

(2022) 07 AFT CK 0003
In the Armed Forces Tribunal
Case No : OA 345 Of 2021

Hay Pawar Manoj Ravindra

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 04-07-2022

Acts Referred:

Citation : (2022) 07 AFT CK 0003

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

Bench : Division Bench

Advocate : Archana Ramesh, Rajesh Kumar Das

Final Decision : Dismissed

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, the applicant has prayed for the following reliefs.

(a) Issue directions to the Respondents to quash and set aside the Army HQ, ADGMP Letter dated 7 Nov 2020 read with AMC Records letter dated 02 Dec 2020 assailed as the Impugned Orders in the Original Application and placed as Annexure A-1 (CoIly) being arbitrary and whimsical on the face of it;

(b) Issue directions to the Respondents to allow the PMR Applications of the Applicant so that the Applicant could be discharged from military service with immediate effect based on the extreme genuine circumstances as discussed in the Original Application to meet the ends of equity, justice and fair play;

(c) Pass such other and further orders to the Respondents by way of an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice.

2. The applicant is aggrieved by the impugned order issued by the Competent Authority on 17th November, 2020 vide Annexure A-1 whereby the request of the applicant for premature retirement has not been considered.

3. The facts in nutshell indicate that the Applicant was enrolled in service on 18th May, 2004 in the Army Medical Corps and has now put in more than 16 years of service. Presently, the applicant is posted at Military Hospital, Pulgaon as a Havildar (Laboratory Assistant). It is the grievance of the applicant that though on account of various domestic and family problems, the applicant had applied for premature retirement from the Army Medical Corps right in the year 2018, till date the Competent Authority has not considered his claim. It is the case of the applicant that on 19th November, 2018 vide Annexure A-2 he has forwarded a complaint to the District Collector, Jalgaon (Maharashtra) seeking protection to his family members living in his house from miscreants. It is the case of the applicant that he was, at that point of time, serving in Military Hospital, Avadi and he was a resident of Plot No - 10A, Krushi Nagar, Dheku road, Tehsil and PS-Amalner, Distt-Jalgaon (Maharashtra). His family consists of his aged parents, wife and daughter and his younger brother, who was preparing for PG after completing his MBBS course at Delhi, which is about 1500 kms away from the native place of the applicant. It was pointed out in the complaint to the District Collector that his neighbour named Smt. VP Saner had illegally constructed a house/compound wall on the back side of the applicant's house blocking the natural air and light to his house. A complaint was, therefore, filed by the applicant against this lady before the Municipal Corporation, Amalner and they sent a notice to her to remove the obstruction. It is said that since this neighbouring lady's son and her brother were harassing and ill-treating his parents by using unparliamentary language, they indulged in rude behaviour in front of applicant's wife and his mother and threatened to kill his family. On 20th November 2018, though the Commanding Officer of the applicant had also requested the District Collector to protect the house of the applicant from miscreants and take necessary measures to safeguard his family and aged parents, no action has been taken. Since the harassment continued, the applicant sought premature retirement from service and the application for premature retirement dated 1st July, 2019 filed is at page 21. It is pointed out in this application that the earlier application submitted on 2 April 2018 was also not considered. The learned counsel took us through various documents and material available on record, the strong recommendations made by the applicant's superior officers for his premature retirement and the fact about applicant's father's death in between as is evident from death certificate (Annexure A-4) on 27th September, 2019. The learned counsel also submitted about the recommendations made by the Competent Authority and the Commanding Officer and inability of the respondents in considering his application properly and passing an order. Referring to the impugned order, learned counsel argues that the matter relating to the applicant had been deferred without taking any action on the ground of want of manpower, etc., whereas on 1st September, 2020 three officers in the rank of Lt Col had been granted premature retirement in Base Hospital, Lucknow, Military Hospital, Bhuj and Air Force Hospital, Bangalore. Similarly, one Zeenath Mary, Lt

Col (TS) in MH, Avadi unit was also granted premature retirement on 10th December, 2020. In spite of all these factors contending that applicant's claim, which is based on genuine family problems has not been considered and the matter has been deferred from time to time. The learned counsel also argued that in somewhat identical situation, a Coordinate Bench of this Tribunal has granted premature retirement and it is a fit case where the claim of the applicant could also be considered. In support of his contentions, he placed reliance on the following decisions:

- (i) Union of India and others v. R.P. Yadav (2000 AIR SCW 2370);
- (ii) Cp/. Abhishek Joshi v. Union of India & Ors. (OA No. 2309/2021 decided by AFT (PB) on 17.11.2021.
- (iii) Hav/STA Mukesh Kumar v. Union of India & Ors. (OA No. 517/2021 decided by AFT RB (Lucknow) on 03.12.2021
- (iv) Maj Piyush Bansal v. Union of India & Ors. (OA No.1876/2020 decided by AFT (PB) on 18.02.2022.
- (v) Cpl Shaju M v. Union of India & Ors. (OA No. 1963/2017 decided by AFT (PB) on 23.02. 2022.

4. The Respondents have filed a detailed counter affidavit and it is their case in Para 8(a) and (b) of the counter affidavit that discharge on compassionate ground is not a matter of right and in a routine manner applications are filed for premature retirement, In Para 9, 10 and 11 of the counter affidavit, the following submissions are made to say that premature retirement cannot be granted.

(9) It is evident from the preceding paragraphs that, the applicant had submitted the applications thrice for premature retirement from service on compassionate grounds of routine nature like demise of father, looking after old aged mother, court case pertaining to property dispute and case filed at municipal corporation etc. The same were examined in detail in accordance with existing policies in vogue by Army Medical Corps Record Office and not agreed to by the competent authority as per the merit of the case and alarming deficiency in the trade to which the applicant belongs.

(10) As per norms, the premature retirement from service at own request is being dealt with as per guidelines issued by integrated Headquarters of Ministry of Defence (Army). In the past, it has been noticed that the cases of premature retirement has gradually increased and hence, only genuine cases are being recommended after verifying the merits of the cases and Corps manpower state. With respect to the reasons mentioned by the applicant in his applications, regarding medical condition of the applicant's mother, he can provide better medical care to her in service hospitals wherever he is posted. Further, regarding cases pertaining to property dispute and social dispute filed at Honble Court and municipal corporations respectively, he can be granted leave by

military authorities in case his physical presence is mandated during the respective hearings. In addition, the individual has been granted compassionate posting to Military Hospital Pulgaon nearby to his hometown Jalgaon which is approximately 350 km from Pulgaon and hence, he may also exercise the option to follow up with the ongoing cases accordingly while being posted to Military Hospital Pulgaon. Therefore, premature retirement will serve no specific purpose to the applicant.

(11) It is pertinent to mention that, Army Medical Corps is meant for providing medical cover to all serving personnel of Indian Armed Forces and their dependents. Every personnel serving in the Army Medical Corps in various trades are assigned important duties in accordance with their trades. Here, the applicant is a serving Laboratory Assistant and has an important role to play in service hospitals i.e. generation of various laboratory related reports of the patients which requires specific qualification and competence on the subject. As such Laboratory Assistant category is grossly deficient in the Corps. The applicant being a Non-Commissioned Officer and an experienced person, his services are being considered inescapable in the organization till he completed his terms of engagement i.e. 24 years of colour service. Deficiency of even a single Laboratory Assistant in any of the service hospitals has direct bearing on patient care and clientele satisfaction, which is very important and crucial in saving life and limb of a patient.

5. It is argued that the applicant has earned maximum benefits out of the service, he has completed his pensionable service, availed deputation to United Nation's Mission at Congo from September 2014 to June 2015 and earned substantial monetary benefits out of this service. He was promoted to the rank of Havildar and his term of engagement increased from 20 years to 24 years of colour service and taking into account all his family problems stated in Annexure R-10 on 25th February, 2020 he was posted to Military Hospital Pulgaon in District Maharashtra very near to his home town so that he could resolve his family problems and facilities were being granted to the applicant to resolve his family disputes pending in various Courts. The Respondents also referred to the administrative necessity indicated in the matter as contended in the note sheet at Page No. 91 to show that grant of premature retirement at this stage to the applicant is not possible and the following administrative reasons are indicated in the note sheet at page 91. It is indicated that a total of 51 premature retirement applications have been received through proper channel from various individuals working in the Corps. The grounds for seeking premature retirement have been thoroughly scrutinized and it is found that it is a routine, domestic, health, land dispute and children education related problems. However, in the Corps there is an acute shortage of technical hands, particularly in the pharma and department of medicine where there is more than 20% deficit and in technical trade the deficit is more than 10%. Furthermore, during the current year, the sanctioned manpower has been reduced. No recruitment process has been

undertaken due to Covid-19 pandemic and on account of various administrative reasons, the applications are being deferred. A detailed note sheet from page 91 to 94 has been filed indicating the administrative reasons which prevented the respondents from granting premature retirement to the applicant. Accordingly, it is the case of the respondents that in the facts and circumstances of the case, there is no illegality or irregularity in not granting premature retirement to the applicant at this stage.

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

7. While enrolling a person to the service in the Forces, certain terms and conditions are laid down in the offer of appointment and the individual joins the service in the Forces after accepting the said terms and conditions. An individual who joins the Forces is governed by the terms and conditions of appointment and it is a well-settled principle of law that grant of premature retirement is not a right but it is done on the basis of various circumstances prevailing in the environment. The requirements of service are of paramount importance and grant of premature retirement is normally taking into account various administrative and executive reasons. In *R.P. Yadav (supra)*, while considering the right of an employee to seek premature retirement, the Hon'ble Supreme Court has made the following observations:

An incidental question that arises is whether the claim made by the respondents to be released from the force as of right is in keeping with the requirements of strict discipline of the Naval Service. In our considered view the answer to the question has to be in the negative. To vest a right in a member of the Naval Force to walk out from the service at any point of time accordingly to his sweet will is a concept abhorrent to the high standard of discipline expected of members of defence services. The consequence in accepting such contention raised on behalf of the respondents will lead to disastrous results touching upon security of the nation. It has to be borne in mind that members of the defence services including the Navy have the proud privilege of being entrusted with the task of security of the Nation. It is a privilege which comes the way of only selected persons who have succeeded in entering the service and have maintained high standards of efficiency. It is also clear from the provisions in Regulations like Regulation 217 and 218 that persons who in the opinion of the prescribed authority, are not found permanently fit for any form of naval service may be terminated and discharged from the service. The position is clear that a sailor is entitled to seek discharge from service at the end of the period for which he has been engaged and even this right is subject to the exceptions provided in the Regulations. Such provisions, in our considered view, rule out the concept of any right in a sailor to claim as of right release during subsistence of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A sailor during the 15 or 20 years of initial engagement which includes the period of training attains a high degree

expertise and skill for which substantial amounts are spent from the exchequer.

8. Even in the case of premature retirement, the same principle is applicable. The applicant has sought premature retirement only because of his family circumstances. The respondents have considered the same and he was granted compassionate ground posting to Military Hospital, Pulgaon, which is close to his home town i.e. Jalgaon. That apart, the administrative necessities which prevent the respondents from considering the application of the applicant have been detailed in the counter affidavit which we have considered. As grant of premature retirement is not a right but is a factor to be considered based on administrative requirements and organisational necessity, when in such cases, the scope of judicial review is limited, interference by Court can be made only in exceptional circumstances. We find no exceptional circumstances existing in the present case and if the circumstances pointed out by the applicant for seeking premature retirement are balanced in the backdrop of the administrative requirements indicated, particularly with reference to shortage of manpower on the technical side, this Court cannot exercise its power of judicial review in such matters. In the case of Cpl. Abhishek Joshi (supra), no principle has been laid down. The respondents were directed to consider granting premature retirement to Hav/STA Mukesh Kumar (supra) taking into account the serious ailments of the applicant viz, he was suffering from Hansen's disease and he was placed in LMC P3 (T-24) and P2 (T-24) and treating his case as an extreme compassionate case. The facts of the said case are entirely different and will not help the applicant. In the case of Maj Piyush Bansal (supra) also, after evaluating various factors, it was found that the application of the employee was not considered in accordance with the policy and the matter was only remanded back for reconsideration. In the case of Cpl Shaju M (supra), this was again a case where the applicant who had suffered from Chronic Otitis Media Right was granted premature retirement. It was a case of low medical category and in accordance with the mandate of Air Force Order No 16/2008, the interference was made. The case of the applicant is not identical to the cases relied upon by him and are all distinguishable on facts. It is a well settled legal principle that grant of premature retirement or premature retirement is not a right. It is granted on evaluation of various administrative and executive reasons and if the consideration indicated by the respondent's shows justice for keeping the matter pending, in the limited scope of judicial review available, this Tribunal should not interfere. In the present case, the applicant wanted premature retirement only because of certain family issues. The respondents have evaluated his application and posted to a place about 300 kms near to his home town, given him permission to visit his home town by granting leave as and when required and kept his application pending for consideration till the administrative situation improves.

9. Taking note of all these factors, we find no justifiable reasons to interfere with the matter. The respondents have acted fairly to the applicant, their action

cannot be said to be arbitrary, irrational or illegal in any manner, whatsoever and once the administrative action is found to be reasonable and justifiable in nature, interference within the limited scope of judicial review, in our considered view, is not possible.

10. Accordingly, finding no ground for interference into the matter, the OA stands dismissed.

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

Pronounced in open Court on this the 4th day of July 2022.