

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**Original Application No. 82 of 2021****Monday, this the 25th day of July, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Army No. 15486326X L.D. Nami chand
S/o Shri Sarwan Singh Burdala
R/o Village Bhuma Chhota, Post – Bhuwa Bara, Tehsil – Laxman Garh,
Distt – Sikar (Rajasthan) – PIN-332318
Presently serving in Unit (7 CAVALARY), PIN-908420, C/o 56 APO

.... Applicant**Ld. Counsel for the Applicant : Shri D.S. Kauntae, Advocate****Versus**

1. Union of India, through Officer-in-Charge, Armed Corps Records, ACC & S Ahmad Nagar (Maharashtra).
2. Brigade Commander, 14 (I) Armed Bde, C/o 56 APO.
3. Commanding Officer, PIN-912607.

... 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:-

- (a) *Quash/set aside any such order/orders held on the file of the respondent no. 1, 2 & 3 all imposing any ban or restriction thereby curtailing the provisions of Rule 13 (3) III (iv) of the Army Rules, 1954 or nullifying/declaring in operative the provisions as contained in the Appendix I, 'ENROLMENT FORM' as provided in the book of statute containing the bare provisions of the Army Act,*

1950 and the Army Rules, 1954 enacted by the parliament on 20.05.1950.

(b) Directions be issued against all the respondent no. 1 and 3 to accord and grant formal sanction order/orders and relieve the applicant from Army duties forthwith/without causing any further delay by taking all necessary steps to process the discharge request of the applicant made in writing on 25.03.2017, and the representation dated 17.07.2020, held/lying un-actioned and undecided in the official records of the respondent no. 2 & 3 till date.

(c) Also issue/pass such further order(s) or direction thereby directing the respondent no. 1 being the sole manpower controlling authority to give effect the provisions of the contract documents (ENROLMENT FORM) held in possession, custody and control of the respondent No. 1 and process the discharge request of the applicant as accepted and pass final release order in favour of the applicant thereby calling upon the respondent No. 3 to relieve the petitioner from Army service by granting sanction for speedy settlement and release of all the retiral dues including service gratuity and pensionary benefits as per the rules as expeditiously as possible."

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 09.09.2002 to serve for a period of 17 years with 2 years of reserve liability as per 'Enrolment Form' signed by him. The initial terms of engagement is 17 years of colour service with 2 years of reserve liability. The applicant has applied for premature discharge at his own request on 25.03.2017 due to family problems but his application has been orally rejected by respondent no.
3. The applicant has completed his terms of engagement of 17 years on 08.09.2019 and is unable to continue service due to family problems, he should be discharged from service. The applicant has submitted a

representation on 17.07.2020 to respondent no. 2 but no action has been taken on the said representation of the applicant. 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 09.09.2002 to serve for a period of 17 years with 2 years of reserve liability as per 'Enrolment Form' signed by him. Though the initial terms of engagement is 17 years of colour service with 2 years of reserve liability, however as per para 132 of Pension Regulations for the Army, 1961 (Part-1), minimum qualifying service to earn service pension is 15 years which implies that a soldier may seek discharge from Army service before fulfilling the condition of enrolment also. Since the applicant has sought discharge from service at his own request after serving 17 years of his colour service, there is no any statutory bar to deny the discharge under Rule 11(1) of Army Rules, 1954.

4. Learned counsel for the applicant further submitted that applicant has applied for premature discharge at his own request on 25.03.2017 due to family problems but his application has been orally rejected by respondent no. 3. Since there is no proclamation of any national emergency nor there is likelihood of external aggression or possibility of war, hence, denial of discharge from service at own request is ex facie bad in law. The applicant has completed his terms of engagement of 17 years on 08.09.2019 and is unable to continue service due to family problems, he should be discharged from service. The applicant has submitted a detailed submission on 17.07.2020 to respondent no. 2 with

copy to respondent no. 1 & 3 but no action has been taken on the said representation of the applicant.

5. Learned counsel for the applicant also submitted that situation after imposing restriction in granting discharge from service due to Covid Pandemic has improved and process of new enrolment in the Army has begun, therefore, discharge request of the applicant be considered and premature discharge of the applicant be sanctioned so that applicant is discharged from service forthwith.

6. On the other hand, learned counsel for the respondents submitted that applicant has consented to all the terms and conditions mentioned in Enrolment Form at the time of joining service. The process to train and groom an individual to make him a soldier takes approx one year and six months. The applicant on promotion to higher rank of Dafadar, willingly accepted the revised terms and conditions laid down by Govt. of India Ministry of Defence letter dated 03.09.1998 which mandates 24 years of colour service extended by two years subject to willingness. An application for premature discharge from service on extreme compassionate grounds has been submitted by the applicant and the same was placed in the wait list in order of seniority for premature discharge of of the Regiment. At present, the applicant stands 14th in the waiting list for premature discharge. As per Regiment policy 12 x Jat personnel are eligible for being granted premature discharge in a calendar year. The lack of recruitment due to Covid Pandemic and the escalating security situation on the Northern borders has necessitated restrictions imposed by AG's Branch, Army Headquarters on grant of premature discharge till the year 2023.

7. Learned counsel for the respondents further submitted that as per Army Rule 13 (3) iii (iv), the Commandant will exercise the power for sanctioning discharge of Other Ranks at their own request only when he is fully satisfied. Therefore, in the interest of organisation, the application of the applicant was placed on wait list and he was assured that his case would be considered in due course on improvement of deficiency of the authorised strength of the Regiment. He also submitted that consideration of application for discharge on own request before fulfilling the terms and conditions of service is a privilege and not a military right as it depends upon the genuineness of the case, humanitarian grounds and most importantly the requirement of the organisation. He pleaded that relief prayed by the applicant is not admissible and is liable to be dismissed.

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 observed that applicant has completed his initial terms of engagement of 17 years on 08.09.2019 as per Enrolment Form filled at the time of joining service. The applicant has applied for premature discharge from service due to his domestic/family problems. The authorities could not consider his case in its proper perspective and rejected the same on the grounds of restrictions imposed due to Covid-19 Pandemic, non recruitment in the Army and restrictions imposed by IHQ of MoD (Army) due to deficiency in applicant's trade/organisation.

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 punished if he has filed an application for PMR keeping in view his family problems.

11. We also take note of the fact that the respondents have cited deficiency of personnel in applicant's trade as a ground to deny PMR. We are, however, of the view that his early discharge will not prejudice the respondents in any manner. Considering all aspects of the matter, improved Covid Pandemic situation and commencement of recruitment in the Indian Army, we feel that applicant's case needs a review and could be re-examined 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 restriction due to Covid Pandemic and also commencement of recruitment in the Indian Army, 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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