

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI****Original Application No. 123 of 2020****Monday, this the 25<sup>th</sup> day of July, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Nb Sub (RGR) Mogal Gajanan Naybrao (JC-700772K)  
R/o Room No. 7, Station JCO Mess, Near Lashkar Police Station,  
MG Road, Pune – 411001

**.... Applicant****Ld. Counsel for the Applicant : Shri Jyotishwar Bhosale, Advocate****Versus**

1. The Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. AMC Records, Officer-in-Charge, Army Medical Corps NE Group RO AMC Lucknow – 226002.
3. Director General of Medical Services (Army), Adjutant General Branch, Dte Gen of Medical Services (Army), MPRSO (O) 'L' Block, New Delhi – 110001.
4. Armed Forces Medical Store Depot, Dr. Coyaji Road, Pune – 411001.

**... Respondents**

**Ld. Counsel for the Respondents : Shri A.J. Mishra,**  
**Govt Standing Counsel**

**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

*"i. That this petition be admitted.*

ii. *That the impugned order dated 15 April 2020 passed by competent authority be quashed and applicant application of retirement dated 29 Feb 2020 be granted.*

iii. *That the respondent be directed to process the premature retirement of applicant.*

iv. *That the applicant be given all the lawful benefits as may be applicable as per set down rules of Armed Forces.*

v. *Cost of this petition be provided for.*

vi. *To pass such other and further orders as may be deemed necessary on the facts and in the circumstances of the case."*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 23.01.2004. The applicant while posted with Base Hospital, Delhi was detected with 'Bronchial Asthma' in April 2015. His medical board held on 12.10.2015 and he was downgraded to low medical category. The applicant applied for premature retirement on compassionate grounds on 14.11.2019 and his application was recommended by the Commanding Officer and other senior officers in chain including MG (Medical) of HQ Eastern Command. The applicant was asked to submit certain certificates and medical documents of his mother which he submitted to the respondents but his request for premature retirement was rejected by the respondents vide order dated 15.04.2020 and 30.06.2020. Being aggrieved, the applicant has filed the present Original Application for grant of premature retirement.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 23.01.2004. The applicant while posted



at Base Hospital, Delhi was detected with 'Bronchial Asthma' in April 2015. His medical board was held on 12.10.2015 and he was downgraded to low medical category. The applicant requested for premature retirement due to his medical condition as also his family problems but the same was rejected by the respondents vide letter dated 14.03.2019. Thereafter, applicant applied for premature retirement on compassionate grounds on 14.11.2019. His application was recommended by the Commanding Officer and other senior officers in chain including MG (Medical) of HQ Eastern Command vide his remarks dated 16.12.2019. The applicant was asked to submit medical documents of his mother vide their letter dated 27.12.2019 and thereafter on 15.02.2019, applicant was asked to submit certificate of submitting his pension documents for sanctioning of PMR. The applicant again resubmitted his mother medical documents on 16.01.2020 and unwilling certificate as per ROI 14/2014 but his request for premature retirement was rejected by the respondents vide order dated 15.04.2020 and again on 30.06.2020.

4. Learned counsel for the applicant also submitted that applicant has completed more than mandatory pensionable service of 15 years and he is in low medical category and having family problems due to ill health of his mother and therefore, he should be prematurely discharged from service after granting pensionary benefits.

5. On the other hand, learned counsel for the respondents submitted that applicant is posed with AFMSD, Pune w.e.f. 05.07.2020. He was promoted to the rank of Naik, Havildar and Nb Sub. The applicant's present medical category is P2 (Permanent) due to disability "Bronchial

Asthma". He will be completing his normal service limit in the rank of Nb Sub on 31.01.2030. The applicant submitted an application dated 15.11.2019 for premature retirement from service on compassionate grounds for taking care of his aged mother, attending to the dispute of ancestral property and his own medical condition. His application was processed and was returned to his unit with observation about his mother's medical documents and requesting him for a certificate for submission of his pension documents within one month after sanction of premature retirement. The applicant resubmitted above required documents vide letter dated 29.02.2020. The applicant's case was examined in detail by AMC Records but the competent authority has not agreed to sanction premature retirement as per the merit of the case vide letter dated 15.04.2020.

6. Learned counsel for the respondents further submitted that as per para 163 (a) of Regulations for the Army, 1987 retirement age of Nb Sub is 26 years service or 50 years of age whichever is earlier. Besides this, there is restriction in granting premature retirement till 31.03.2023 due to COVID-19 pandemic and non recruitment in Indian Army. He also submitted that para 438 of AMC ROI deals with disposal of permanent low medical category personnel.

7. Learned counsel for the respondents further submitted that premature retirement from service at own request is being dealt with as per guidelines issued by IHQ of MoD (Army) and only genuine cases are recommended after verifying the merit of the case and the Corps manpower state. He also submitted that applicant signed a contract for 20 years of colour service and 03 years of reserve liabilities as per



terms and engagement contained in the Enrolment Form signed by him at the time of enrolment in the Army. The respondents' refusal for grant of premature retirement from service is wholly just, proper and in accordance with law and there is no illegality in the said order. Hence, applicant is not entitled for grant of premature retirement from service. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and perused the records.

9. We have given our thoughtful consideration to the facts and rival contentions. It is not disputed that applicant is suffering from 'Bronchial Asthma' and his mother is also suffering from some ailments. The applicant submitted an application for premature discharge from service due to his domestic problems and also ~~on medical~~ <sup>medical</sup> condition. The authorities could not consider his case in its proper perspective and rejected the same on the grounds of restrictions imposed by IHQ of MoD (Army) due to deficiency in applicant's trade and COVID-19 pandemic.

10. It is true that at the time of enrolment certain terms and conditions are laid down in the offer of appointment and an individual has to accept the same in order to join service. No doubt, it was a contract at that point of time. But once an individual joins service, he is governed by service rules and regulations. In the relevant service rules, there is provision for voluntary retirement or premature discharge on stated grounds. Therefore, the applicant cannot be blamed if he has filed such an application in view of his disability and ill health of his mother.

11. We also take note of the fact that the Major General (Medical) Eastern Command has recommended the case of the applicant for premature discharge on compassionate grounds but the respondents have resorted to <sup>citing</sup> deficiency of personnel in applicant's trade as a ground for denying his PMR. Considering all aspects of the matter as also the receding of Covid Pandemic situation and commencement of fresh recruitment, we are of the view that applicant's case needs re-consideration by the competent authority for grant of premature discharge on compassionate grounds.

12. Accordingly, Original Application is disposed off finally with direction to the respondents to reconsider the prayer of the applicant for premature discharge from service on extreme compassionate grounds, keeping in view the overall improved situation of Covid Pandemic as also the commencement of recruitment in the Indian Army. Respondents are directed to reconsider his case within a period of four months from the date of this order and communicate the decision to the applicant accordingly.

13. No order as to costs.

14. Pending Misc. Applications, if any, shall stand disposed off.

(Vice Admiral ~~Abhay~~ Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 25 July, 2022  
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