

(2020) 03 AFT CK 0011

In the Armed Forces Tribunal

Case No : Original Application No. 1376 Of 2019

Neeraj Kumar Pal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0011

Hon'ble Judges : Rajendra Menon, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : V.S. Kadian, D.K. Sabat

Final Decision : Dismissed

Judgement

1. Aggrieved by the impugned speaking order dated 12.02.2019, whereby the request of the applicant for discharge from service on extreme

compassionate grounds has been rejected by the competent authority in terms of Para 2 of Air Force Order No.16 of 2008, the applicant has filed the

instant O.A seeking the following relief:

Quash and set aside the impugned speaking order dated 12.02.2019 and direct the respondents to discharge the applicant from service with immediate effect.

2. The facts of the case, in a nutshell, are that, the applicant was enrolled in the Indian Air Force 02.07.2008 in the trade of Propulsion Fitter.

Subsequently, he was re-mustered in the trade of Administrative Assistant with effect from July 2013 since he had failed in the Module II course

thrice. The initial term of engagement of the applicant is 20 years, extendable by 03/06 years, till completion of 57 years of age. It is the case of the

applicant that he had failed in the course on account of domestic responsibilities

and sickness of his parents. At present, the applicant is posted at 4 Base Repair Depot, Kanpur, with effect from 26.12.2016. The family of the applicant consists of his father, mother, younger sister and brother. His father is suffering from epilepsy, diabetes, eye sight loss and hearing loss and the mother is suffering from high blood pressure, rheumatoid and orthopaedic ailments and severe lower back pain and his parents are under constant medication. Therefore, he submitted an application on 03.07.2017 for discharge from service on extreme compassionate grounds to look after his ailing parents. The Commanding Officer recommended his case on compassionate grounds. However, the same was rejected by the competent authority vide signal dated 04.10.2017 stating that it did not merit consideration. Being aggrieved, the applicant filed O.A No. 1426 of 2018 before this Tribunal. In the said O.A, the applicant sought for a direction to reconsider his application for discharge from service on compassionate grounds. On 27.08.2018, a Coordinate Bench of this Tribunal, while disposing of the said O.A, directed the applicant to file a fresh comprehensive representation along with necessary medical documents of his parents for consideration of his release on compassionate grounds. It also made the following observations:

3. Respondents shall process and dispose of such application as and when received by passing a speaking order preferably not later than four months from date of receipt of the application. We hope and trust that the prayer of the applicant for release from service shall be considered sympathetically without being influenced in any manner whatsoever either to the rejection of his earlier application or to the fact that he has chosen to invoke the jurisdiction of the Tribunal.

Accordingly, the applicant filed a detailed application on 20.09.2018, which was rejected by the competent authority by the impugned speaking order dated 12.02.2019. It is against the said order that the applicant has filed the present O.A.

3. Mr. Kadian, learned counsel for the applicant, at the outset, submitted that the impugned order is not in accordance with AFO No.16 of 2008 as it clearly stipulates that Airmen/NCs(E) are permitted, in exceptional cases, to apply and seek discharge from service on compassionate and other grounds before the expiry of their regular engagement. He also stated that the

serious illness of his parents was cited as the main reason for seeking discharge from service on compassionate grounds. Learned counsel further contended that the Commanding Officer, after satisfying himself about the situation narrated in his application by the applicant for discharge from service, had recommended the same for approval on compassionate grounds. However, the competent authority, without applying their mind, rejected his application stating that it did not merit consideration. Questioning the validity of the said rejection order, the applicant had filed an O.A before this Tribunal, which was disposed of directing the applicant to file a detailed representation. Accordingly, a representation was filed, which also resulted in rejection.

4. Learned counsel for the applicant contended that the grounds contained in Para 2(a) and (b) of AFO No.16/2008 squarely cover the case of the applicant, on which grounds he sought discharge from service. On the subject of compassionate grounds, which can be considered for grant of early discharge, Para 2(a) clearly states that 'serious illness of parents/ direct dependents where the continued absence of the airman will endanger their lives' and Para 2(b) states that 'cases where the entire responsibility of the family is resting on the shoulder of the airman and his presence at home is absolutely necessary'. It was categorically stated by the applicant in his application that his father is diabetic and also suffering from epilepsy and that his mother suffered from high blood pressure, rheumatoid and orthopaedic ailments. He also brought out that he was unable to visit and render assistance to his parents due to distance from unit and limitations of leave. He also stated in the application that, being the elder son, he had to look after his ailing parents.

5. Learned counsel for the applicant also submitted that, along with the application for discharge from service, the applicant had produced medical certificates issued by the doctors for consideration by the respondents and consequently, his Commanding Officer had recommended his discharge on compassionate grounds. However, the competent authority, declined to approve discharge of the applicant. Denial to discharge him from service on compassionate grounds, according to the learned counsel, is against the policy contained in AFO No.16/2008. Furthermore, once the Commanding Officer of the applicant had recommended for discharge of the applicant from

service on compassionate grounds, the competent authority was bound by the same and should not have turned down the recommendation. Summing up, relying upon Para 2(a) and (b) of the aforesaid AFO, learned counsel for the applicant stated that the application submitted by the applicant for discharge from service on compassionate grounds should have been allowed and the action of the respondents in not approving the premature discharge of the applicant from service on compassionate grounds is unjustifiable.

6. On behalf of the respondents, a detailed counter affidavit has been filed stating that the application submitted by the applicant seeking discharge on compassionate grounds has not been approved since the grounds advanced by him did not merit approval. As per Para 8 of the AFO, discharge from service cannot be claimed as a matter of right and nothing in the said order shall interfere with the powers of the Air HQs to suspend/ withhold discharge temporarily or otherwise on compassionate grounds or refuse the same in a particular case. Furthermore, Para 11 clearly states that application for review/ reconsideration of discharge on compassionate grounds, once not approved by the competent authority, can only be submitted after one year unless the grounds advanced earlier by the airmen for discharge have changed. Therefore, the respondents have rightly exercised their authority in not approving the application of the applicant for discharge from service on compassionate grounds. It is also stated in the counter affidavit that request for premature discharge from service on compassionate grounds in respect of airmen are considered on case to case basis by the competent authority keeping in mind the gravity of the problems faced by the airmen as well as serious exigencies. Furthermore, the illness/ medical condition/ ailment of parents of the applicant was not found to be serious enough to grant premature discharge to the applicant under compassionate grounds clause by the competent authority, in accordance with the advice of the Medical Advisor of the Indian Air Force.

7. The application submitted by the applicant on 20.09.2018 seeking discharge from service on compassionate grounds was considered by the competent authority and the same was rejected vide impugned order on the following grounds:

(i) The medical documents in support to the ailment of parents of the applicant

have been examined by the Medical Authority and the Medical Authority had not recommended the case for discharge on medical grounds. The report by Neuro Psychiatrist brought out that the father of the applicant had been under treatment from various private neurologists for the last 12 years. The neurologists had also stated that the father of the applicant needed to avoid night duties. Hence the contention of the applicant that his parents were severely ill is not borne out by medical facts.

(ii) The applicant had been enrolled in the Air Force for a period of 20 years and he has completed only 10 years and 06 months of service. Regular

engagement of the applicant would be expiring only on 31.07.2028.

(iii) The Air Force invests heavily on its personnel for training and grooming. Therefore, granting premature discharge would significantly cost the exchequer.

(iv) The Air Force is facing acute shortage of manpower and premature discharge of trained manpower would adversely affect the manning level and operational preparedness of the Air Force.

Thus, the primary grounds on which his application for premature discharge was rejected are that, firstly, the medical documents produced by the applicant do not prove that his parents are seriously ill to the extent that the applicant's presence beside them is critical, and secondly, he has completed only ten and a half years as a trained Clerk, whereas he is under obligation to complete 20 years of service.

7. Mr. Sabat, learned counsel for the respondents contended that the contents of the application seeking discharge from service on compassionate

grounds and also the present O.A are not justified. Furthermore, the grounds taken by the applicant for discharge from service on compassionate

grounds are not satisfactory. For looking after the ailing parents, he need not seek discharge from service. The father of the applicant is a retired

Government servant and would be in receipt of pension now. Therefore, the request for discharge from service is not justifiable and the O.A deserves

to be dismissed.

Consideration:

8. Having heard the learned counsel appearing for both the parties and having gone through the records of the case, the only question that requires to

be considered is, whether the applicant, a trained Clerk, has made out a justifiable case for getting premature discharge from service on

compassionate grounds, without having completed the obligatory tenure of service?

9. There is no dispute that the only ground that the applicant has projected for discharge from service on compassionate ground is that his parents are

suffering from chronic diseases and being the elder son, his presence at his home town to take care of his parents is critical. There is also no dispute

that at the time when the applicant sought discharge from service on compassionate grounds, he had only ten and a half years of service against the

mandatory term of engagement of 20 years. On the other hand, the respondents have informed that the Indian Air Force (IAF) is facing an acute

shortage of trained manpower and, thus, grant of premature discharge would adversely affect the manning levels and operational preparedness of the

force. It is in this background that we have to consider the case of the applicant.

10. At the outset, we may deal with the objection of the respondents on the ground of criticality in the trade of the applicant. It has been submitted by

the respondents that the IAF being a technology oriented force dealing with sophisticated and specialised equipments, requirement of well trained and

experienced manpower to handle such equipments and their documentation need to be addressed properly. Each airman is trained for a specific role

and his continuance in the service is essential not only to make good the expenditure incurred on him by the nation for his training, but also to man all

the required posts at all levels (from worker to supervisor level/ senior most ranks) as well as to achieve desired operational efficiency and

preparedness of the IAF at all times. In this regard, Mr. Kadian, learned counsel for the applicant contends that the applicant, being a Clerk, there is

no loss as such to the Air Force in terms of the cost of training/ specialisation, which would mandate his continuing in service for a long period.

Nonetheless, we find force in the contention of the respondents, even though the applicant is a Clerk, keeping in view that considerable time and effort

goes into training a Clerk, who also acquires specified skills and experience over a period of time.

11. With regard to the further objection of the respondents for a favourable consideration of the request of the applicant for discharge from service on

compassionate grounds based on Para 2(a) and (b) of the AFO, Para 8 of the AFO clearly stipulates that discharge from service cannot be claimed as

a matter of right and nothing in the said AFO shall interfere with the powers of Air HQs to suspend or withhold discharge temporarily or otherwise on

compassionate grounds or refuse the same in a particular case. The earlier request of the applicant for discharge from service did not find favour as

his prayer did not merit favourable consideration. In the subsequent application also, the same grounds have been taken by the applicant for discharge

from service on compassionate grounds. As such, we do not find any illegality or irregularity in the impugned order rejecting the request of the

applicant for discharge from service on compassionate grounds even though the applicant contends that he meets the criteria laid down in the AFO.

12. We note that the request of the applicant for discharge from service on compassionate grounds only depend on reasons mentioned at Para 2(a)

and (b), which read as under:

(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.

As pointed out by learned counsel for the respondents, the medical documents produced by the applicant do not prove that the applicant's parents are

severely ill to the extent that the applicant's presence is critical to their survival. We also note that the applicant is under an obligation to serve for a

period of 20 years while he has completed only ten and a half years of service. The Air HQ is the final sanctioning authority to grant discharge from

service on compassionate grounds. We find that though humanitarian issues have been given due consideration by the respondents, as evident by the

extant policy, service requirements have outweighed these while considering the applicant's case and, to that extent, institutional needs override

individual requirements. This being the situation, we do not find any merit in the present O.A.

14. The O.A fails and is dismissed. No order as to costs.

Pronounced in open Court on this the 11th day of March 2020.