

(2020) 02 AFT CK 0035

In the Armed Forces Tribunal

Case No : Original Application No. 344 Of 2020

Parveen Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 02 AFT CK 0035

Hon'ble Judges : Rajendra Menon, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Manoj Kr. Gupta, Shyam Narayan

Judgement

OA 344/2020

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, this application has been filed for the following

reliefs:

(a) To direct the respondents to grant immediate discharge from service as per policy in vogue.

(b) To direct the respondents to consider his request for posting to peace area till the time discharge application is pending.

(c) Direct the respondent to grant him discharge considering the fact that his application for change of place of posting on compassionate ground has

been rejected and posted him against the provision of the policy.

(d) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. The applicant is working in the Indian Air Force. He was enrolled on 16th December, 2002, initially for a term of twenty years as a technician in

Regular Engagement (RE) and has been posted to various Air Force units. At the relevant time when the cause occurred for filing of this application,

he is said to have been posted at Suratgarh. He was promoted to the rank of Corporal, Sergeant and is said to have a clean unblemished service

record. Prior to his posting at Suratgarh, he has completed his tenure in Naliya. According to the applicant in the matter of posting of Airman in Air

Force, the policy dated 21st November, 2013 under para 15 provides limited tenure without choice posting and two consecutive postings to such

stations is to be avoided. According to the applicant his posting in Suratgarh (Limited tenure) from Naliya is contrary to this provision and it seems that

when he was posted in Suratgarh he moved an application for change/cancellation of posting on compassionate ground on 17th September, 2019

(Annexure A-2). According to the applicant this was not processed and no action was taken on this application till 15th November, 2019. He,

therefore, on 24th October, 2019 (Annexure A-3) moved an application seeking discharge. His grievance now is that the discharge application has

been returned with certain queries. He re-submitted the same and now it has been returned back vide the impugned order dated 28th November, 2019

(Annexure A-1) and the impugned order indicates that because his application for cancellation/change of posting on compassionate grounds has been

forwarded for consideration on 1591 November, 2019 to the competent authority and decision on the same is yet to be received, the applicant cannot

apply for discharge from service till disposal of his application for change/cancellation. It is said that nothing has been brought to the notice of the

applicant based on which the application could be returned back without consideration.

3. Even though learned counsel for the respondents had advance notice for taking instructions, he tried to argue that when the applicant has sought for change of positing or cancellation of posting, he cannot seek discharge from service.

4. Be that as it may, the impugned order does not indicate as to under which policy or basis, circular or instructions the discharge application has been

returned back and on what ground or basis it is indicated that till disposal of the change or cancellation of posting, application to discharge cannot be

considered. That being so, for the present, we are not inclined to go into the merits of the matter and are of the considered view that interest of justice

would be met in case the application for discharge submitted by the applicant on 2401 November, 2019 is taken note of and evaluated in the back drop

of the policy, circular or instructions available with regard to the same and a speaking order is passed in that regard. Let the entire exercise, as

indicated herein above, be completed within two months from the date of receipt of this order. Needless to emphasise that if still aggrieved, the

applicant will have the liberty to challenge the action taken in the matter.

5. We may indicate that we have not expressed any opinion on the merits of the case and leave it open to the authority to take note of various aspects

of the matter, evaluate them in the back drop of various rules, policy, circulars or instructions and take a decision.