
(2020) 01 AFT CK 0038
In the Armed Forces Tribunal
Case No : Original Application No. 988 Of 2019

Ajay Sangwan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 01 AFT CK 0038

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Indra Sen Singh, Tarunvir Singh Khehar

Final Decision : Allowed

Judgement

1. This O.A filed under Section 14 of the Armed Forces Tribunal Act, 2007 is directed against the order dated 05.04.2019, whereby the respondents

have accepted the applicant's original request of January 2019 for premature retirement and ordered him to retire from service before 03.07.2019.

However, they had ignored the subsequent two requests made in March 2019 for extending the date of retirement, so that the applicant could get

promoted before his premature retirement. In the O.A, the applicant has prayed for following reliefs:

(a) Set aside the impugned order dated 05.04.2019 (Annexure A1) passed by the third respondent;

(b) Direct the respondents to treat the application filed by the applicant for premature retirement dated 14.01.2019 as withdrawn in view of his

application for withdrawal dated 08.05.2019; or alternatively,

(c) Direct the respondents to defer the applicant's premature retirement (PMR) and allow him to continue in service till his promotion to the rank of

Colonel (Time Scale), for which he already stands approved vide order dated 15.03.2019 read with order dated 29.03.2019; and

(d) Direct the respondents to promote the applicant to the rank of Colonel (Time Scale) for which he already stands approved vide order dated

15.03.2019 read with order dated 29.03.2019.

2. The facts of the case, in a nutshell, are that the applicant was commissioned as a Short Service Commissioned (SSC) officer on 06.03.1993 and

was later granted permanent commission (PC). On 14.01.2019, the applicant gave an application for premature retirement. While the said application

was pending decision, the applicant submitted two applications, one on 09.03.2019 and the other on 18.03.2019, requesting for deferment of

consideration of his application for premature retirement due to his likelihood of promotion to the rank of Colonel (Time Scale). Subsequently, vide

letter dated 29.03.2019, the applicant was intimated by the respondents that he was approved for promotion to the said rank with effect from the date

when he completes 26 years of reckonable commissioned service. However, the respondents rejected the subsequent applications of applicant, for

deferment of date of premature retirement, on grounds of being conditional premature retirement applications and against the policy of granting

premature retirement. Thereafter, based on the original application of the applicant, the respondents, vide their letter dated 05.04.2019, sanctioned the

premature retirement of the applicant for release not later than 03.07.2019. In this background, the applicant has filed this O.A and his premature

retirement has been stayed vide the interim order of this Tribunal dated 03.07.2019.

3. Learned counsel for the applicant submitted that the applicant had applied for premature retirement on grounds of looking after his aged parents

vide his application dated 14.01.2019. However, on learning that he is likely to be promoted to the rank of Colonel (Time Scale), he submitted two

additional applications dated 09.03.2019 and 18.03.2019, well before any decision was taken by respondents, to defer his premature retirement till he

gets his promotion. However, the same was not agreed to by the respondents and they issued the orders for premature retirement of the applicant not

later than 03.07.2019. The learned counsel accused the respondents of being insensitive and arbitrary because denying promotion will cause a huge

financial loss to the applicant, including recurring loss in pension. He stated that though the applicant is continuing in service due to the stay granted by

the Tribunal, the respondents are trying to harass the applicant by sending him for psychological evaluation for alcohol dependence and other issues.

He claimed that in this psychological evaluation, the medical authorities have cleared the applicant as fit. He also claimed that though the applicant has

completed 26 years of service, the respondents have not granted him his cleared promotion. He pleaded that his application for premature retirement

be treated as withdrawn and he be granted promotion to the rank of Colonel (Time Scale).

4. The stand taken by the learned counsel for the respondents is that the applicant is in the habit of excessive drinking and alcohol abuse. According to

learned counsel, the applicant had a history of excessive alcohol consumption and was earlier downgraded to the low medical category. Thereafter,

though he was upgraded from 52H1A1P1E1 to Shape I, he had failed to control his drinking habits and ignored the medical advice not to consume

liquor for life. The applicant in the past has repeatedly been warned and counselled to check his alcohol dependency. Thus, after repeated failure of

the applicant to correct himself, when action was being initiated against him for alcohol dependence, he has pleaded for permitting him to go out in

peace and with dignity on premature retirement. It is in this context that his application for premature retirement for looking after his aged parents was

accepted vide order dated 05.04.2019. Learned counsel further submitted that:

(a) Under the existing policy, premature retirement and resignation of Army officers, excluding AMC, ADC and MNS, is governed by the policy

promulgated vide MS Branch letter dated 25.02.2009. Furthermore, grant of premature retirement and permission for its withdrawal is not an absolute

and unconditional right. The Government has the discretionary power to accept or reject the application depending on the reasons advanced in the

application and in deciding whether to accept or reject an application, the Government is entitled to have due regard to the exigencies of service.

(b) After his original application for premature retirement in January 2019, the applicant submitted another application on 09.03.2019 making a request

to consider his application for premature retirement after the outcome of the Selection Board for grant of Colonel (TS) rank. In the said application,

the applicant did not mention anything about the change in the circumstances on which he had sought premature retirement.

(c) Subsequent to the declassification of the result of the Selection Board, the applicant submitted yet another application on 18.03.2019 requesting to

consider his application for premature retirement after December 2019 as he had already been approved to the rank of Colonel (TS). The applicant

was intimated that his request for consideration of his application for premature discharge after December 2019 cannot be accepted as the same was

against Para 26(c) of the policy (Annexure R2). The said Para 26(c), reads as under:

26(c) Conditional requests for PR/resignation which are coupled with specific date, postings, reconsideration of punishments, expunction of

adverse remarks in annual confidential reports and pending complaints will not be entertained.

5. Learned counsel for the respondents concluded his arguments by stating that the circumstances, as explained in the original application for

premature retirement submitted by the applicant, were approved vide order dated 05.04.2019, wherein he was intimated that he would be relieved

from his duties not later than 03.07.2019 (AN). Thereafter, on 08.05.2019, the applicant submitted another application requesting for deferment of his

premature retirement till 31.12.2019 or withdrawal of his application for premature retirement. However, the competent authority did not recommend

either withdrawal or deferment of the application for premature retirement of the applicant since as per the extant policy, the said request was to be

accompanied by the recommendations of the TO, RO and SRO. Learned counsel for the respondents submitted that there is no illegality or irregularity

in the impugned order and, therefore, the instant O.A should be dismissed.

6 After hearing both the parties and perusing the record, we have framed the following questions, which need to be answered:

(a) Were the respondents right in rejecting the subsequent applications of the applicant in March 2019, requesting for a deferment of premature

retirement date due to his impending promotion?

(b) Were the respondents justified in denying a cleared promotion of Colonel (Time Scale) to the applicant, even after completion of 26 years of

service?

7. As far as first question is concerned, it is an admitted position that the applicant had submitted an application for premature retirement on

14.01.2019. While the said application was pending decision, the applicant had, in the month of March, written two more applications stating in the first

one, that he is expecting promotion to the substantive rank of Colonel (Time Scale) by the Selection Board to be held in March 2019, hence his

retirement date should be deferred. However, in the second application of March 2019, the applicant has informed that he has been cleared for

promotion and requested for deferment of consideration of his application for premature retirement till December 2019. The respondents ignored the

applicant's requests for deferment of retirement until his promotion and his premature retirement was approved by the competent authority well before

the effective date of promotion. The law on 'right to withdraw a request for premature retirement' is no more res Integra. It is in this background that

we find the necessity of adverting to the decisions of the Hon'ble Supreme Court in Union of India and others v. Wg Cdr T Parthasarathy (2001) 1

SCC .158 and Dharam Pal Singh v. Union of India and others (2007) 15 SCC 770 relied on by learned counsel for the applicant.

8. In Wg Cdr Parthasarathy (supra), the Honible Supreme Court held that a request of premature retirement, which required the acceptance of the

competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before

it became so complete, particularly in a case where the request for premature retirement was made to take effect from a future date.

9. In Dharam Pal Singh (supra), the Hon'ble Supreme Court observed that even before the effective date i.e. 31.05.1988, the appellant had expressed

his willingness and desire to continue if promoted as JCO. The term of the appellant therein as Havaladar unless further extended was to expire on

31.05.1988. The unwillingness to continue as Havaladar was expressed more than a year earlier i.e. on 27.01.1987. It was a formal unwillingness in

view of the rules. The unwillingness to continue as Havaladar beyond 31.05.1988 does not imply unwillingness to be promoted or unwillingness to

continue as JCO. The Hon'ble Supreme Court further observed therein that denying the relief of promotion, though a notional promotion at this stage,

the appellant already having reached the age of superannuation, would be placing a premium on the wholly incorrect and contrary to record stand

taken by the respondents. It was also noticed by the Hon'ble Supreme Court that the appellant therein was not informed that although he was selected

to be promoted, but he cannot be given promotion as he had given unwillingness for extension of the service as Havaladar. Accordingly, the

respondents were directed to grant the appellant therein the consequential relief i.e. the pensionary benefits treating him to be in service.

10. The decision in Wg Cdr Parthasarathy (supra) dealt with a situation where the officer had stipulated a future date with effect from which his

premature retirement would become effective. However, before the application for retirement was accepted, he withdrew his request and it was only

thereafter that Air HQs accepted his original application and communicated the decision to retire him from service. In the case on hand, the applicant

gave two more applications before the acceptance of his first application dated 14.01.2019, the outcome of which was not intimated to the applicant

nor did they take a decision on his application dated 14.01.2019.

11. In the above circumstances, we are unable to accept the contention of the learned counsel for the respondents that the applicant is not entitled to

the relief asked for and he should proceed on premature retirement before his due date of promotion.

12. Resultantly, we allow the instant O.A and set aside the impugned order, with the following directions to the respondents:

(1) The applicant shall be granted all consequential benefits, including time scale promotion to the rank of Colonel from the date it was due. The

respondents are, however, at liberty to take a fresh decision on the original and the subsequent applications of the applicant on his request for

premature retirement.

(2) This order is to be implemented within three months from the date of receipt of a copy of this order.

13. No order as to costs.

Pronounced in open Court on this the 6th day of January 2020.