

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

OA 818/2024

Sgt Vikas Pandey ... **Applicant**
Versus
Union of India & Ors. ... **Respondents**

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. KK Tyagi, Sr. CGSC

CORAM :

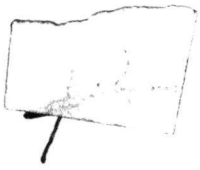
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking premature discharge (hereinafter 'PMR') from the Indian Air Force. Aggrieved by the rejection of his application for grant of PMR, 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 enrolled in the Indian Air Force on 02.07.2008 for an initial engagement of 20 years, scheduled to expire on 01.07.2008 and presently on the posting strength of 5 Tactical Air Centre (TAC), Tezpur wef 26.03.2023 for trade duties of Operational Assistant (Air Defence) and applied for PMR on 10.04.2023 which was returned back unactioned to HQ

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CAC vide letter no AFRO/5039/Discharge dtd 22.05.2023. Subsequently, applicant preferred another application seeking discharge from service on compassionate grounds, and the same was 'Not Approved' by Competent Authority for being 'Devoid of merit' and subsequently informed the applicant vide signal no. AFRO/RRD/371 dated 18.09.2023. Aggrieved, the applicant preferred this OA against the rejection of the aforesaid application.

3. Learned counsel for the applicant submits that the applicant has lost his father on 09.01.2023 after his long treatment, and thereafter, the applicant is the only one to look after his old aged mother who is suffering from several ailments, as she is suffering from Osteoarthritis, and is unable to sustain without the help of an attendant. The applicant's elder brother has also denied to look after his mother, due to which the applicant is compelled to visit his mother regularly which is physically as well as financially exhausting for him.

4. Stressing on the humanitarian consideration, learned counsel for the applicant raises the point that due to these unavoidable circumstances and domestic pressure, he is not able to concentrate more on service requirements. He has a minor daughter of 4 years and his wife is not able to take care of his old

mother and minor daughter altogether who need constant care and therefore the presence of the applicant is required at home. It is the last chance for the applicant to get the treatment of his mother who is suffering from old age ailments and looking after his daughter, and if the applicant is not released/discharged from service at this juncture then it will be too late.

5. Per Contra, learned counsel for the respondents submits that the discharge from service on compassionate grounds in respect of airmen are considered on case to case basis by the competent authority keeping in mind the gravity of the problems being faced by the applicant as well as service exigencies.

6. In this case the stand of the respondents is that the Paragraph 1 of AFO 04/2023 stipulates that the discharge from service cannot be claimed as a matter of right, and it depends on the competent authority to accept or reject such application.

7. Stressing on the organizational loss, learned counsel for Respondents submit that the indiscriminate acceptance of PMR applications of service personnel would be a loss to the organisation due to outflow of trained manpower leading to deficiency of such trained service personnel.

8. We have heard the learned counsel for both the parties in length and perused the material available on record. Keeping

in view the submissions of the applicant and that the tenure of the applicant is left only for 4 years, we have directed the applicant vide our order dated 25.09.2024 to submit an application/representation to the Competent Authority seeking transfer on compassionate grounds near to his hometown so that he can take care of his ailing mother. We have been informed by the Ld. Counsel for the Respondents that the aforesaid request of the applicant was rejected by the Competent Authority as being non-feasible due to HRP and manning constraints.

9. Before advertng to the rival submissions, 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.

10. 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.”

11. 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."

12. Even in the case of premature retirement, the same principle is applicable. The applicant has sought premature retirement only because of his family circumstances. The respondents have considered the same and held it to be devoid of merit. As grant of premature retirement is not a right but is a factor to be considered based on administrative requirements and organisational necessity, when in such cases, the scope of judicial review is limited, interference by Court can be made only in exceptional circumstances. It is pertinent to mention if the circumstances pointed out by the applicant for seeking premature retirement are balanced in the backdrop of the administrative requirements indicated, particularly with reference to shortage of manpower on the technical side, the Court cannot exercise judicial review in such matters.

13. We may point out that it is also not essential that acceptance of PMR, as in the case in hand, may necessarily put an end to the applicant's family woes. However, 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 family of every person, the mandate of the provisions of the Constitution, the International Covenants and the spirit of the statutes set out above.

14. Therefore, taking note of the fact that the applicant's engagement period is left for less than 4 years, coupled with the fact that entire responsibility of the family is on the shoulder of the applicant, and the same being recognized as reasonable grounds under Para 3 (a) and (c) of AO 4/2023, a compassionate view is required to be taken on the issue, purely on humanitarian grounds.

15. In view of the aforesaid discussion, and the fact that we have granted opportunity to the Respondents to consider granting compassionate posting to the applicant, which was denied, we find no reason to not take a compassionate view of the difficulties of the applicant, wherein his continued absence could jeopardise the life of his mother. Thus, the impugned orders passed by the respondents are set aside, and we deem it appropriate to allow the prayer of the applicant and direct the respondents to discharge the applicant after completion of all the pre-retirement formalities. The respondents are directed to give

effect to aforesaid within a period of four months from the receipt of this order.

16. Consequently, this OA 818/2024 is allowed subject to the conditions specified above.

17. Pending miscellaneous application/s if any, also stand disposed of.

18. No order as to costs.

Pronounced in the open Court on 5th day of December, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/akc/