

(2022) 05 AFT CK 0012
In the Armed Forces Tribunal
Case No : O.A. No 1098 Of 2021

Cpl Prasobh M

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2022) 05 AFT CK 0012

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Ajit Kakkar, Avdhesh Kumar Singh

Final Decision : Disposed Of

Judgement

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant has filed this application and the relief claimed for by him reads as under:

- (a) To set-aside the impugned order dated 23.02.2021 passed by the Respondent against Applicant.
- (b) To consider the Applicant for grant of premature discharge in view of his circumstances.
- (c) To direct the Respondents to pay the pensionary benefits.
- (d) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.

2. It is the case of the applicant that he was enrolled in the Indian Air Force on 02.07.2014 and at the relevant time, when he filed this application on or around 01.07.2021, he was working at 5 Air Force Hospital. He was enrolled in the trade of Med/Asst Indian Air Force and it is his contention that he had completed six years of service, his service record is unblemished and he has no hesitation in continuing his engagement in the Air Force but on

account of certain bonafide personal reasons, primarily on account of the ailment of his old parents and his family requirement, which was aggravated during the onset of the Covid pandemic, the applicant was forced to seek discharge from service on compassionate grounds in accordance to the provisions of the Air Force Order 16/2008 (Annexure R-1).

3. It is the case of the applicant that his father is about 65 years of age who is currently facing severe medical issues; he had undergone a bypass surgery on 03.01.2017; he is currently suffering from 'Arterial Occlusive Disease' and he is even unable to carry out his day-to-day personal activities in a smooth manner. His mother is also ailing, suffering from various old-age diseases and the applicant has produced various documents in support of the aforesaid contentions.

4. It is the case of the applicant that his only brother who was looking after his parents, has recently suffered locomotor Disability' more than 40%, as a result of which, his right upper limb is disabled and he is even unable to look-after his parents. The applicant's only brother who was looking after his parents having become disabled, his family is suffering; their agricultural land and other properties are not being attended to and based on these circumstances, it is said that he sought for discharge from service on compassionate grounds by filing an application under the provisions of Clauses 2(a), (b) and (c) of the AFO 16/2008 and when the same was dismissed by the impugned order (Annexure-A1) dated 23.02.2021, the applicant has approached this Tribunal.

5. Shri Ajit Kakkar, learned counsel for the applicant, invited our attention to the grounds available for seeking discharge on compassionate grounds i.e. Clauses (a), (b) and (c) of Para 2 of the AFO 16/2008 which read as under:

"2. Compassionate Grounds. The cases in which it is clear that undoubted material hardship to airmen or to their dependents is caused by their continuation in service, can be considered of compassionate nature. These can be broadly viewed as:

(a) Serious illness of parents / direct dependents where the continued absence of the airmen will endanger their lives.

(b) Cases where the entire responsibility of the family is resting on the shoulder of the airman and his presence at home is absolutely necessary.

(c) Absence of the airman from his family will cause heavy financial loss of the family."

He argues that it is a fit case where the respondents should have considered the case of the applicant for discharge and as the respondents have merely rejected his application as not approved by the Competent Authority being devoid of merit without disclosing any reason and without considering the same in accordance to the requirement of the AFO, applicant has invoked the

jurisdiction of this Tribunal.

6. Learned counsel invites our attention to a judgment of the Hon'ble Supreme Court in the case of Sanjay Jain Vs. National Aviation Co. of India Ltd. [Civil Appeal No. 7822 of 2011] decided on 01.11.2018, to say that the resignation from employment is a right of an employee and he cannot be compelled to serve contrary to his willingness. Reliance is also placed on various other judgments in this regard and finally it is argued that in the facts and circumstances of the present case, as the respondents have not evaluated the case of the applicant in the backdrop of the requirement of the provisions stipulated in the AFO 16/2008, the same warrants consideration by this Tribunal.

7. Learned counsel for the respondents opposed the aforesaid prayer and invited our attention to the documents filed by the applicant in support of his case and argued that the documents supplied by the applicant seems to be doubtful; there are confusions and errors in the medical documents produced with regard to his father's name, his brother's name and various discrepancies in the documents and, therefore, the claim cannot be accepted. Learned counsel further argued, placing reliance on an order passed by this Tribunal in Cpl Neeraj Kumar Pal Vs. Union of India & Others [O.A. No. 1376 of 2019] decided on 11.03.2020 to say that grant of discharge from service is not a matter of right, it is based on the requirement of service and consideration of various other issues and in this case, after analysing various issues, as the Competent Authority has rejected the claim, within the limited scope of judicial review, in such matters, interference cannot be made. Accordingly, the learned counsel prays for rejection of the claim.

8. We have heard learned counsel for the parties at length and perused the record.

9. As far as the factual aspect of the matter is concerned, submission of the application by the applicant on the grounds canvassed for seeking discharge is proved and rejection of the same is also established. However, the only issue which warrants consideration is as to whether in the facts and circumstances of the present case, any indulgence by this Tribunal is called for?

10. Before adverting to consider various aspects of the matter, it would be appropriate to take note of the policy i.e. AFO 16/2008, governing grant of discharge from service on compassionate grounds to Airmen and NCs(E). AFO 16/2008 came into force with effect from 19.09.2008 and it lays down a policy of a scheme permitting Airmen/NCs(E), in exceptional cases, to apply and seek discharge from service on compassionate grounds and other grounds before expiry of their regular engagement. The grounds on which discharge on compassionate grounds can be granted and the procedure for applying and seeking discharge from service are laid down in this AFO. Para 2 of the AFO deals with various grounds which fall in the category of Compassionate Grounds

and a perusal of the provisions reproduced hereinabove would clearly show that in a given case, when it is clear that there is material hardship to the airmen or to their dependents caused by their continuation in service can be considered on compassionate grounds and the same are serious illness of parents or direct dependents where the responsibility of the entire family is on the shoulder of the airman and his presence at home is absolutely necessary and absence of the airman from the family may cause financial loss to the family. These are the grounds on which discharge on compassionate grounds can be sought under Clauses 2(a), (b) and (c) of AFO 16/2008.

11. A perusal of the application submitted by the applicant seeking discharge clearly indicates that the applicant, in the said application filed as Annexure-R2 dated 30.07.2020, in Paras 3 and 4, spells out the medical condition of his father and has also produced certain documents. The applicant has been forwarded with the recommendation for consideration by the Competent Authority and by the impugned order, without disclosing any reason, only on the ground that the application and the request have not been approved by the Competent Authority, the same being devoid of merit, the application was rejected. When an employee has a right to seek discharge from service on compassionate grounds and when the employee seeks release on compassionate grounds on the basis of the grounds culled out by him in accordance to the policy, the minimum, requirement of law to avoid arbitrary or discriminatory implementation of the policy is that the application should be evaluated, considered in the backdrop of the reasons and the difficulties expressed by the employee, its evaluation by the Competent Authority and its rejection by passing a speaking order. In the present case, nothing has been brought on record as to how and in what manner the application was considered, what were the reasons that made the Competent Authority to reject the application and why the applicant's request cannot be acceded to.

12. No doubt we have, in various cases, held that seeking discharge from service is not a matter of right but consideration of a request as per the policy, in our considered view, is a right and consideration means a meaningful consideration showing application of mind, evaluation of compassionate grounds and difficulties expressed and its rejection in the manner as is prescribed in law i.e. by passing a speaking order. Except for pointing out some discrepancies in the documents submitted by the applicant at the time of hearing, nothing has been brought to show as to whether these discrepancies were pointed out to the applicant and he was asked to explain the same, whether any explanation was called for from the applicant and after consideration, the same was rejected. The discrepancies in the documents were only tried to be pointed out to us at the time of hearing whereas in the impugned order, it is only stated that the application is devoid of merit and it is rejected.

13. From the aforesaid, it is clear that even though an employee may not

have a right to seek discharge as a matter of right, but he has a right to seek consideration of his claim for discharge on compassionate grounds and the consideration has to be a meaningful consideration through application of mind, evaluation of relevant aspects and decision in accordance to a process known to law i.e. by passing a speaking order. All this having not been done in this case, we allow this OA in part, quash the impugned order and remand the matter back to the Competent Authority with the following directions:

"The applicant may submit an application again along with the relevant documents in support of his claim seeking discharge on compassionate grounds in accordance with Para 2 (a), (b) and (c) of AFO 16/2008 and on the same being done, the Competent Authority is directed to evaluate the same in accordance to the requirement of the aforesaid policy and the administrative principles governing grant of discharge on such grounds and, if required, call for clarification or cause an inquiry, as may be required, and thereafter, decide the claim of the applicant by a speaking order. The entire exercise in this regard be completed within a period of three months from the date of filing of a copy of this order along with a fresh claim seeking discharge for consideration and documents by the applicant."

14. With the aforesaid, the OA stands disposed of. No order as to costs.

Pronounced in open Court on this 18th day of May, 2022.