

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

OA 3256/2023

Maj Shubham Sood ... Applicant
Versus ... Respondents
Union of India & Ors.

For Applicant : Mr. Rajesh Nandal, Advocate with
Ms. Richa Sharma, Advocate
For Respondents : Mr. Anil Gautam, Sr CGSC with
Ms. Depika Yadav, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking approval of resignation from the Indian Army. Aggrieved by the rejection of his application for grant of resignation, 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 commissioned into Corps of Engineers of Indian Army on 11.06.2016 with an antedate seniority of one year, i.e. 11.06.2015. The applicant got married to Miss Garima Rao on 20.11.2020 who was on H1B1 Visa of United States of America (USA) at that time for which the applicant was

granted due permission by Competent Authority. Since the wife of the applicant was allotted a green card later, she started to work in USA as an Indian Citizen. Faced with difficulty of separation from his spouse, the applicant sought resignation on 21.02.2022 which was rejected by MS Branch, IHQ of MoD (Army) on 31.03.2022 citing reasons that spouse applying for foreign citizenship is not a tenable ground for grant of PMR/Resignation. In the meanwhile, action was also initiated by the respondent for administrative termination of service of the applicant for marriage with foreign national and later the same was dropped as the spouse of the applicant was neither a foreign national at the time of marriage nor did she apply for US citizenship.

3. Accordingly, fresh application for resignation was submitted by the applicant for resignation in April 2023 and the same was rejected by competent authority vide their impugned letter dated 18.09.2023 wherein Para 2 & 3 read to the effect:-

“ 2. The request dated 08 Apr 2023 in respect of IC-82146 Maj Shubham Sood, Engrs for resignation from Army service has been examined with due consideration. However, based on the merits of the case and the laid down criteria in this regard, the request of the office has been rejected by the competent authority.

3. The officer is debarred from applying for PMR/Resignation for next six months a per extant policy.”

Hence the applicant preferred this OA against rejection of the

foresaid application.

4. We have heard the learned counsel for parties and perused the record placed before us. The applicant has submitted through his OA that he is willing to forego any pension or any other terminal benefits as he was in a dire need to join his wife to save his marriage and the same was reiterated on his behalf by Learned Counsel who also stated that the applicant will not make any claim to this effect in future to which he was even willing to submit a written declaration. We have taken note of the same.

5. Learned counsel for the respondents during his submissions relied upon the relevant policy guidelines with respect to grant of resignation on the grounds stated by the applicant. However, given the extreme compassionate grounds for seeking resignation and assurances as stated above, learned counsel fairly accepted that the case merit fresh reconsideration by the competent authority; given the peculiar circumstances which have been enunciated by the applicant.

6. Before expressing our views about the instant case, 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.

7. 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.”

8. In Union of India Vs 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.”

9. The same principle is applicable for PMR/Resignation and therefore, the respondents have considered the applicant's case and held it to be devoid of merit as the same is not a matter of right but to be considered based on organisational necessity, administrative requirement wherein although the judicial review is limited, interference by the court is warranted if the exceptional circumstances of the case necessitate the same. In the instant case we are of the view that applicant has sufficient reasons to be considered for such a resignation and therefore we

are inclined to exercise judicial review in the case.

10. We have perused the file noting of the respondents while the applicant's case was considered for resignation. We have observed that the application has been considered on its merits but rejected on grounds that it may set a wrong precedence for consideration of similar cases in future. While we share the concerns of the Advisory Board considering the case, having now gone through the facts of the case, we consider this to be a fit case for a more empathetic view to have been taken by the Advisory Board considering the PMR/Resignation cases and not to be merely rejected rather mechanically because of apprehensions of setting a precedence.

11. 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 life of every person, the mandate of the provisions of the Constitution, the International Covenants and the spirit of the statutes set out above.

12. 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:-



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“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 in as much 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.”

13. We find it proper to refer to the judgement of this Tribunal in Cpl Shaju M Vs Union of India & Ors [OA 1963/2017], wherein this Tribunal has observed as under:

12. Thus, in this case, considering that the applicant has completed pensionable service (Enrolled in 2004 and has 17 years of service as on date); has a medical category that is non promotable across all trades in the IAF, thereby having no avenues for promotion and career progression whilst in service; has restrictions on his employment and the fact that he is unfit for re-mustering due to the 12-year rule, it is the considered opinion of this Tribunal that the Respondents should have sympathetically considered his application for discharge under Clause 2(f) and accorded necessary sanction.

14. Therefore, in view of the peculiar circumstances under which the applicant is seeking resignation, we set aside the impugned letter dated 18.09.2023 with directions to the respondents to reconsider the application of the applicant seeking Resignation from Service. The respondents are directed


to give effect to such consideration within four weeks from date of pronouncement of the order.

15. Consequently, this OA 3256/2023 is allowed subject to the conditions specified above.

16. Pending miscellaneous application(s), if any, stand disposed of.

17. No order as to costs.

Pronounced in the open Court on 4 day of September, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/Akc/