

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

TA 2/2022 [WP (C) 12990/2022]

Sgt Ajay Kumar Yadav ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Nikhil Palli, Advocate
For Respondents : Mr. Prabodh Kumar, 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 27.06.2006 for an initial engagement of 20 years, with his engagement scheduled to expire on 26.06.2026, and presently posted at 339 Transportable Radar Unit, Air Force

w.e.f. 22.08.2022 and applied for PMR on 14.03.2022 seeking discharge on compassionate grounds, which was received from the HQ EAC IAF vide EAC/1656/32/P-3 dated 26.04.2022, and the same was considered and was not approved by the Competent Authority being 'devoid of merit' vide letter no Air HQ/40802/3/PA-1 dated 21.06.2022 and subsequently informed the applicant vide signal no. RO/RRD/910 dated 21.06.2022. Aggrieved, the applicant preferred this OA against the rejection of the aforesaid application.

3. Learned counsel for the applicant submits that he has been not able to keep his personal life intact, that his mother, aged about 60 years, has been suffering from anxiety disorder, vertigo, arthritis and cervical spondylosis, and that the condition of the mother remains vulnerable due to the absence of the applicant at home, as she requires constant medical care and routine follow ups with requisite medical treatments.

4. Referring to his father's medical condition, applicant submits that the father has retired from government service, who has adopted a life of renunciation which had a detrimental effect and severe bearing on the family of the

applicant, and that the applicant has requested his father to come back to uphold his moral obligations towards the family. However, the applicant's father has recently being diagnosed with amnesia and is suffering from bipolar disorder, thus aggravating the medical anguish of the applicant.

5. Stressing on the humanitarian consideration, learned counsel for the applicant raises the point that the younger brother of the applicant along with his wife and children has moved to another city and has refused to support the parents, while the applicant was married on 31.05.2015 and has not yet been blessed with a child till date, which has made him psychologically disturbed with his inability to balance his professional and personal life and duties and if the applicant is not released/discharged from service at this juncture then it will be too late.

6. 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.

7. In this case the stand of the respondents is that the Paragraph 8 of AFO 16/2008 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.

8. Learned counsel for the respondents further submits that as per the medical records submitted by the applicant, the same are prescription slips belonging to the private hospital, which does not give comprehensive picture of the medical condition of the mother and father of the applicant.

9. Stressing on the organisational loss, learned counsel for the 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.

10. We have heard the learned counsels for both the parties in length and perused the material available on record. 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.

11. In Union of India Through its secretary Vs. 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.”

12. 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.”

13. 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.

14. In aforesaid background, we now proceed to examine the case of the applicant as demonstrated through the circumstances pointed out by the applicant in his OA. We find that the term of the engagement of the applicant is scheduled to expire on 26.06.2026 i.e. less than two years from now. While we are conscious of the fact that the mother of the applicant is suffering from several diseases, yet there is nothing on record to convince other than the medical prescriptions and advisories, which require continued presence of the applicant with the mother. Similarly, as far as the concern of the wife with regard to pregnancy is concerned, we are of the view that acceptance of PMR, as in the case in hand, may not necessarily put an end to the applicant's family woes.

15. The fact that none of the medical records show such serious illness of the parents warranting his continued presence with the family, thus, not qualifying to be exceptional circumstances, we are of the view that the case of applicant does not qualify to be recognized as reasonable grounds under Para 2 (b) and (c) of AO 16/2008.

16. However, taking note of the fact that the applicant's engagement period is left for less than 2 years, coupled with the fact that his posting near to his parents' place could be of much help in the medical conditions of his parents, a compassionate view is required to be taken, and therefore, we are of the opinion that the applicant's case should be considered for a compassionate posting near to the native place or the place where his parents resides, purely on humanitarian grounds.


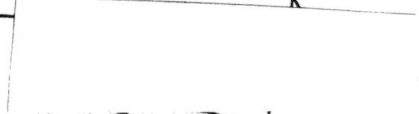
17. The impugned order is upheld. However, the respondents are directed to give effect to such consideration of compassionate posting within a period of three months from the date of pronouncement of this order.

18. Consequently, this OA is disposed off subject to the conditions specified above.

19. Pending miscellaneous application if any, also stands disposed of.

20. No order as to costs.

Pronounced in the open Court on 13 day of September, 2024.



(JUSTICE RAJENDRA MENON)
CHAIRPERSON



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

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