

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

103.

OA 3040/2023 WITH MA 9/2024

ALD Koli Vikas Kallappa

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Rakesh Kumar Yadav, Advocate

For Respondents : Mr. K K Tyagi, Sr. CGSC

WITH

104.

OA 2560/2023 WITH MA 630/2024

Swr/NA (VET) Mohe Digambar Pundlikarao

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Rakesh Kumar Yadav, 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
20.03.2024

OA 3040/2023 WITH MA 9/2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks discharge from service with effect from 31st January, 2024 on the ground that he has completed his terms of engagement in the Army as per the

original terms and conditions of service which was communicated to him at the time of joining service.

2. Facts in brief indicates that the applicant was enrolled in the Indian Army on 6th January, 2007 and after undergoing military training has been posted in various units of the Army. At the time of enrollment into the Indian Army, the terms and conditions of service or the contract of service contemplated the applicant to serve in the Indian Army for 17 years i.e., regular colour service and 02 years of reserve service. As per the terms and conditions of appointment, the applicant was to be discharged from service on 31st January, 2024, until and unless, he was granted extension in accordance to the rules and regulations. Applicant joined the service after accepting the aforesaid terms and conditions and in accordance to the procedure laid down. It is the case of the applicant that his aged parents are sick and, therefore, he decided to take care of them during their old age and, accordingly, proceeded to settle in life by acquiring all required facilities and all amenities. According to the applicant, his family consists of father, mother, wife and children. The wife stays along with his parents. He had other domestic problems. The terms and conditions of service has been modified, the period of colour service is now extended now from 17 years to 20 years with an extension of 03 years in reserve service as per AG's Branch Army HQ

letter No. B/33098/Screening/AG/PS-2© dated 19 July, 2022. It is the case of the applicant that this change in the terms and conditions of service unilaterally after the discharge exercise has commenced and without the consent of the applicant is unsustainable in law. The action amounts to promissory estoppels and by placing the reliance on various aspects of law in sum and substance, it is his case that the action of the respondents in unilaterally changing the contract of employment and the terms and conditions of employment in the manner done is illegal and violative of Article 14 of the Constitution. The action is hit by the principle of promissory estoppels and once the applicant started re-settlement plans in civil life based on the promise extended to him as per the terms and conditions of service and the order issued on 19.07.2022 retrospectively behind his back the change of the terms and conditions of service is unsustainable. He invites our attention to an order passed on 28.02.2023 by a Coordinate Bench of this Tribunal in OA No. 2613/2022 with MA 780/2023 ALD (Navet) Rakesh Kumar Vs. UoI and others and OA No. 2703/2022 with MA 799/2023 ALD (NAVET) Krishan Meena Vs. UoI and others wherein unilateral change of the terms and conditions of employment or withdrawal of NOC granted for discharge has been set aside by this Tribunal and the decision to change the contract of service by the same impugned policy which

came into effect from 19.07.2022 has been held to be illegal. Based on the aforesaid orders based by this Tribunal, learned counsel for the applicant Shri Rakesh Yadav seeks for relief.

3. Respondents have filed a detailed counter affidavit and it is their contention that the applicant's discharge was to take effect from 31st January, 2024 and the alteration in employment of Group I to Group II employees which was approved by the Competent Authority on 19th July, 2022 has been implemented with effect from 19th July, 2022 vide Annexure R-1 and as the terms and conditions now require the initial colour service of 20 years. In the instant case neither the warning order nor the discharge order has been issued. Respondent's contention that the terms and conditions of service have been changed by the Competent Authority, looking to the requirement of the service and the applicant is bound by the same. They also invite our attention to the provisions of Regulations 146 of the Regulations for the Army (Annexure R-10) to say that under this Regulation also compulsory retention in service is permissible.
4. We have heard learned counsel for the parties at length and perused the records.
5. The moot question warranting consideration is as to whether the respondents can unilaterally change the contract of service in the manner done.

6. In the case of *Rakesh Kumar and Krishan Meena* (supra), the same issue was considered by this Tribunal. Both Rakesh Kumar and Krishan Meena sought discharge from service. Rakesh Kumar sought discharge after completing the terms of engagement for which he was appointed and he was also granted NOC for seeking civil employment. Rakesh Kumar was granted NOC for joining the civil employment but it was withdrawn on account of the change brought about in the terms of appointment with effect from 19.07.2022 as done in the present case. In the case of both *Rakesh Kumar and Krishan Meena*, the permission granted to them or the decision taken for discharge was withdrawn on the ground that now with effect from 19.07.2022, the terms and conditions of service have changed and are binding on them. Considering similar arguments which were advanced, it was held by this Tribunal that even though respondents are within their right to change the terms and conditions of appointment and give a specific date of its implementation but during the subsistence of the original contract when appropriate order agreeing to their request for discharge was already taken, the same cannot be withdrawn on account of subsequent change of the policy. Similar is the case in hand. In this case also, the terms and conditions of appointment of the applicant was 17 years for colour service. He was to complete the terms of engagement on 31st

January, 2024. When all of a sudden, the respondents retracted back and changed their decision and amended the contract of service retrospectively and unilaterally with effect from 19th July, 2022. In our considered view, this is not permissible on two grounds one it amounts to retrospectively and unilaterally changing the contract of service without consent of one of the parties, the respondents have promised the applicant and obtain his consent in a particular manner for his settlement in civil life and preparation for his dues w.e.f., 31st January, 2024, by changing the position, the respondents have violated the principle of promissory estoppel. In the order passed by this Tribunal on 28.02.2023 in the case of Rakesh Kumar (supra), the following observations have been made by this Tribunal for allowing the application:

"In our considered view, in the peculiar facts and circumstances of the present cases, the action of the respondents in withdrawing the NOC and the discharge proceedings on the ground of retrospective unilateral change of the contract of service cannot be imposed for the simple reason that the principles of estoppel will come in the way of the applicants and the retrospective amendment to the service rules cannot be enforced upon the applicant or thrust upon them once they were permitted to seek discharge after grant of NOC and they believing on the promise made by the respondents, participated in the competitive examination for civil posts, got selected and now only want discharge for joining. In our considered view, the applicants are entitled to the reliefs claimed for based on the principles of retrospectively taking away the rights which had accrued to a person and the principles of estoppels will come in the way of the respondents unilaterally amending the contract of service as far as the present applicants are concerned and therefore we allow both the OAs quash the order of the respondents in disallowing discharge to the applicants and direct that they be granted discharge in pursuance to the order already passed on

14.06.2022 and 11.04.2022. Both these OAs are allowed and disposed of as such.

That apart, as far as exercising of power under Rule 146 of the Regulation is concerned, Regulation 146 reads as under.

"A man enrolled for contractual period of engagement who has completed prescribed service or age limit applicable for his rank, and does not wish to extend it, may be retained in service to which he belongs is 10 per cent below strength or in other cases if the exigencies of service so require. A formal extension of colour service is not necessary in such cases."

Regulation 146 permits a person to be retained in service beyond the prescribed service limit or age limit applicable to the rank in case the enrolled person does not wish to seek extension, he can be retained compulsory in a situation of war or when the establishment is below 10 per cent of the strength required or in case of exigency of service. The contention that under the aforesaid regulation, they have power to retain the applicant in service, in our considered view, is an afterthought and cannot be accepted in the facts of the present case. That apart, in the counter affidavit, the respondents give an explanation that their being a deficiency of 15.7% personnel in the Nursing Assistant Veterinary Category, Provision of Para 146 of the Regulation for the Army would apply. In our considered view, if that be so, the respondents should have invoked the provisions and informed the applicant by issuing warning letter and informed the applicant to plan his future career in civil life and under the said

apprehension and belief that he is to be discharged on 31st January, 2024. In our considered view, the explanation now given by the respondents both on the facts and law are unsustainable and, therefore, we allow the petition, quash the action of the respondents in withdrawing the warning order/discharge of the applicant and direct that he be permitted to be discharged on completing his terms and conditions of engagement on 31st January, 2024 in accordance with rules.

7. OA is thus allowed with no orders as to costs.

OA 2560/2023 WITH MA 630/2024

8. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks discharge from service with effect from 30th November, 2023 on the ground that once he has completed his terms of engagement in the Army as per the original terms and conditions of service which was communicated to him, the respondents unilaterally after commencing the discharge process by issuing retirement cum discharge Warning Order on 13th May, 2022 cannot withdraw the same and impose fresh condition contrary to the original terms and conditions of service.

9. Facts in brief indicates that the applicant was enrolled in the

Indian Army on 11th November, 2006 and after undergoing military training has been posted in various units of the Army. At the time of enrollment into the Indian Army, the terms and conditions of service or the contract of service contemplated the applicant to serve in the Indian Army for 17 years i.e., regular colour service and 02 years of reserve service. As per the terms and conditions of appointment, the applicant was to be discharged from service on 30th November, 2023, until and unless, he was granted extension in accordance to the rules and regulations. Applicant joined the service after accepting the aforesaid terms and conditions and in accordance to the procedure laid down, Warning Order for Retirement for Discharge of the applicant was issued by the Competent Authority on 13th May, 2022. The applicant was informed that in terms of the engagement of service limit and appointment tenure, he is to be discharged from 30th November, 2023 and, therefore, he was directed to complete the procedure contemplated in the order for his discharge. The applicant was informed to take note of Army order 65/82 with regard to re-settlement in civil life after discharge and to take action as indicated in the letter. Accordingly, the process for discharge of the applicant commenced on 13th May, 2022 and it is the case of the applicant that he started modulating his further course for settlement in civil life. In terms of conditions of

appointment and the Warning Order issued to him, the applicant started establishing himself for future and planning his career. According to the applicant, he started his re-settlement plan in civil life and wanted to settle down in his home town. His aged parents are sick and, therefore, he decided to take care of them during their old age and, accordingly, proceeded to settle in life by acquiring all required facilities and all amenities. According to the applicant, his family consists of father, mother, wife and children. The wife stays along with his parents. He had other domestic problems. He will not get any further promotion in service and, therefore, accepting the discharge offered to him by the warning order and being satisfied with the terms and conditions of appointment, he proceeded to take up the discharge as communicated to him in the warning order of discharge. However, it is the case of the applicant that all of a sudden, without notice to him, behind his back, the warning order issued to the applicant has been withdrawn and it is the case of the applicant that he has been informed that the terms and conditions of his appointment which existed in the year 2006 has been changed as per the new terms and conditions which came into force on 19.07.2022, i.e., much after the discharge warning was issued to him on 13th May, 2022. The terms and conditions of service has been modified, the period of colour service is now extended now

from 17 years to 20 years with an extension of 03 years in reserve service. It is the case of the applicant that this change in the terms and conditions of service unilaterally after the discharge exercise has commenced and without the consent of the applicant is unsustainable in law. The action amounts to promissory estoppel and by placing the reliance on various aspects of law in sum and substance, it is his case that the action of the respondents in unilaterally changing the contract of employment and the terms and conditions of employment in the manner done is illegal and violative of Article 14 of the Constitution. The action is hit by the principle of promissory estoppel and once the applicant started re-settlement plans in civil life based on the promise extended to him as per the terms and conditions of service and the order issued on 19.07.2022 retrospectively behind his back the change of the terms and conditions of service is unsustainable. He invites our attention to an order passed on 28.02.2023 by a Coordinate Bench of this Tribunal in OA No. 2613/2022 with MA 780/2023 ALD (Navet) Rakesh Kumar Vs. UoI and others and OA No. 2703/2022 with MA 799/2023 ALD (NAVET) Krishan Meena Vs. UoI and others wherein unilateral change of the terms and conditions of employment or withdrawal of NOC granted for discharge has been set aside by this Tribunal and the decision to change the contract of service by the

same impugned policy which came into effect from 19.07.2022 has been held to be illegal. Based on the aforesaid orders based by this Tribunal, learned counsel for the applicant Shri Rakesh Yadav seeks for relief.

10. Respondents have filed a detailed counter affidavit and it is their contention that the applicant's discharge was to take effect from 30th November, 2023 and the alteration in employment of Group I to Group II employees which was approved by the Competent Authority on 19th May, 2022 has been implemented with effect from 19th July, 2022 vide Annexure R-1 and as the terms and conditions now require the initial colour service of 20 years, it is said that the discharge warning order issued to the applicant has been withdrawn. Respondent's contention that the terms and conditions of service have been changed by the Competent Authority, looking to the requirement of the service and the applicant is bound by the same. They also invite our attention to the provisions of Regulations 146 of the Regulations for the Army (Annexure R-10) to say that under this Regulation also compulsory retention in service is permissible.

11. We have heard learned counsel for the parties at length and perused the records.

12. The moot question warranting consideration is as to whether the respondents can unilaterally change the contract of service in the manner done once the discharge warning order has been issued and the process of discharge has commenced.

13. In the case of *Rakesh Kumar and Krishan Meena* (supra), the same issue was considered by this Tribunal. Both Rakesh Kumar and Krishan Meena sought discharge from service. Rakesh Kumar sought discharge after completing the terms of engagement for which he was appointed and he was also granted NOC for seeking civil employment. Rakesh Kumar was granted NOC for joining the civil employment but it was withdrawn on account of the change brought about in the terms of appointment with effect from 19.07.2022 as done in the present case. In the case of both *Rakesh Kumar and Krishan Meena*, the permission granted to them or the decision taken for discharge was withdrawn on the ground that now with effect from 19.07.2022, the terms and conditions of service have changed and are binding on them. Considering similar arguments which were advanced, it was held by this Tribunal that even though respondents are within their right to change the terms and conditions of appointment and give a specific date of its implementation but during the subsistence of the original contract when appropriate order agreeing to their request for discharge was already taken, the

same cannot be withdrawn on account of subsequent change of the policy. Similar is the case in hand. In this case also, the terms and conditions of appointment of the applicant was 17 years for colour service. He was to complete the terms of engagement on 30th November, 2023 and on 13th May, 2022 warning and retirement/discharge order for discharge with effect from 30th November, 2023 was issued and it was clearly stipulated in this order that the applicant would be discharged from service on completion of the terms of engagement/tenure on 30th November, 2023. He was also directed to initiate process for settlement of his dues/accounts. The warning letter was issued to enable the applicant to prepare for settlement in his civil life after discharge and the applicant in accordance to the promises extended to him in the warning order/retirement/discharge order on 13th May, 2022 proceeded to settle in civil life. When all of a sudden, the respondents retracted back and changed their decision and amended the contract of service retrospectively and unilaterally with effect from 19th July, 2022. In our considered view, this is not permissible on two grounds one it amounts to retrospectively and unilaterally changing the contract of service without consent of one of the parties and second on issuance of the letter of discharge/warning, the respondents have promised the applicant and obtain his consent in a

particular manner for his settlement in civil life and preparation for his dues w.e.f., 30th November, 2023, by changing the position, the respondents have violated the principle of promissory estoppel. In the order passed by this Tribunal on 28.02.2023 in the case of Rakesh Kumar (supra), the following observations have been made by this Tribunal for allowing the application:

"In our considered view, in the peculiar facts and circumstances of the present cases, the action of the respondents in withdrawing the NOC and the discharge proceedings on the ground of retrospective unilateral change of the contract of service cannot be imposed for the simple reason that the principles of estoppel will come in the way of the applicants and the retrospective amendment to the service rules cannot be enforced upon the applicant or thrust upon them once they were permitted to seek discharge after grant of NOC and they believing on the promise made by the respondents, participated in the competitive examination for civil posts, got selected and now only want discharge for joining. In our considered view, the applicants are entitled to the reliefs claimed for based on the principles of retrospectively taking away the rights which had accrued to a person and the principles of estoppels will come in the way of the respondents unilaterally amending the contract of service as far as the present applicants are concerned and therefore we allow both the OAs quash the order of the respondents in disallowing discharge to the applicants and direct that they be granted discharge in pursuance to the order already passed on 14.06.2022 and 11.04.2022. Both these OAs are allowed and disposed of as such.

That apart, as far as exercising of power under Rule 146 of the Regulation is concerned, Regulation 146 reads as under.

"A man enrolled for contractual period of engagement who has completed prescribed service or age limit applicable for his rank, and does not wish to extend it, may be retained in service to which he belongs is 10 per cent below strength or in other cases if the exigencies of service so require. A formal extension of colour service is not necessary in such cases."

This Regulation was already available to the respondents and in spite thereof they issued discharge/warning order of retirement on 13th May, 2022 vide (Annexure R-3) and while doing so, did not invoke the provisions of Regulation 146. Regulation 146 permits a person to be retained in service beyond the prescribed service limit or age limit applicable to the rank in case the enrolled person does not wish to seek extension, he can be retained compulsory in a situation of war or when the establishment is below 10 per cent of the strength required or in case of exigency of service. If the respondents wanted to exercise power available under Regulation 146, they should have done so before issuing warning order for retirement or discharge on 13th May, 2022. The contention that under the aforesaid regulation, they have power to retain the applicant in service, in our considered view, is an afterthought and cannot be accepted in the facts of the present case. That apart, in the counter affidavit, the respondents give an explanation that their being a deficiency of 15.7% personnel in the Nursing Assistant Veterinary Category, Provision of Para 146 of the Regulation for the Army would apply. In our considered view, if that be so, the respondents should have invoked the provisions and informed the applicant much before issuing warning letter on 13th May, 2022 having informed the applicant to plan his future career in civil life and under the said

apprehension and belief that he is to be discharged on 30th November, 2023. In our considered view, the explanation now given by the respondents both on the facts and law are unsustainable and, therefore, we allow the petition, quash the action of the respondents in withdrawing the warning order/discharge of the applicant and direct that he be permitted to be discharged on completing his terms and conditions of engagement on 30th November, 2023 in accordance with rules.

14. OA is thus allowed with no orders as to costs.

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

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

Ps