
(2018) 11 DEL CK 0114

In the Delhi High Court

Case No : Civil Writ Petition No.5248 Of 2018 & C.M. APPL.23368 Of 2018

Major Abhishek Dwivedi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-11-2018

Acts Referred:

Hindu Marriage Act 1955 — Section 13(1)(ia)

Citation : (2018) 11 DEL CK 0114

Hon'ble Judges : S. Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Sunil K. Mittal, Kadambini Sharma, Anshul Mittal, Chiranjeev Kumar, Mukesh Sachdeva,

Final Decision : Disposed Off

Judgement

S.NO.,NAME OF THE OFFICER,SERVICE NO.,"COURSES AVAILED
FROM THE ARMED
FORCES INSTITUTE","INSTITUTE THE
APPLICATION

1.,Maj. Tarun Sood,MR-08357L,"MBBS, MS
(ENT)","Granted
Release

2.,Maj. Shilpi Singh,MR-08373H,"MBBS, MD
(Pathology)","Granted
Release

3.,Maj. Ankit Kumar,MR-08552H,"MBBS, MS
(Gen. Surgery)","Granted

Release

4.,Maj. Neelam Singh,MR-08643M,"MBBS, MD

(Dermatology)",Accepted

10. Mr. Mittal also placed before this Court, the decision of this Court in Major Rahul Shukla v. Union of India 59 (1995) DLT 573 (DB) where, in a",,,,,

similar instance, this Court set aside the order passed by the Respondents rejecting the Petitioner's request for being relieved from service and asked",,,,,

them to again consider afresh his application on sympathetic and compassionate grounds and pass an appropriate order within two months.,,,,,

11. The Court finds that the decision in Major Rahul Shukla (supra), contains a detailed discussion of the prevailing regulations in the Army on the",,,,,

subject of accepting an application for premature retirement/resignation. This Court has noted that the ground that the services of the Petitioner would,,,,,

be required to meet exigencies cannot be a valid ground for rejecting such an application. It is also observed that it may be a ground for,,,,,

keeping the application in abeyance. In that case too, the Petitioner had made a request on account of grounds of domestic issues and the Court",,,,,

formed the view his request required reconsideration. Even in that case, the Petitioner had drawn the attention of the Court to other instances where",,,,,

requests for premature release had been accepted and the Court, after examining those instances, observed that the Petitioner did stand on a",,,,,

better footing than the cases of the doctors on whom the Respondents had spent substantial amounts in bringing them up as doctors for utility in the,,,,,

army.,,,,,

12. Learned counsel for the Respondents sought to suggest that there was a policy in the Army that request for premature release would not be,,,,,

considered earlier than completion of 20 years of service. However, the Court has perused the Policy on Release/Resignation/Premature",,,,,

Retirement in respect of AFMS Officers issued by the Ministry of Defence and finds that there is no such requirement of a minimum of 20 years of,,,,,

service in Army before an application for premature release can be considered. On the contrary, in para 3 thereof, it is stated that the term",,,,,

premature retirement would apply only to permanent commission officers who have rendered 10 years or more of service, and who wish to",,,,,

retire before the date of superannuation. Even so, in the four instances cited by

the Petitioner the dates of their respective commissioning in the Army",,,,,
were in the years 2006 and 2007 and they have been permitted to resign even
before completing 10 years of service. It is further pointed out that one,,,,
of them, viz. Major Ankit Kumar, was allowed premature release within one year
of his completion of the post-graduate course from Armed Forces",,,,,
Institute.,,,,,

13. This Court is of the view that it was necessary for the Respondents to give
reasons for the rejection of the Petitioner's request and a single line,,,,

order merely stating that the request was being rejected on account on "??
pending service liabilities" does not satisfy the requirement of the law.,,,,

14. Consequently, this Court sets aside the impugned decision of the
Respondents communicated to the Petitioner by the letter dated 24th April
2018",,,,,

and directs the Petitioner's application to be placed before the Competent
Authority for a fresh consideration in accordance with law. In particular,",,,,

the Competent Authority will consider the Petitioner's grounds as set out in
this petition as well as the additional affidavit and give a fresh decision,,,,

with reasons. The Competent Authority will not be uninfluenced by any earlier
decision. The fresh decision shall be communicated to the Petitioner on,,,,

or before 31st December 2018. If still aggrieved by such decision, it will be open
to the Petitioner to seek appropriate remedies in accordance law.",,,,

15. The petition and application are disposed of in the above terms.,,,,