

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

OA 1788/2024

Wg Cdr Polineni Varun Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Sri Harsha Peechara, Advocate
Mr. Duvvuri Subrahmanya Bhanu, Advocate
For Respondents : Mr. Karan Singh Bhati, Sr. CGSC

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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 approached this Tribunal and the reliefs claimed in Para 8 read as under:

“A. Direct the CMA Board to consider the case of the applicant herein for grant of PSS in terms of the HRP policy and as per law;

B. Pass any order or further orders in the interest of justice, equity and good conscience.”

2. The applicant is a serving Wg Cdr in the Indian Air Force (IAF) and in relevant time in the year 2024 when he invoked the jurisdiction of this Tribunal, he was posted in the Air Force Station, Agra. It is the contention of the applicant that he has

served in the IAF for 21 years, indicating certain family issues to the effect that his father passed away in the year 2021 during the COVID Pandemic and he has an ailing mother who is about 71 years of age with number of health issues and further that he has appeared before the Promotion Board on three occasions in the years 2019, 2020 and 2021 for consideration of his case for promotion to the rank of Gp Capt in accordance to the Air Force Headquarters Human Resource Policy (hereinafter referred to as HRP), he was not granted promotion. He was considered for promotion on two more occasions in the years 2022 and 2023 but he was denied promotion and his juniors have been promoted. There is no positive career growth available to him now in the IAF and coupled with his family requirements, the applicant sought Premature Separation from service. It is stated that on three occasions, the three Premature Separation applications of the applicant were rejected by the appropriate Board. Even after personal interview with the Competent Authority his case for Premature Separation has not been considered. The applicant has, therefore, invoked the jurisdiction of this Tribunal with the prayer as indicated hereinabove.

3. The applicant also brings to our notice the facts about his batchmates and juniors having been granted Premature

Separation from service right from the year 2023 onwards and argued that between March, 2023 to September, 2025, total 56 Gp Capts and 69 Wg Cdrs were considered for Premature Separation. In the cadre of Gp Capt, 43 officers were senior to the applicant similarly in the cadre of Wg Cdr, 43 officers were senior and 10 of them were his batchmates. It was stated that around 28 juniors have been granted Premature Separation, 06 in the cadre of Gp Capt and 22 in the cadre of Wg Cdr and 10 batchmates have also been granted Premature Separation. *Inter alia*, contenting that on account of service exigencies, denying the claim of the applicant for Premature Separation is unsustainable in law and the applicant seeks the benefit.

4. From the records, it is seen that the applicant was commissioned into the IAF on 22.06.2002 as a Flying Officer and in between he was posted to various areas. During his period of posting, he has earned promotion to the rank of Wg Cdr which post he is holding as of now. The applicant is also said to have been awarded the Chief of the Air Staff Commendation for his bravery in 2008 and in 2019, 2020 and 2021, his case was considered by three consequent Promotion Boards for promotion to the rank of Gp Capt. However, he was not granted promotion on all the three occasions. Thereafter, in 2022 and 2023 also, his case was

considered by the Additional Promotion Board and again he was not granted promotion. On the ground that his case for promotion is not been considered properly and career growth is not available to him now and also on account of death of his father in the year 2021 and ailment of his mother and health issues of his mother who is 71 years of age, the applicant on 28.11.2022 submitted an application for Premature Separation from service in accordance to the policy applicable. The case of the applicant was considered in the appropriate Board of Officers which met on 23.03.2023, he was not recommended and the intimation in this regard was provided to him on 23.03.2023. Even though some of his juniors and seniors have been granted Premature Separation in spite of the fact that the applicant was not getting promotion and he has family problems, his case was not considered. On 26.05.2023, for the second time, the applicant again sought Premature Separation and his case was considered in the appropriate Board which met in September, 2023 and it was again rejected. He indicated that certain Gp Capts like Prashant Grover and YC Dahiya who were senior and highly qualified fighter pilots have been recommended for Premature Separation in the Board Meeting held in September, 2023 but the case of the applicant was rejected. He also indicated the case of Wg Cdr Saurabh Suri,

a junior officer who has been granted Premature Separation and the allegation made is that the applicant has been discriminated. For the third time, on 09.10.2023, the applicant again submitted an application for Premature Separation and this was considered by the CMA Board on 19.03.2024 and again he was not recommended. This time also persons like Wg Cdr Shashank Bhatt and Sqn Ldr SVK Reddy who were juniors to the applicant have been granted Premature Separation even though the applicant, a transport pilot, has not been considered and Premature Separation not granted.

5. The grievance of the applicant is that even on 15.04.2024, in the combined Semi Annual Consideration for category-1 officers certain officers were granted Premature Separation, the applicant was not granted Premature Separation. As a last resort, the applicant had a personal interview with the Air Officer-in-Charge Personnel (AOP) on 16.04.2024 and after the brief interview, again when his case was not considered, the applicant has invoked the jurisdiction of this Tribunal by filing this OA.

6. Learned counsel for the applicant took us through all the records and argued that the claim of the applicant has not been considered properly, his personal difficulties which fall within the parameters of HRP for Premature Separation is

fulfilled, his juniors have been granted Premature Separation and there is no exigencies of service explained by the respondents, it is a discrimination and invokes the jurisdiction of this Tribunal.

7. Respondents have refuted the aforesaid contention and as far as non-grant of promotion to the applicant on three occasions are concerned, it is their contention that promotion is in accordance with the HRP 02/2018, the applicant was considered on merit. The provisions of the policy are uniformly applied to all officers who are considered by Promotion Board No.2, the promotion is then solely on the service profile and merit and relative performance of the officers of the same branch/stream. On all the three occasions, the Promotion Board considered the case of the applicant in the year 2019, 2020, 2021 and again on 2022 and 2023, multitude of factors were taken note of and based on the potential as requirement of service and the service record on comparative analysis more meritorious candidates were promoted and the applicant was not granted promotion. As far as, Premature Separation is concerned, it is argued that even for grant of Premature Separation, various policies are laid down apart from different compassionate reasons, organisational based requirement are taken note of. The IAF

being an organisation based on various aspects pertaining to maintaining of fighting potential and related service requirement, cases of the deserving candidates are considered based on the service requirement and all these requirements are evaluated by a Board of Officers constituted in accordance to the provisions of HRP 02/2018 and bringing the same on record, respondents have indicated that on all the three occasions, case of the applicant was considered in accordance with the said HRP dated 23.02.2018 (Annexure R-1) by the appropriate Board and as the applicant was not recommended for promotion not only based on the said policy but the amended policy (Annexure R-2) dated 09.04.2019, the case of the applicant has been rejected. According to the respondents, grant of Premature Separation or Premature Retirement from service is not a right. It is based on consideration of the case in accordance with the requirement of the policy. The service requirement, particularly, the nature of service to be performed by an officer in the backdrop of the technicalities and the fighting potentials required in an organisation like the IAF and when the Board which is an expert headed by senior officers have evaluated the case and have not recommended, it is stated that the applicant cannot have any grievance in the matter. Respondents refuted the comparison made by the applicant and the allegation of

discrimination on the ground that every case is evaluated in the backdrop various requirement and the Board having evaluated the case of the applicant in accordance with the law as there being no statutory violation of procedural impropriety or illegality, interference into the matter is not called for.

8. Learned counsel for the respondents relied upon a judgement rendered by the Hon'ble Supreme Court in the case of *Amit Kumar Roy Vs. Union of India and Others* [(2019) 7 SCC 369] and argued that in the said case, AFO 14/2008 pertaining to grant of Premature Retirement/Separation was evaluated by the Hon'ble Supreme Court and it is stated that it has been held by the Hon'ble Supreme Court that seeking Premature Separation is not a fundamental right and an employee cannot seek Premature Separation or NOC for joining Civil Post by seeking discharge from the service of the IAF, cannot be granted as a matter of right. He further argued that the case of the applicant having been considered in accordance with law, no interference into the matter is sought for.

9. We have heard learned counsel for the parties at length and we have considered various aspects of the matter, admittedly, under the provisions of the policy in question. The cases for Premature Separation are considered in accordance with the policies applicable and for the same, a Premature

Separation Board of Officers evaluates the case of each candidate and based on the merit and other factors as per the policy, decision is taken. The case of the applicant was considered on three occasions by the Premature Separation from the Service Board of Officers on 21.03.2023, 20.09.2023 and 16.03.2024 and thereafter, a Semi Annual Consideration on 21.12.2024 for the fourth time was also considered and the considerations made have been brought on record which read as under:

“4. Case of PSS wrt Wg Cdr P Varun Kumar (26972-H) F(P)

(a) The applicant has requested four times for grant of PSS in BoOs/SAC as on date. The grounds stated by the applicant for all his PSS requests and disposal thereof are as follows:-

(i) 1st time Consideration (PSS BoO Mar 23, held on 21 Mar 23). The case of the officer was considered first time in PSS BOO Mar 23 on the grounds of “no career growth/prospects, Supersession and Non-select and his case was deliberated in detail. However, during the assessment it came out that his grounds were relatively lower in merits vis-à-vis that of many other applicants assessed by the BoO and hence, the assessed priority of his case was 34 out of the total 35 applicants (from the Flying stream) empaneled in the BoO. Based on the calculations for vacancy (as per AOP Branch Internal Directive ID 03/2023), there were only eight (08) exit vacancies earmarked for PSS for officers from Flying Branch. Hence, out of 42 applicants, exit was authorised for only eight (08) officers from Flying stream, whose cases were assessed to be on top of the priority matrix.

(ii) 2nd time Consideration (PSS BoO Sep 23, held on 20 Sep 23). Further, the case of

the officer was considered second time for PSS in PSS BoO Sep 23 on the grounds of “no career growth/prospects, Supersession and Non-select” and his case was deliberated in detail. During the assessment it came out that the grounds projected by the officer were relatively lower in merits vis-à-vis that of many other applicants and hence, the assessed priority in his case was 17 out of the total 33 applicants (from the Flying stream) empaneled in the BoO. Based on the calculations for vacancy (as per AOP Branch Internal Directive ID 03/2023), there were only eight (08) vacancies earmarked for Flying Branch. Hence, out of 33 applicants, exit was authorised for only seven (07) officers from Flying stream, whose cases were assessed to be on top of the priority matrix.

(iii) 3rd time Consideration (PSS BoO Mar 24, held on 16 Mar 24). The officer applied third time for PSS in PSS BoO Mar 24 on the grounds of “no career growth/prospects, Supersession and Non-select”. However, the collegiums observed that his grounds were relatively lower in merits vis-à-vis that of many other applicants assessed by the BoO and hence, the assessed priority in his case was 23 out of the total 42 applicants (from the Flying stream) empaneled in the BoO. Based on the calculations for exit vacancy (as per AOP Branch Internal Directive ID 03/2023), there were only five (05) exit vacancies earmarked for Flying Branch. Hence, out of 42 applicant, exit was authorised for only five (05) officers from Flying stream, whose cases were assessed to be on top of the priority matrix.

(iv) 4th time Consideration (Semi Annual Consideration Dec 23, held on 21 Dec 24). The case of the officer again came up for consideration during SAC Dec 24 (under Cat-I officer) on the grounds of “no career growth/prospects, Supersession and Non-select” and his case was deliberated in detail by the SAC held on 21 Dec 24. It was assessed by the collegiums that there were many other applicants whose cases were relatively higher in merits vis-à-vis that of Wg Cdr P Varun Kumar. Hence, the assessed

priority in his case was 13 out of the total 17 applicants (from the Transport stream) empaneled in the SAC. Based on the calculations for exit vacancy (as per AOP Branch Internal Directive ID 04/2024), there were only three (03) exit vacancies earmarked for Transport stream. Hence, out of 17 applicant, exit was authorised for only three (03) officers from Transport stream, whose cases were assessed to be on top of the priority matrix were granted PSS.”

10. From the aforesaid, it is clear that the case of the applicant was considered by the appropriate Board of senior officers and the Board did not recommend the case of the applicant. The grant of Premature Separation is not a right and as per the HRP also Premature Separation is considered based on various factors and the primary consideration is requirement of the service. The records indicate that the case of the applicant was considered on the three occasions and the Board did not recommend the case of the applicant for Premature Separation. In the case of *Amit Kumar Roy* (supra), the issue considered by the Hon'ble Supreme Court was with regard to discharge from service sought by an officer of the IAF to seek appointment in Civil Service/Banking Service and while considering the relevant AFO 14/2008 and when a argument was advanced in the said case to say that in denying discharge from service, the fundamental right under Article 19(1)(g) to choose a place of employment is being violated, the Hon'ble Supreme Court

evaluated various aspects of the matter and in Para 29, curled out the principles in the following manner:

“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.”

11. From the aforesaid, it is clear that for the purpose of leaving the service of the IAF, no one has an unqualified right under Article 19(1)(g) of the Constitution of India. Even though, the AFO 14/2008 was with regard to seeking Premature Discharge for joining Civil Services or other services, the provisions of AFO 14/2008 and the policy for Premature Separation are *pari materia* as in both these policies the most

important aspect emphasis on the criticality of the service, the exigencies of the service and after evaluating all these factors and holding interest of service to be paramount as detailed in Para 29, claim was rejected. The same principle would be applicable in the present case. Once a Board of senior officers has considered the case of the applicant for Premature Separation as per the policy applicable and after evaluating the claim based on the compassionate ground and the service exigencies, if the said Board of senior officers came to the conclusion that Premature Separation cannot be granted to the applicant in the absence of any statutory or constitutional right of the applicant being violated or mala fides or biased or discrimination made out or the decision is found to be arbitrary or unreasonable, the Tribunal cannot interfere into the matter. The subjective satisfaction arrived at by the Board of Officers based on the criteria laid down for Premature Separation such as compassionate ground, service exigencies are evaluated and are not found to be arbitrary or unreasonable, interference cannot be made.

12. That being so, taking note of the totality of the circumstances, we see no reason to interfere into the matter. However, the same shall not be construed to mean that the right of the applicant to seek Premature Separation for all times

is curtailed. If for changed circumstances or any other eventuality, the applicant makes any other application, the respondents are bound to consider it in accordance with law and take a decision.

13. Therefore, the OA stands disposed of.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 2nd day of April, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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