

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

52.

OA 1829/2024 WITH MA 790/2025

Col Sudip Chatterjee	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant	:	Ms. Shriya Gilhotra, Advocate Ms. Megha Agarwal, Advocate
For Respondents	:	Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
15.04.2025

MA 790/2025

Counter affidavit has been filed. There being some delay in filing the same, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. The MA stands disposed of.

OA 1829/2024

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and seeks quashing of the policy dated 30.04.2010 whereby a four years ban period has been placed upon officers seeking Pre-mature Retirement (PMR) after withdrawal of their first application. He further

seeks quashing of the orders dated 27.09.2023, 04.01.2024 and 04.04.2024 passed by the competent authority whereby his application seeking PMR has not been considered. Further prayer is made to waive the period of four years ban imposed upon him for seeking PMR, consider his difficulties and circumstances sympathetically and by waiving the period of four years ban, grant him PMR.

4. The applicant was commissioned into the Indian Army on 07.12.1996 and is presently posted in the Army Recruiting Office (ARO), Tiruchirappalli, Tamil Nadu. The respondents issued a policy on 30.04.2010 introducing a scheme for permitting the officers to seek PMR from service. The applicant was subjected to Re-categorization Medical Board Proceedings on 19.09.2020, where he was assessed in S1H1A2(P)P3(P)1E1 with Simple Obesity and Osteochondral injury Medial Femoral Condyle in the Left Knee. He underwent medical procedure in Jan 2021 and Feb 2021 which ultimately led to having permanent knee brace in his left knee. On 08.03.2021, the applicant submitted an application dated 05.03.2021 seeking PMR on extreme compassionate ground. On 09.06.2021, a letter was issued by the respondents accepting and allowing his application seeking PMR and the applicant was granted retirement

w.e.f. 06.09.2021. It seems that on 15.07.2021, the applicant submitted an application seeking withdrawal of his request for PMR and this was forwarded to the competent authority on 19.07.2021. The applicant submitted an undertaking on 15.07.2021 to the effect that on withdrawal of his PMR application, he would be debarred from applying for PMR for four years. On 09.08.2021, the respondents rejected the applicant's application seeking withdrawal of his PMR. Thereafter, on 13.08.2021, the applicant submitted a request for interview because of the rejection and wanted withdrawal of his PMR. However, subsequently, after the interview, vide letter dated 01.09.2021, his application for withdrawal of the PMR was permitted and the communications dated 09.06.2021 and 09.08.2021 passed by the respondents not permitting him to withdraw his PMR application, the applicant was permitted to continue in service subject to the conditions that he shall not apply and was debarred from seeking PMR/resignation for four years.

5. The applicant was granted study leave from 24.07.2023 till 31.05.2025 which was cancelled on 02.08.2023. On 09.09.2023, the applicant made an application for waiver of PMR ban of four years and wanted

to seek PMR. This was rejected on 27.09.2023 and on 18.11.2023, the applicant again made an application seeking PMR on extreme compassionate grounds mainly on the grounds of mental illness and low career prospects. The GOC, Dakshin Bharat Area forwarded the application to the HOD, Competent Authority on 23.12.2023 which was rejected on 04.01.2024 and the same is now impugned by the applicant in this application. That apart, the applicant again submitted another application on 05.01.2024 seeking PMR, waiver of four years ban, this was also rejected by the impugned order dated 04.04.2024 and now, the applicant seeks grant of PMR.

6. It is the case of the applicant that in accordance with the policy formulated, PMR should be granted in a deserving case and the act of the respondents in imposing a ban of four years in re-applying for PMR after withdrawal is arbitrary, discriminatory and unjust. The applicant demonstrated his inability and circumstances including his medical condition which prevents him from performing the duties and argued that he is seeking PMR on justified consideration, his family life has been crippled and instead of considering his genuine prayer and granting him PMR, his applications have been rejected.

7. Invoking the jurisdiction of this Tribunal, the applicant has filed this application for the prayer as indicated in Para 8 of the application. On notice being issued, respondents have filed a detailed counter affidavit and argued that the MoD vide communication dated 14.08.2001 (Annexure R-1) and the MS Branch Policy dated 25.02.2009 (Annexure R-2) lays down the policy in the matter of withdrawal of PMR Applications/Resignations. Para 29 of the aforesaid policy reads as under:

*“Withdrawal of Application*

*29. Decision of competent authority on a request for PR/resignation is final and a request for withdrawal will not be entertained. However, if an officer, whose application for PR/resignation from the Army has been accepted, wishes to withdraw his application due to changed circumstances, he may apply to IHQ of MoD (Army), MS Branch, at least 30 days prior to his date of PR, duly recommended by the Cdrs in chain ie IO, RO and SRO and his request will be decided on merit. Requests for withdrawal of PR/resignation application and cancellation of order for PR/resignation will be submitted alongwith the undertaking at Appendix B to this letter.”*

8. It is the case of the respondents that as per this guideline, the case of the applicant was considered and he was not granted his request for PMR as his PMR application was processed and allowed as indicated by the applicant himself but the same was withdrawn by the applicant. When the applicant's initial prayer for withdrawal of PMR

application was rejected, he sought an interview with the Competent Authority and it is only after the interview that his rejection application for withdrawal of PMR was permitted to be withdrawn and he was permitted to continue in service. Now, it is the case of the respondents that within the period of four years when the policy prohibits him from seeking PMR, he is again seeking PMR which is not permissible. The respondents, further, contented that the policy for PMR at Annexure R-2 dated 25.02.2009 has been formulated after taking note of the facts and circumstances of the case and the requirements of the service and, therefore, there is no illegality or infirmity in the same.

9. We have heard learned counsel for the parties at length and perused the records. The grant of PMR to a Member of the Armed Forces is not a matter of right. The Hon'ble Supreme Court in the case of Amit Kumar Roy Vs. Union of India and Others [(2019) 7 SCC 369] has laid down the policy with regard to the grant of PMR and the principles laid down by the Hon'ble Supreme Court in the aforesaid case reads as under:

*"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.”*

10. This law laid down by the Hon’ble Supreme Court has been followed consistently not only by various Hon’ble High Courts but also by this Tribunal and its Regional Benches and it is now a well settled proposition of law that grant of PMR to a Member of the Armed Forces is not a right, it is based on various schemes and policies and the requirement of the service. That being the legal principle, the case of the applicant has to be considered in the light of the aforesaid policy.

11. As far as the present case is concerned, it is clear that initially when the applicant sought PMR by submitting his first application on 05.03.2021 on extreme

compassionate grounds, the same was considered as per the policy and on 09.06.2021 it was accepted and the applicant was granted PMR w.e.f. 06.09.2021. However, the applicant on 15.07.2021, withdrew his application for grant of PMR, when this was rejected on 09.08.2021, the applicant again made an application on 13.08.2021 seeking withdrawal of his PMR sought an interview with the Competent Authority and considering his request, on 01.09.2021, he was permitted to withdraw his PMR application which was already allowed and granted. However, within a period of two years, the applicant again sought PMR after seeking waiver of ban of four years as per the policy in vogue. This application has been rejected by the respondents and in doing so, we see no error or illegality. The applicant except for contending that the policy stipulating a condition of ban for seeking PMR for four years is unconstitutional and invalid, no statutory rule, regulation or constitutional provision is indicated based on which the policy can be termed as illegal or unsustainable in law. As laid down by the Hon'ble Supreme Court in the case of Amit Kumar Roy (supra), the applicant does not have any unqualified right under Article 19(1)(g) of the Constitution to leave the service of the Armed Forces. The provisions of the Army Act, Army Rules



and the Policy governing grant of PMR are formulated based on the exigencies of service, the critical aspect involved in the matter of safeguarding the interest of the nation and as indicated by the Hon'ble Supreme Court, a person who is enrolled as a Member of the Armed Forces does not have any unqualified right to depart from service at his own free will.

12. Taking note of the aforesaid circumstances, we see no reason to grant benefit of PMR to the applicant on the grounds canvassed before us. The applicant's difficulties in serving and other issues have to be considered by the Competent Authority and we are informed that in the month of August, 2025, the four years period of ban imposed upon the applicant for seeking PMR would be over and thereafter, he can seek PMR. However, learned counsel for the applicant invited our attention to an order passed on 04.02.2011 in OA No.125/2010 with MA No.288/2010 titled Col. Sandeep Singh Vs. Union of India & Anr., where looking to the hardship of the employee concerned, a sympathetic view was taken and PMR was permitted to him after waiving of the period of prohibition during which he was not entitled to seek PMR. We have gone through the order passed in the case of Col. Sandeep Singh (supra) and find that it was a case based on the foreign assignment granted to the officer

concerned and various other issues which are distinguishable on facts and a Coordinate Bench of this Tribunal in that case, looking to the peculiar facts and circumstances of the case took a sympathetic view for the reasons that are indicated in Para 5, 6 and 7 of the order. In the case at hand, we do not find any such peculiar or exonerating circumstances available to exercise a discretion in favour of the applicant.

13. Taking note of the totality of the facts and circumstances for the present, we see no reason to make any indulgence into the matter on the grounds raised before us. We, accordingly, dismiss the application. However, we further observe that in case after the period of ban imposed by the policy is completed and the applicant submits an application for PMR from service, the respondents shall consider the same and take a decision on the same within a period of two months of its presentation.

14. With the aforesaid liberty to the applicant to review his prayer once the period of ban is over, we dispose of this OA.

15. No order as to costs.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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