

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : TA 29 OF 2012

THIS 1ST DAY OF MAY, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Havildar Ashok Kumar Joshi,
Depot Bn, BEG Centre,
Kirkee, Pune -3

..... Petitioner

-VS –

1. Union of India through the Secretary,
Ministry of Defence, New Delhi-110 011
2. Chief of Army Staff,
Through Adjutant General, (ADGPS)
Army Headquarters, New Delhi-110 011
3. The Senior Record Officer,
BEG Records, Kirkee, Pune-3

..... Respondents

For the petitioner : Major K. Ramesh, Advocate

For the respondents : Mr. S.K.Bhattacharyya, Advocate

O R D E R

Per Lt. Gen. K.P.D.Samanta, MEMBER (Administrative)

This original application filed under section 14 of the AFT Act, was initially filed by the applicant seeking premature retirement, before the Principal Bench of Armed Forces Tribunal, New Delhi and registered as 562 of 2011. Subsequently, the said application

was transferred to this Bench of the Tribunal for disposal as the applicant, in the meantime, has been transferred and posted within its territorial jurisdiction and accordingly, it has been re-numbered as TA 29 of 2012.

2. At the relevant time, the applicant was working as Havildar Clerk in the Bengal Engineering Group Centre, Kirkee, Pune. His case is that in 2007 it was detected that his infant son was suffering from 'Congenital Heart Disease' and was in need of regular medical treatment as per advice of the doctor. In the family, there is no other male member and therefore, his presence at home was needed on regular basis. Under such circumstances, he applied for premature discharge from service on completion of about 17 years of service in 2011. However, the authorities did not consider his prayer in its proper perspective and turned it down on the ground that there was a ban imposed on such premature release.

3. His grievance is that while the respondents considered two other cases even during ban period, his case was turned down illegally and arbitrarily. Being aggrieved, he filed a statutory complaint which has not yet been considered. In such circumstances, he had no other alternative than to approach the Tribunal for redressal of his grievance. His prayer is to allow him to go on premature retirement without any further delay. The applicant has placed reliance on two decisions of the Hon'ble Delhi High Court in support of his prayer for premature discharge and submitted that his case is similar, and therefore, his prayer should also be allowed.

4. The respondents have contested the case by filing a reply affidavit. It is stated therein that the applicant was enrolled in the Bombay Engineering Group (BEG), Kirkee on 20.12.1995 as a Clerk (SD) after signing a contract for serving till completion of

terms of engagement. The applicant was posted in the present unit in Kolkata on 20th March 2010 on compassionate medical ground for treatment of his ailing son. He had applied for premature discharge from Army service citing domestic problems vide his application dated 11.6.2011 at Annexure-R3. However, at that point of time there was a ban on premature discharge due to overall deficiency of clerks category in BEG centre vide circular dt. 10.6.11 (annexure-R5). Therefore, the premature discharge application of the applicant could not be considered and this fact was also intimated to the applicant on 6th /13th August 2011 (annexures R 6 & 7). Subsequently, the wife of the applicant also made a prayer for early release of her husband from service, which was also duly considered and replied to by stating that as soon as the ban was lifted, the case of the applicant for premature discharge would be considered immediately, vide letter dt. 4.10.11 (annexure-R8). Being dissatisfied, the applicant made a statutory complaint before the Chief of Army Staff directly on 12.8.11 without routing it through proper channel, thus violating statutory rules. So far as the point of discrimination as raised by the applicant is concerned, it is submitted by the respondents that indeed two individuals were allowed premature discharge, as one was a case of HIV positive and in another case, the daughter of the individual was suffering from Cerebral Palsy and Hemiparesis. It is clarified that the applicant in his application for premature discharge cited only domestic grounds and, therefore, his case could not be considered as an extreme compassionate ground case. That apart, it is stated that there is overall deficiency of clerks in the BEG unit and, therefore, there was restriction on such premature discharge.

5. The applicant has filed a rejoinder from which it appears that his local Unit Commander recommended his case favourably. But still no action has been taken by the authorities.

6. We have heard the Id. advocates for both sides and carefully perused various documents as annexed with the application, reply and rejoinder.

7. Major K. Ramesh, Id. adv. appearing for the applicant has very fervently submitted that the mother of the applicant died in 1997 and thereafter, the father of the applicant was living with him. But recently he (the father) has become blind in both eyes, therefore, the wife of the applicant has to look after her father-in-law and also to take care of the unfortunate child alone as there is no other male member in the family living at Surat (Gujrat), his home town, and the applicant is posted in Kolkata. Considering such extreme hardship, the authorities should be directed to grant premature discharge in favour of the applicant forthwith. He has further pointed out that the applicant has put in more than 17 years of service and will be eligible only for a meager pension and because of family condition, he has no option but to forego full pensionary benefits and go on premature discharge.

8. Mr. S.K.Bhattacharyya, Id. adv. appearing for the respondents has contended that it is not that the case of the applicant was not considered but his case was not found to be a fit case for premature discharge on the face of shortage of clerical staff and the ban that was imposed on such premature release in 2011. But the applicant's wife made a representation by putting pressure on the authorities which was not proper. Moreover, the applicant filed a statutory complaint direct to the COAS without routing it through proper channel as per rules. Therefore, his actions did not befit that of a

disciplined soldier of a disciplined force like the Army. He, however, did not dispute that the applicant's son has been suffering from congenital heart disease. But Mr. Bhattacharyya contended that the disease was detected in 2007 and the applicant waited for long four years and filed his application for premature release in 2011 which is indicative of the fact that there was in fact no problem in the treatment of his son even in his absence. Mr. Bhattacharyya, however, admitted that the applicant's wife was assured by the authorities that as soon as the ban was lifted, the case of the applicant would be considered immediately. It is also admitted by him that the ban has since been lifted and there is no bar in considering his case appropriately.

9. We have given our thoughtful consideration to the facts and rival contentions. It is not disputed that the son of the applicant is suffering from "congenital heart disease" for which the child requires constant medical treatment. However, when the applicant made his application for premature discharge (annexure-R 3), he only mentioned about his domestic problems and not the medical ground of his son. Therefore, the authorities could not consider his case in its proper perspective and rejected the same on the ground of existence of ban on premature release of Clerks (GD). However, when the wife of the applicant made a representation stating all details, the authorities considered the same and assured her that the case of her husband would be reconsidered immediately after the ban was lifted. It is not in dispute that the ban has now been lifted. Therefore, there should be no problem in considering the case now.

10. During the course of argument, although Mr. Bhattacharyya raised certain contentions resisting the claim of the applicant, however, we do not consider the same as much relevant. Firstly, Mr. Bhattacharyya submitted that at the time of enrolment, the

applicant signed a contract to serve for full term and therefore, he cannot resile back and pray for early release. It is true that at the time of enrolment certain terms and conditions are laid down in the offer of appointment and an individual has to accept the same in order to join service. No doubt, it was a contract at that point of time. But once an individual joins service, he is governed by service rules and regulations. In the relevant service rules, there is provision for voluntary retirement or premature discharge on stated grounds. Therefore, the applicant cannot be blamed if he has filed such an application in view of his family condition.

11. Mr. Bhattacharya has next contended that the disease of the son of the applicant was detected in 2007 and the applicant waited for long four years, perhaps, in order to be eligible for pension and thereafter filed such application. Therefore, his case is not an urgent one. We do not find any substance in this contention. Pension is a right of an individual and is not a bounty. When the disease was detected, the applicant had already put in more than 12 years of service, therefore, if he waited for some time to be eligible for minimum pension, he cannot be blamed. Moreover, even at this stage, the applicant will not get his full pension and thus, will still be in disadvantageous position. However, because of his family condition he is ready to forego such full pensionary benefits.

12. Thirdly, Mr. Bhattacharyya submitted that the applicant has filed a statutory complaint directly to the COAS without routing it through proper channel, which is irregular and may call for disciplinary action against him. It is true that the applicant ought not to have submitted such complaint directly to the COAS. But, in his state of mind and possibly, in extreme frustration, in order to get the matter expedited, he may

have done so, but we are sure that the authorities will understand the matter in its proper perspective and will not hold such action of the applicant against him. However, it is submitted by Mr. Bhattacharyya on instruction at the time of hearing that the statutory complaint was not acted upon at all and is not under consideration.

13. We also take note of the fact that the Additional Chief Engineer (ES), HQ, Eastern Command vide his letter dt. 14.12.2012 (R3) addressed to Brig. Bal Raj Singh, Commandant BEG & Centre, has very strongly recommended the case of the applicant for early discharge on compassionate ground. He has specifically stated that due to mental agony the applicant has not been able to perform his duty to his full potential. Although the respondents have taken a ground of paucity of clerks, we are of the view that the applicant being a Havildar Clerk, his early discharge will not prejudice the respondents in any manner. Considering all aspects of the matter, we are of the view that this is a fit case where this Tribunal should intervene and issue direction to the respondents to consider the matter of early discharge of the applicant as an extreme compassionate case.

14. Accordingly, we allow this application and direct the respondents to consider the prayer of the applicant for premature discharge on extreme compassionate ground and issue necessary release order within 60 days from the date of communication of this order. No costs.

15. Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due procedures.

I agree

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE R.N.RAY)
JUDICIAL MEMBER