

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

OA 2518/2023

In the matter of:

Sub Sanjeev Kumar Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Mr. Devendra Pal,
Mr. Pratap Singh and
Mr. Sunder Lal, Advocates

For Respondents : Mr. Prabodh Kumar, Sr. CGSC

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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, the applicant seeks quashing and setting aside of the impugned order dated 23.07.2022 and 31.05.2023 passed by the Competent Authority whereby request made by the applicant for grant of compassionate discharge from service i.e. Premature Retirement (PMR) has been rejected. The applicant has sought premature retirement from service on account of family issues and other personal problems. Facts in brief indicate that the applicant is working as a Subedar in the Army Medical Corps and is

presently discharging his duties as a Radiographer (RGR) and is posted in the Institute of Nuclear Medicine & Allied Sciences (INMAS) under the Ministry of Defence Organization, DRDO. It is a case of the applicant that he was enrolled in the Army Medical Corps on 24.08.2001 in SHAPE-1 medical category and has been performing his duties with utmost dedication and devotion to the complete satisfaction of his superior officers for the last 22 years in accordance to the contract of service and rules and regulations. Governing the same, the applicant is to retire on attaining the age of superannuation in 31st August 2029 in the present rank of Subedar.

2. It is the case of the applicant that he is married and has two children. Applicant's wife is working as HR Admin at Deo Leela Façade Systems LLP, Kondhwa, Pune, in which firm she was appointed on 30.12.2016. She is residing in Pune with applicant's two children, a son aged 10 years and a daughter aged 07 years. The children are currently studying in the Bishop's Co-Ed School in Pune.

3. It is the case of the applicant that his wife is working well, taking care of the children without any external help. After

seeking employment in the year 2016, the applicant's wife is carrying out and handling her professional responsibilities and personal life single handedly by herself. As a result, she has been diagnosed with an ailment of "LUMBER SPONDYLOSIS" and due to her degrading health, the applicant's wife is unable to continue her job as well as take good care of the children. For the sake of good health and betterment of applicant's wife and children, applicant's presence to take care of his family is imperative. The applicant is supportive of his wife's career and support her in future so that she can continue to work and excel in her profession. But at the same time the applicant is required to take care of his children and the family and therefore this is one ground on which the applicant seeks premature retirement.

4. It is also stated that the applicant's parents had passed away at a young age. The applicant has to take care of his uncle so also certain ancestral property in his home town in the State of Bihar which is entangled in some family dispute. He is required to attend this dispute also.

5. In view of these circumstances which have been created in the family, the applicant sought premature retirement in

2019 but on account of the Covid pandemic and the ban on premature retirement the applicant's application was withheld and he was not granted premature retirement. Thereafter, the applicant sought premature retirement on 12.07.2022 which was forwarded with recommendation by the competent authority i.e. R 3, R 4 and R 5 collectively but both these applications having been rejected, the applicant is before this Tribunal.

6. It is the case of the applicant that the two years restrictions on grant of premature retirement has since been withdrawn and in spite of the applicant's genuine claim on compassionate ground having been made, he submitted a third request for premature retirement on 03.04.2023 vide Annexure R 4, which has also now been rejected by the competent authority. The applicant is also suffering from Primary Hypertension and therefore, it is the case of the applicant and he seeks premature retirement and without considering the grounds canvassed and the reasons available, premature discharge has been rejected to him on extraneous consideration in an arbitrary manner without any just cause or



reason. Counsel for the applicant placed reliance upon the following judgments of this Tribunal to say that the applicant is entitled for premature retirement in view of the consistent law laid down by various Benches of this Tribunal:-

1. *Hav/STA Mukesh Kumar Versus Union of India and Ors. in OA NO. 515/2021*

2. *Hav Virender Singh v. Union of India and Ors. in OA 578 of 2022*

3. *Havildar Ashok Kumar Joshi v. Union of India and Ors. TA 29 of 2012*

4. *A case by the Hon'ble Delhi High Court i.e. K.S. Bhimwal Moh (Lt. Col.) v. Union of India & Anr. 79 (1999) DLT 297*

7. Shri Ajit Kakkar, learned counsel for the applicant took us through the facts of the case and argued that the applicant's case has not been properly considered. Administrative requirement and shortage of staff has been incorrectly indicated as a reason for denying the claim of the applicant. It was submitted that shortage of staff has been indicated by Army Medical Corps, in spite thereof the applicant has been sent on deputation to DRDO and therefore, the administrative exigency shown based on staff shortage and requirement is also not existing.

8. Respondents have filed a detailed counter affidavit and have pointed out that the applicant is a Subedar, Radiographer in the Army Medical Corps and presently working in the DRDO which is also under the same Ministry i.e. Ministry of Defence. His work is required as there is shortage of technical expert staff even in the Institute of Nuclear Medicine & Allied Sciences (INMAS). This is an organization of the Ministry of Defence and the applicant's services are required for the Army by the Ministry of Defence.

9. It is the case of the respondents that the applicant is physically fit. His medical shape and category in spite of essential primary hypertension is not an impediment in the discharge of his duties. It is the case of the respondents that in accordance to the competent authority in the Office of Integrated Headquarters of Ministry of Defence (Army)/Adjutant General's Branch/Manpower, sanction and requirement have been notified and as per the aforesaid notification, there is a ceiling for premature retirement and the quota has been fixed in the Junior Commissioned Officers rank, discharge on medical discipline and unforeseen circumstances,

it is permissible only to the extent of one person and discharge on compassionate ground is only for 0.5% of the authorized strength held in a particular trade.

10. It is further the case of the respondents that in terms of Sections 13 and 14 of the Army Act of 1950, applicant got enrolled in the Armed Forces. He has to work for the period of colour service as stipulated in the contract of service and in the rank of Subedar as per the Ministry of Defence letter dated 03.09.1998. The tenure in age limit for retirement w.e.f. 1998 in the cadre of Subedar is 20 years with colour service extendable by 2 years or 52 years of age whichever is earlier. As per this policy, the applicant can only be superannuated in the year 2029.

11. It is the case of the respondents that the claim of the applicant for premature retirement from service was considered in accordance with the requirements and rules and policies and after evaluating it, in terms of the rules of engagement i.e. Para 163 (a)(ii) of the Regulations of the Army 1987 (Volume 1) which reads as under:-

“Terms of Engagement

(a) *Para 163(a)(ii) of the Regulations of the Army 1987 (Volume-1) stipulates that :*

“Retirement of Subedar of all arms of services, who opted for revised terms operative from 01 Dec 1976, is compulsory on completion of 28 years pensionable service or 52 years of age, whichever is earlier”

and the rules governing discharge on compassionate ground, Respondents in Paras 11, 12, 14 and 15 of the counter affidavit has given the following justification for not granting premature retirement to the applicant:-

“11. It is germane to mention here that on scrutiny of the facts/documents submitted by the applicant, it is revealed that the problems/difficulties enumerated by the applicant are of common/routine in nature as the same is being faced by all the combatants while serving at different parts of country. They are not able to provide the required support/assistance to their family and dependents. In the instant case, the applicant has mainly reflected the issues faced by him due to job & health issues of his spouse for consideration of his premature retirement. In this regard, it is submitted that Mrs. Khushbu Singh wife of the applicant accepted the joining letter of Deo Leela facade Systems LLP, Kondhwa Pune on 01 Jan 2017 le after birth of his two children and subsequently, the applicant has also accepted promotion to the rank of Subedar on 01 October 2019 which has automatically revised his service engagements to 28 years of service. It clearly shows that the couple was well aware of the consequences earlier. Now, after deliberately accepting the prom to the rank of Subedar, affirming pensionable service in the said rank, gaining adequate knowledge and experience as radiographer from the government

resources/funds, seeking premature retirement quoting obvious reasons is unjustified/unexpected from the applicant.

12. Further, the applicant has also cited his own and spouse medical condition for consideration of his premature retirement. In this regard, it is submitted that the applicant has been provided required medical assistance at service hospitals under the supervision of concerned specialist for his infirmity and subsequently, downgraded to low medical category. with various employability restrictions as per the opinion of the concerned medical authorities Moreover, his disability is being monitored during periodic reviews/re-categorization medical boards scheduled at regular intervals. Moreover, for health issues of his family, the applicant is well aware of the fact that Army Medical Corps is providing medical treatment to all dependents of serving personals and many multispecialty service hospitals are located across the country to provide advance treatment and ensure good health of their dependents. The applicant can utilize the medical facilities available at service hospitals located at his duty station as well as at nearest military hospital of his native place, as the case may be, on requirement.

14. Army Medical Corps is meant for providing medical cover to all serving personnel of Indian Armed Forces and their dependents. Every personnel serving in the Army Medical Corps in various trades are assigned important duties in accordance with their trades Here. the petitioner is a serving Radiographer and has an important and unique role to play in service hospitals ie dealing with sophisticated Radio-electronic medical equipment like MRI CT Scan etc. As such Radiographer category is grossly deficient in the Corps The applicant being a Junior Commissioned Officer and an experienced person, his services are being considered inescapable in the organization till he

completes his terms of engagement ie. 28 years of colour service. Deficiency of even a single Radiographer in any of the service hospitals has direct bearing on the critical care of the patient which is very important and crucial in saving life and limb of a patient. Although, the recruitment process which was terminated earlier due to COVID-19 pandemic has been started now, However, in Army Medical Corps only recruits of Nursing Assistants category have reported till date and it will take approx. 4 to 5 years for their deployment to various service hospitals after completion of mandatory basic as well as technical training of their respective trade.

15. In the instant case, the petitioner after earning maximum benefits out of service ie earning adequate knowledge/experience as radiographer, affirming pensionable service in Group 'X' which may include disability pension also and deliberately accepting the promotion to the rank of Subedar by which his terms of engagement changed from 20 years to 28 years of colour service, is now seeking premature retirement from service which cannot be justified from any angle or on any grounds."

12. Learned counsel for the parties made submissions strictly in accordance with the aforesaid submissions that are available on record.

13. The issue before us today is as to whether grant of premature retirement is a matter of right and can be claimed as a matter of right by an individual and whether on administrative consideration and various other reasons the same

can be denied by the respondents. The issue has been considered by the Hon'ble Supreme Court in the case of *Amit Kumar Roy Vs Union of India & Ors. Civil Appeal No. 4605-4606/2019 (2018) (7) SCC 36* and by the Delhi High Court in *WP (C) 567/2019, Sgt Pradeep Kumar Rai vs. Union of India & Ors.*

14. In the case of *Amit Kumar Roy (supra)* the issue has been considered in the following manner and in the case of *Pradeep Kumar Rai (supra)* in the following manner in Para 29:-

“29. 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 of 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 of 2008. A person enrolled cannot assert a general right to act in breach or defiance of those orders."

15. Thereafter, the issue has been considered by a Coordinate Bench of this Tribunal very recently on 15.01.2024 in *OA 1420/2022 LAC Prem Kumar Vs Union of India & Ors.* and in that case also, the applicant therein had sought premature retirement from Air Force Service on humanitarian consideration. After taking note of the law with regard to the subject in question, reliance has been placed on the judgments of the Hon'ble Supreme Court in the case of *Union of India and Ors. Vs. Wg Commander Subrata Das [(2020) Vol. 12 SCC 784]* and *Union of India & Ors. Vs. R.P.Yadav 2000 AIR SCW 2370.*

16. In the case of *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."

17. Therefore, 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."

18. Finally, in Para 14, the Hon'ble Delhi High Court in the case of Major *Rahul Shukla Vs. Union of India & Ors. 59(1995) DLT 573 (DB)* has been considered in Para 14 in the following manner:-

"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."

and similar prayer made has been rejected.

19. If the case in hand and the legal issue involved is analyzed in the backdrop of the aforesaid judgments, particularly in the case of LAC Prem Kumar (supra), we find that the applicant wants premature retirement on account of his wife's ailment, at the same time wants his wife to progress in her career and work

in spite of the ailment, instead he wants to go to Pune and take care of his children. The respondents have evaluated the request of the applicant in the backdrop of the administrative requirement, and if the administrative requirement of the respondents is analyzed in the background of the legal right available to the applicant to seek premature retirement, it is crystal clear that in the Armed Forces, claim for resignation or premature retirement cannot be accepted until and unless exceptional circumstances are made out. Seeking resignation or premature retirement is not a matter of right. A contingency of the service to the nation and service to the force which is of national importance has to be given predominant consideration. The respondents, in the counter affidavit filed details of which have already been reproduced by us in the preceding paragraph, have emphasized the shortage of staff and the specific reasons based on the rules and the contract of service which prevent them from acceding to the request of the applicant.

20. In our considered view, for the purpose of granting premature retirement to the applicant, we have to analyze the



reasons given by the respondents and if a justification is made out by the respondents based on the requirement of the service to the force, this Court cannot sit in appeal over the decision of the authorities and interfere into the same until and unless the decision is found to be perverse, tainted with malafide and taken in an arbitrary manner without any just cause or reason.

21. We find that none of these eventualities exists in the present case for administrative necessity based on shortage of staff etc. the rule position and contract of service have been pleaded and made out by the respondents in the counter affidavit. Analyzing all these facts in the backdrop of the legal principles culled out as detailed hereinabove by the Hon'ble Supreme Court and Delhi High Court and also being followed by this Court consistently, we see no reason to make any indulgence into the matter. Some of the judgments relied upon by the learned counsel for the applicant have been perused by us and the Benches of this Tribunal have taken individual decisions based on the facts and circumstances of these cases and therefore they cannot be made ipso facto applicable in the present case.

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22. Taking note of the totality of the circumstances, we find no reason to make any indulgence into the matter. The respondents are well within their right and have given cogent justifiable reasons for not acceding to the request of the applicant and we see no reason for making any indulgence into the matter. Accordingly, finding no ground we dismiss the application without any order as to cost.

Pronounced in the open court on this 27 day of May
2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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