

FORM NO. 21  
(SEE RULE 102(1))  
ARMED FORCES TRIBUNAL, KOLKATA BENCH

OA 109/2016.

THE 28<sup>TH</sup> DAY OF FEBRUARY, 2024.

Hav Clk(SD) Pankaj Kumar Singh ... Applicant.

-Vs-

Union of India and others. .... Respondents.

Advocates present:

For the applicant,

Mr Argha Banerjee.

For the respondents,

Mr Daya Shankar Mishra, Sr.PC.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATION).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

2) This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed for quashing and setting aside the impugned order dated 23.08.2014(A/5) conveying thereby the rejection of the representation(A/4) made by the applicant with a request to reconsider the date of his premature discharge from service with effect from 31.05.2015 instead of 31.03.2025 and hold him entitled to the post-

retirement benefits up to the maximum extent as admissible under the rules and with a further prayer to pass any other or further orders as deemed fit and proper in the given facts and circumstances of the case.

(3) Admittedly the applicant was enrolled in the Indian Army on 07.01.1999 and in due course of time was promoted to the rank of Havildar. Unfortunately his mother fell seriously ill on account of suffering from artharitis and there was none to look after her in the family except him. He, therefore, when left with no other option than to opt for premature retirement from service on compassionate ground so that he could look after his ailing mother and got her treated properly, and make an application(A/1) on 12.05.2014 to respondent No.6, the OIC(Records), through proper channel with a request to allow him to retire from service prematurely between the period July 2015-February 2016. His commanding Officer has recommended the said application(A/1) to the competent authority for his release from service prematurely between the period July 2015-February 2016. The recommendation(A/2) was made by the Commanding Officer accompanied by the statement of case justifying the request qua the premature retirement from service he made.

(4) The competent authority has taken a favourable decision vide order dated 01.08.2014(A/3) allowing the applicant to retire prematurely from service along with other Havildars; however, with effect from 31.03.2015, not on a date between the period July 2015-February 2016. As the applicant was promoted as Havildar on 01.05.2007 and on completion of 8 years of service i.e. on 30.04.2015 would have completed 8 years of service in the rank he should have become entitled to certain retiral benefits including the benefits of Modified Assured Career Progression Scheme

(MACP), he made the representation(A/4) requesting the respondents to reconsider the date of his premature retirement at least on 31.05.2015 instead of 31.03.2015. The request so made however has been rejected by the respondents and conveyed to him through impugned order dated 23.08.2014(A/5).

(5) The complaint as such is that by pre-poning the date of premature discharge of the applicant from service between the period July 2015-February 2016 the applicant has been put to huge financial loss which he would have otherwise drawn by way of retirement benefits on the completion of 8 years of service in the rank of Havildar, which he had to complete in the month of May 2015. Therefore the impugned decision(A/3) to retire him prematurely from service with effect from 31.03.2015(A/5) denying thereby the rescheduling of his date of pre-mature retirement on 31.05.2015 instead of 31.03.2015 has been sought to be quashed and set aside being illegal, arbitrary, and contrary to the rules and regulations.

(6) The respondents have not disputed the factual aspect at all; rather, as per their version, there being no mention in the application(A/1) that he has sought premature retirement between the period from July 2015 to February 2016 so that he could earn monetary benefit nor that on completion of 8 years of service in the month of May 2015 in the cadre he would have become entitled to such retiral benefits under the Modified Assured Career Progression Scheme(MAC)) etc, the respondents as such had retired him from service on and w.e.f. 31.03.2015 instead of between the period from July 2015 to February 2016. His application for premature discharge from service was rather considered favourably along with other Havildars and he was allowed to retire from service prematurely with effect from 31.03.2015. As per further case of the respondents the date of premature retirement of the applicant so

fixed could not have been postponed to 31.05.2015 as prayed by him vide his representation(A/4). In reply to para 8.1 to V it has been submitted that in terms of the policy dated 13.06.2011 he would have been held entitled to the benefit of MACP on completion of 8 years of service had he been in service on 01.05.2015.

(7) There is thus a tacit admission on the part of respondents that on completion of 8 years of service in the rank of Havildar, his case should have been considered for grant of the benefits under the MACP Scheme had he been otherwise eligible therefor.

(8) The controversy as such lies in a narrow compass as it has to be determined by this Court that in view of the specific request(A/4) of the applicant to discharge him prematurely between the period from July 2015 to February 2016 the respondents could have fixed some other date to his detrimental and when approached them to postpone the date of his discharge at least to 31.05.2015 stating specifically that his discharge on 31.03.2015 has resulted in financial loss to him the request so made by him has been rejected. Whether the rejection is legally sustainable or not?

(9) Our answer to the above poser in all fairness and in the ends of justice would be in negative for the simple reason firstly that the applicant, before shifting the date of his discharge from service to 31.03.2015 from the period between July 2015 and February 2016 vide impugned order dated 31.03.2015(A/3) has not been given any opportunity to appraise the respondents that such preponement of the date of discharge suits him or not. Nothing has been brought to our notice to suggest that the respondents under the Rules/Policy if any can prepone/postpone the date of premature discharge in a matter like this. Not only this, nothing has been brought to our notice that the request(A/1) of the applicant for postponing the date of discharge to at least 31.05.2015 from 31.03.2015 could not have been accepted. The impugned

order(A/5) by which he has been conveyed about the rejection of his representation (A/4) is silent in this regard as the same does not contain any reason what to speak of plausible and reasonable justifying that his prayer for postponement of the date of discharge could not have been accepted. Therefore, firstly the decision for preponing the date of discharge of the applicant to 31.03.2015 and secondly, the rejection of his representation(A/4) for postponing his date of discharge at least to 31.05.2015 are neither legal nor valid and rather the result of an arbitrary exercise of power by respondents. The same as such in all fairness and in the ends of justice deserves to be quashed and is hereby quashed. However, we leave it open to the respondents to consider afresh the representation(A/4) made by the applicant taking into consideration our observations hereinabove made in this order and also their own version in reply to the OA that the applicant would have been considered for grant of the benefit of MACP had he been in service up to the month of May 2015. Since he had sought his voluntary retirement from service between the period from July 2015 to February 2016 and had he been retired during this period alone would have in job in the month of May 2015 also, hence considered for grant of monetary benefits the benefit under the Modified Assured Career Progression Scheme. The decision on the representation(Annexure A/4) is now required to be taken in terms of this order and supported by reasons. Of course, in case the applicant is still aggrieved thereby he may approach the appropriate forum, including this Bench again, for redressal of his grievances in accordance with law.

(10) For all the reasons herein above we allow this application. Consequently the impugned order dated 31.03.2015(Annexure A/3) only qua the applicant is quashed

and set aside. The impugned order(Annexure A/5) qua rejection of the representation made by the applicant is also quashed and set aside. There shall be a direction to the respondents to consider the representation(Annexure A/4) afresh in the light of the observations made in this order herein above. Opportunity of being heard be also granted to the applicant and thereafter a reasoned order passed in the matter and communicated to the applicant. In case the order to be so passed by the respondents goes against the applicant, he shall be at liberty to approach the appropriate forum including this Bench in accordance with law for redressal of his surviving grievances if any. The application is accordingly disposed of so also miscellaneous application(s) if any pending. No order as to costs.

LT GEN SHASHANK SHEKHAR MISHRA  
HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY  
HON'BLE MEMBER(J)

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