
(1999) 02 DEL CK 0038
In the Delhi High Court
Case No : C.W. No. 2708/97

Lt. Col. P.C. Madan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 78 DLT 765

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. C.M. Khanna Adv, for the Appellant; Mr. Rakesh Tikku and Y.D. Nagar Advs., for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—The point involved in the writ petition is a very short one. The petitioner sought pre-mature retirement and for the first time it was rejected. The second time he again applied explaining the circumstances under which he was forced to seek pre-mature retirement. That was also rejected by the Adjutant General and it was not sent to the Government. The petitioner was moved out to Guwahati and he has filed the writ petition seeking the following reliefs:

Issue a writ of mandamus to respondent no.1 to consider the application of the petitioner dated 09.01.1997 and 09.06.1997 seeking premature retirement from service with sympathy and compassion in accordance with their own policy on the subject and pass a reasoned order thereupon within a period of 6 weeks.

Issue a writ of mandamus to respondent no.4 to consider the application of the petitioner dated 09.06.1997 seeking cancellation of posting to 151 Base Hospital c/o 99 APO with justness and compassion in accordance with Medical Board recommendations of 25 Mar 97 which restrain posting of petitioner to area of damp and moist climate and pass a reasoned order thereupon before the

petitioner is required to move on posting.

Issue an appropriate writ, order or direction to Respondent no. 4 and 5 restraining them from implementing movement order dated 25.06.1997 till decision is taken by respondent no.4 on his application of requesting cancellation of posting to 151 Base Hospital at Gauhati.

2. The point urged by the respondents is that the petitioner is correct in stating that the competent authority is the Government and as per Regulation 105(f) of defense Services Regulation as it stood in 1987 (Revised) the Adjutant General is the competent authority. The case of the petitioner is that the Director General of Medical Services had issued a letter to all concerned on 22.07.1994 and that had been completely ignored by the respondents.

3. The question is whether the Central government is the competent authority or the Adjutant General. Para 105 (f) reads as under:

105 (a) xx xx xx xx (b) xx xx xx xx (c) xx xx xx xx (d) xx xx xx xx (e) xx xx xx xx

(f) The applications for premature retirement/resignation will be examined by Army HQ and submitted for consideration and approval of the COAS who may reject an application which is not based on adequate and justifiable reasons at his level without reference to the Government or recommend for acceptance by the Central Government. In case, the officer feels aggrieved by the decision of the COAS, he can, if he so chooses, file a statutory complaint addressed to the Central Government under the provisions of section 27 of the Army Act. The decision of the Central Government on application to retire premature/resign will be final.

4. But the letter issued by the Director General of the Medical Services issued on 22.07.1994 reads as under:

Dte General of Medical Services (Army)

Adjutant General's Branch/Army

Headquarters "L" Block,

New Delhi - 110 001.

22.07.1994 66797/PR&R/94/DGMS -1A Headquarters

Southern Command (Med) Commandant,

AMC Centre & School Lucknow

Eastern Command (Med)

Western Command (Med) DGBR Shillong

Central Command (Med)

Northern Command (Med)

Army Trg. Command, Simla

PREMATURE RETIREMENT/RESIGNATION FROM SERVICE: AMC OFFICERS

In view of the frequent queries received by this HQ regarding the procedure and implications in connection with premature retirement/resignation, the details are given in the succeeding paragraphs. Paras 104 and 105 of DSR 1987 refer connection with retirement/resignation.

Central Govt is the competent authority to accept requests for retirement/resignation and the decision of Central Govt is final.

Conditional requests for premature retirement/resignation which are coupled with postings, re-consideration of punishment, expunction of adverse remarks in annual confidential reports and so on will not be entertained. The aggrieved officers may be advised to take up such issues separately and submit application for premature retirement/resignation only when they finally decided to leave the service unconditionally.

Applications from officers who are involved in any disciplinary case will not be forwarded to this HQ until the case is finalised.

Definition: An officer who has put in 20 years of qualifying service and earned his pension and gratuity can seek premature retirement before he reaches the normal age of retirement as applicable. Officers who have put in less than 20 years of service resign from service.

Entitlements: An officer who is permitted to retire prematurely will be entitled to retiring pension and Death-cum-retirement gratuity at the appropriate rates. Officers with less than 20 years of service are not entitled to any pension. Officers with less than 20 years but more than 10 years service may be granted gratuity at the discretion of the Govt. Officers with less than 10 years of completed service are not entitled for gratuity. All officers are entitled to encashment of accumulated leave as per existing instructions irrespective of the length of service.

Officers who requests for premature retirement/resignation have been accepted by the Govt. should be relieved of their duties as early as possible but not later than the date specified in the letter. They may be granted annual leave, if due and the officer want to avail the same. Units/formations will forward Part II orders notifying the date of relieving to this HQ also.

Submission of explanations: Application for premature retirement/resignation should be submitted to this HQ in triplicate, through proper channel as per format at Appendix "A" enclosed to this letter. The officer and command concerned must ensure that the applications should be complete in all respect and should be in three complete sets of thick paper to enable us to process the applications expeditiously.

Supporting documents: Documents supporting the reasons for premature retirement/resignation will invariably be forwarded with the applications. In order to eliminate anfractuous correspondence and ensure timely finalisation of applications, intermediate authorities will scrutinise the application/ accompanying certificates/documents for completeness/genuineness before forwarding the same with specific recommendations to this HQ.

Premature retirement/resignation on compassionate grounds:

The request for premature retirement/resignation on compassionate grounds must be accompanied with a certificate from OC/Comdt/ADMS/DDMS to the effect that the compassionate grounds put forth by the officer have been personally reviewed and are valid.

The contents of this letter will be disseminated to all the officers.

This letter supersedes all earlier orders issued on the subject.

Please acknowledge receipt.

Sd/-

(S Sengupte)

Brig.

5. Therefore, it is clear so far as the petitioner is concerned, the competent authority is the Central government as per para 2 of the letter. It is for the Central Government to consider the case of the petitioner. Having regard to the facts and circumstances and when pre-mature retirement had been granted to the following officers, details of which given by the petitioner is as under:

1. Major S. Chaudhari (MR-5722) 2. Lt.Col (Mrs.) Gulshan Rain (NR 16200) 3. Maj. (Mrs.)K.P. Elizabeth (NR 16227) 4. Major Rahul Sukhla. 5. Lt. Col. PC Sanchet (MR 3421) 6. Wg Cdr S.K. Krishan (MR 3702) 7. Col. (Mrs.) K.G. Valiyamal (NR 14588) 8. Maj (Mrs.) Lata Natarajan (MR 5064) 9. Gp Capt S. Mukherjee (MR 2667) 10. Wg Cdr G. Singh (MR 3918) 11. Lt Col. (Mrs.) Varinder Kaur (NR 16053) 12. Lt Col. AK Verma 13. Wg Cdr B Kapoor

6. The case of the petitioner about the illness of his father and that he is suffering from a stroke of brain haemorrhage and is suffering from paralysis is not disputed by paralytic is not disputed by the respondents. That is a fact to be taken into account by the Central Government.

7. It is all well settled any public authority has to exercise its discretion reasonably under the norms and principles and as a person properly instructed in law would consider the matter. Accordingly, the Central Government is directed to consider the request of the petitioner for pre mature retirement and the same shall be considered in accordance with well known principle applicable to the exercise of discretionary powers. The petitioner shall not be disturbed from his present position until the request of pre-mature retirement is considered by the

Central Government.

8. Accordingly, the writ petition stands allowed. There shall be no order as to costs.