

(2022) 05 AFT CK 0011
In the Armed Forces Tribunal
Case No : O.A. No 1137 Of 2021

Sgt Prasenjit Roy

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Constitution of India, 1950 — Article 14
Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2022) 05 AFT CK 0011

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

Bench : Division Bench

Advocate : Manika Roy, Satya Ranjan Swain

Final Decision : Dismissed

Judgement

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed by him read as under:

(a) Admit the original application.

(b) To pass an appropriate Order directing the concerned respondent authorities and each one of them to grant discharge your applicant on extreme compassionate grounds by setting aside the impugned order dated 28th April, 2021 passed by the respondent no. 3.

(c) To produce all the records in connection with the interest case before this Learned Tribunal, for the ends of justice.

(d) Any other order or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. The applicant is serving as a Sergeant (Sgt) in the Unit of 337 TRU Kanchrapara and seeks discharge from service on compassionate grounds in accordance to the policy in this regard contained in AFO 16/2008

(Annexure A-10). Applicant was enrolled in the Indian Air Force on 16.06.2003. In the month of December, 2012, the applicant was posted at Trivandrum.

3. In December, 2017, the applicant sought for posting to Kolkata on compassionate grounds due to health problems of his parents and the same was considered and approved by the Competent Authority and on 21.12.2018, the applicant was posted to 337 TRU with effect from 13.08.2018 vide posting order dated 20.02.2018. Thereafter, on the ground that the parents of the applicant are not well and on account of his mother's ill- health and other issues, the applicant submitted an application dated 27.11.2018 seeking discharge from service on compassionate grounds along with supporting documents. Even though the documents were forwarded along with the recommendations of the Section Commander and the Station Commander, however, vide order dated 14.03.2019, Respondent No. 3 is said to have rejected the application. Challenging the same, the applicant invoked the jurisdiction of this Tribunal at the Regional Bench, Kolkata in O.A. No. 37 of 2019 and this Tribunal, by a detailed order passed on 24.02.2021, remanded the matter back to the Competent Authority for re-consideration on various grounds detailed in the aforesaid order passed on 24.02.2021. The matter was considered again on remand and vide the impugned order dated 28.04.2021, when the application of the applicant was again rejected, the applicant has invoked the jurisdiction of this Tribunal (PB).

4. Inviting our attention to Para 2 of the AFO 16/2008, particularly the provisions of Para 2 (a) therein, learned counsel for the applicant argues that this is a case where the applicant has made out a ground for grant of discharge on compassionate grounds and that the applicant forwarded the application for consideration of Competent Authority in accordance to the requirement of law and in spite of the directions issued by this Tribunal (RB, Kolkata) on 24.02.2021 in O.A. No. 37 of 2019, again without recording any proper justification or cogent reasons, the application for discharge was rejected on the same consideration. Learned counsel argues that the grounds now added to say that the applicant's service is required, he is a technical person and his duties are indispensable for the Air Force are incorrect and false. It was emphasised by the learned counsel that the applicant is holding a non-technical post and the service of the applicant is not needed for the purpose of the Air Force. It was contended that the ailments and illness of the applicant's parents, who are directly dependent upon the applicant and when the absence of the applicant endangers the life of his parents, discharge on these void grounds can be considered, is not taken note of properly by the Competent Authority.

5. It is the case of the applicant that inspite of the fact that in the earlier round of litigation, this Tribunal (RB, Kolkata) had directed the Competent

Authority to take a decision after considering the recommendations of Section Commander and the Station Commander, again in the so-called speaking order passed on 28.04.2021 without taking note of the observations made by this Tribunal in the earlier order dated 24.02.2021, the same the reasons are repeated. The grounds stated in the impugned order for rejecting the application are not only contrary to the mandate of AFO 16/2008 but the grounds are the same which were analysed in the earlier round of litigation and disapproved by this Tribunal. Accordingly, contending that the applicant has a right enshrined under Part-III of the Constitution of India to seek discharge in accordance with the policy contained in AFO 16/2008 which has not been properly appreciated by the respondents, the applicant prays for interference into the matter and, in this regard, places reliance on a judgment rendered by this Bench in O.A. No. 1963 of 2017 in the case of Cpl Shaju M. Vs. Union of India & Ors. decided on 23.02.2022 to say that the applicant is entitled for grant of discharge from service on compassionate grounds in the matter.

6. Respondents have refuted the aforesaid and submit that grant of discharge under the AFO 16/2008 is not a matter of right. Referring to Para 8 of the said AFO, it was argued that discharge from service cannot be claimed as a matter of right and nothing in the order shall interfere with the power of the Air Headquarters to withhold or refuse request for discharge on administrative consideration. It was argued that the ailments of the parents of the applicant are ordinary lifestyle ailments like hypertension, anxiety disorder etc.; the applicant was granted posting near his home town and no case for discharge is made out. It was argued that on the applicant's own showing, it is seen that the parents of the applicant suffered the ailments since the year 2011; the applicant kept quite from 2011 upto 2018; it was only in November 2018 that he sought for permanent discharge after completing 15 years of service and, therefore, the vested interest of the applicant and the hidden agenda in seeking discharge on compassionate grounds were not the ailments of his parents, but to earn pension and somehow wriggle-out of the contract of the employment, which warrants serving the Force for a period of 20 years.

7. Learned counsel for the respondents took us through various aspects of the matter including the reasons that weighed with the Competent Authority and argued that manpower consideration has been taken note of and in view of the scarcity of the manpower and human resources in the Air Force, the discharge of the applicant in the facts and circumstances has been denied. It was argued by the learned counsel that Unit where the applicant is posted is very near to his native place and under these circumstances, no interference can be made again by this Tribunal when after the earlier remand, the matter was re-examined by the Competent Authority in detail and a speaking order passed. It was argued by the learned counsel that an administrative and executive decision taken on

the basis of the policies and circulars is beyond the scope of judicial review, until and unless the procedure followed for taking the impugned action is found to be discriminatory, contrary to procedural equity or requirement ultravires and offends the requirement of Article 14 of the Constitution. Learned counsel argues that in this case, as the administrative decision has been taken in accordance to the requirement of law, no indulgence into the matter is called for.

8. We have heard the learned counsel for the parties at length and perused the records.

9. From the records, it is clear that the applicant had completed 15 years of service and sought voluntary discharge on account of his ailment of his parents. From the medical documents produced by the applicant, it is seen that mother of the applicant is suffering from some psychological disorder along with hypertension, obesity, diabetes and thyroid related ailments and his father is suffering from hypertension, Insomnia, High Cholesterol and Uric Acid related ailments. The applicant's parents are getting regular treatment from the Department of Health and Family Welfare, Govt. of West Bengal, Kolkata and the National Medical College and Hospital, Kolkata. The father of the applicant being a retired government servant, both the parents of the applicant are being extended the benefit of Central Government Health Scheme (CGHS) for their treatment.

10. Even though in the earlier round of litigation, we had examined the matter in detail and after taking note of certain judgments, particularly the judgments in the case of Sgt Beylinedas Yesudas Vs. The Chief of Air Staff and Others in O.A. No. 167 of 2013 decided by the AFT, Regional Bench at Chennai on 30.04.2014 and in Sgt Satish Yadav Vs. Union of India & Ors. [O.A. No. 112 of 2017] decided by the Principal Bench of this Tribunal on 20.12.2017, remanded the matter back for re-consideration by the Competent Authority, as we found that the requirement of the policy was not appreciated properly. In the reasoned order passed when it was impugned before us in the earlier round of litigation, we took note of the requirement of AFO 16/2008 and after considering various issues including judgments of the Hon'ble Supreme Court and the Tribunal, we had observed that under the AFO 16/2008, claim for discharge from service cannot be claimed as a matter of right. The AFO empowers the Air Headquarters to refuse or grant discharge in a particular case. The claim for discharge has to be evaluated by the Competent Authority and he has a discretion to take a decision after evaluating the difficulties of the employee in the backdrop of the requirement of administration in the survey, but he cannot exercise the discretion in an arbitrary, unjustified or malafide manner. We found that even though the applicant did not seek discharge right from 2011 upto 2018 and in the year 2018, he was posted near his hometown and he sought voluntary retirement after 7 years only after having acquired the right to claim pension. We found that the recommendation of the

Competent Authority, namely, the Commanding Officer, and the requirement of the administration seems to have not been properly evaluated and, therefore, for re-consideration, we remanded the matter back.

11. Now in the impugned order, we find that even though the six grounds which earlier weighed with the Competent Authority have been again crystalised as reasons but along with that, it is indicated that the applicant has been trained in the ADSO Trade. According to the terms and conditions of the engagement, he has to work for a period of 20 years; he was trained to meet the operational requirement of the organisation and in the actions of there being lack of manpower, the request as made cannot be acceded to. As far as considering the recommendations of the Commanding Officer and the Station Commander are concerned, it is indicated that these people evaluate the application with the Unit specific observations and when the matter comes to the Air Headquarters, the matter is re-examined taking note of the requirement of the entire organisation and, therefore, their recommendations are not final and binding and the Air Headquarters can always take a different view.

12. On a scanning of the record, we find that after the applicant submitted his application dated 27.11.2018 for discharge, on 13.02.2019, the applicant sought permission to meet the Station Commander and we find that the Station Commander met him on 13.02.2019 and simply noted that the application is recommended and forwarded for consideration. He did not give any reason or justification for his recommendation. The only words used are "Recommended & forwarded". Thereafter, the matter went to the Adjutant, Fit Lt Vinay Krishnan on the same day, who simply initialled and forwarded it to the Commanding Officer, Wg Cdr J.P.S. Verma. The Commanding Officer, Wg Cdr Verma, observed in his remarks that the individual has been interviewed on 13.02.2019. The Commanding Officer discussed the condition of his ailing mother and he wants discharge only on account of the ailment of his mother. The Commanding Officer simply endorsed and forwarded the matter with a remark "Recommended for consideration". The Station Commander also interviewed the applicant and simply remarked that the case to be taken up for release'.

13. In the earlier proceedings held before us in O.A. No. 37 of 2019 (RB, Kolkata), we had observed that in the judgments rendered in the case of Union of India Through Its Secretary, Ministry of Defence, DHOPO, New Delhi and Others Vs. Wg Cdr Subrata Das [(2020) 12 Supreme Court Cases 784] and Sgt Beylinedas Yesudas (supra), the undoubted material hardship of the airmen and the hardship determined by the Commanding Officer of the individual, who is in close contact and is in the regular interaction with the airman concerned, should be examined by the Competent Authority and the inputs and recommendations of the Commanding Officer are vital, which warrant consideration at the time of discharge. In the earlier round of

litigation, we did not take note of the observations of the recommending officer like the Commanding Officer, the Station Commander etc. and we directed for re-examination of the matter in the light of the law laid down by the AFT, Chennai Regional Bench in the case of Sgt Beylinedas Yesudas (supra). We also found that the requirement of the service, administrative and security concerns were also not properly addressed and, therefore, they be re-examined. We now find that both these aspects have been taken note of and from the applicant's own showing on the basis of the documents filed by him, we find that the Commanding Officer and the Station Commander have simply forwarded the application for consideration without expressing any specific opinion peculiar to the applicant's requirement, which warrants special consideration. In fact, the recommendations of the Competent Unit Authorities i.e. the Section Commander and the Station Commander are all mere forwarding of the recommendations without disclosing any reason.

14. The respondents have, in the impugned order in Paras 5, 6 and 7, observed as under:

"AND WHEREAS, the CO and Section Commander is recommending authority for forwarding a case to the higher authority for final disposal as per the policy in vogue. Each case is considered on the basis of its merit along with recommendations of the CO and decided by the competent authority in terms of policy in vogue and HR state in the IAF. Each case is considered and deliberated at this HQ by keeping in mind the operational requirement of the organization as well as needs of an individual. The recommendations of CO and Section Commander being unit specific are not binding on the competent authority.

6. AND WHEREAS, Para 8 of AFO 16/2008 stipulates that 'discharge from service can not however, be claimed as matter of right and nothing in this order shall interfere with the powers of the Air Headquarters to suspend / withhold discharge temporarily or otherwise on compassionate grounds or refuse the same in a particular case'.

7. AND WHEREAS, the Hon'ble Armed Forces Tribunal (PB) New Delhi has ruled in a similar case OA. No. 1376/2018 filed by Cpl Neeraj Kumar Pal Vs UoI that

"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 OA."

apart from taking note of the earlier consideration, they have again evaluated the matter in the backdrop of various consideration, requirement of the service, requirement of the policy, the recommendations of the Section Commander and the Station Commander and have taken a decision. Once an administrative decision is taken and the policy i.e. AFO 16/2008 in Para 8, itself gives discretion to the Air Headquarters to take a decision on various consideration, we are of the considered view that in the matter of judicial scrutiny or review of an administrative action or decision, this Tribunal can only evaluate the decision-making process, the merits of the decision and the reasons for the decision cannot be subjected to the judicial review, until and unless the decision or the decision-making process is found to be in breach of the procedural requirement, tainted with malafides, lacks in fairness or arbitrarily taken. In the case in hand, none of these eventualities are established and even after remand of the matter back, after re-examination, when a decision has been taken by the Competent Authority, we find that the scope of judicial review in such matters is very limited.

15. Even though learned counsel for the applicant relied upon a judgment in the case of Cpl Shaju M (supra) in support of her contentions, we find that in that case, Cpl Shaju M, in the year 2016, was placed in low medical category for TIVD L3-L4 and L4-L5 and Chronic Otitis Media Right' incapable of being continued in the trade and taking note of his medical condition and further the fact the he was unable to continue in working in the trade and would not be eligible for further promotion, we interfered into the matter. The case of the applicant herein is not similar to that of the case of the Cpl Shaju M. In fact, in the matter of seeking discharge, the Hon'ble Supreme Court in the case of Union of India ez Ors. Vs. R.P. Yadav [2000 AIR SCW 2370], had considered various aspects including the physical condition and finally crystalised the legal principle in the following manner:

"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 according 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.

16. Thereafter, looking to the medical condition of the applicant in that case, even though certain benefits were given and the question of withdrawal of option was considered but the law with regard to the discretion and the policy has been laid down, which clearly says that no person can seek release as a matter of right and it is the discretion of the Competent Authority to take a decision.

17. In our considered view, the facts and circumstances of the present case are entirely different from of the case of Cpi Shaju M (supra) and do not have any application to the present case. Present is a case where the claim of the applicant has been examined after our remand in accordance to the requirement of the policy and the law and we find no infirmity or illegality in the same warranting any re-consideration.

18. In view of the foregoing, OA stands dismissed. There is no order as to costs.

Pronounced in open Court on this 18th day of May, 2022.