

28. 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 in as much as the prayer of the applicant seeking premature

retirement had already been acceded to with effect from 31.12.2017 vide acceptance granted on 17.03.2017, **the prayer made on 01.09.2017** by the applicant seeking withdrawal of the premature retirement, much after the approval accorded of the premature retirement and after the respondents had taken action for manpower management and after the applicant had undergone the Pre Release Course, and as the prayer for withdrawal of the application for premature retirement has been rejected on a final determination of the needs and exigencies of the service, we hold that there is no merit in the prayer made by the applicant.

29. The OA 2060 / 2017 is thus dismissed.

Pronounced in the Open Court on the 9 day of February, 2024.

[REAR ADMIRAL ~~DHIREN VIG~~
MEMBER (A)]

[JUSTICE ANU MALHOTRA]
MEMBER (J)]

/AP/