

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.67 of 2013

Wednesday, the 9th day of October 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Sgt T.Mohanakrishnan 772131-H
Eqpt Asst
No.5 Base Repair Depot
Air Force Station Sullur
Coimbatore-641401.

.. Applicant

By Legal Practitioners:
M/s. Akbar Row, S. Sivashankar
MD Noorulla & N MD Jalal.

vs.

1. Union of India
rep. by the Director
Directorate of Personnel Airmen
Air Head Quarters
Rafi Marg, New Delhi 110 006

2. The Air Officer Commanding
Air Force Record Office
Suboroto Park
New Delhi 110 010

3. The Air officer Commanding
Air Force Station Sulur
Coimbatore-641401

.. Respondents

By Mr. B.Shanthakumar, SPC

O R D E R

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. This application has been filed seeking relief of quashing the order of the second respondent vide Signal No.RRD/833, dated 17th May 2013 and to direct the respondents to consider the request of the applicant for discharge on compassionate grounds before expiry of his regular engagement and to pass any other order as deemed fit. As an interim order, the petitioner requests that pending disposal of this O.A., the respondents be directed to allow him to continue in the present place of posting. During the hearing, the both the petitioner and the respondents stated that the petitioner has moved to Delhi as ordered and hence, the interim relief is unnecessary.

2. The petitioner pleaded that he was enrolled on 1st February 1996 and has served at various Air Force bases in the country. At the time of filing this application, he was posted at No.5 Base Repair Depot,

Air Force Station, Sulur, Coimbatore with effect from 4th April, 2011. He had completed 17 ½ years of service as on 25th June 2013 and had only 2 ½ years of residual service before superannuation. His wife is a Government School Teacher serving at Tirupur and they have one year old child who was born after a prolonged infertility treatment. The petitioner's widowed mother suffering from old age ailments is staying with the petitioner. He would produce medical treatment record of his mother from 2007 to 2013. He got married in 2004 but his wife has not lived with him at any duty station. His wife was transferred to Tirupur from Madurai in the recent past and it would be difficult for her to get a transfer again. His son was born after a prolonged fertility treatment. When the petitioner's wife goes to school, petitioner's mother cannot look after the child as she herself is under treatment. Therefore, petitioner's presence is essential to look after the child. The petitioner received his transfer orders to Delhi vide Air Force Record Office communication dated 27th December 2012 before completion of a normal tenure of five years. He made a representation dated 12th December 2012 for cancellation of his posting order on compassionate/domestic grounds which was turned down by the respondents. Thereafter, the petitioner put forth his request dated 13th March 2013 for immediate pre-mature retirement from his office. This request was turned down vide

respondents' Signal No. AFRO/RRD/833, dated 17th May 2013 stating the reason as, "Grounds does not merit consideration". The petitioner would claim that his local Commander the 2nd respondent had sought reconsideration of the petitioner's case on humanitarian grounds which was not considered. The petitioner would state that the family accommodation provided at Air Force at Sulur would need to be vacated and he has to settle his wife and infant along with his ailing widowed mother in civil area where there is no social security which may lead to unpleasant situation in the prevailing social environment. The grounds advanced by him for pre-mature retirement on compassionate grounds are as per the existing Discharge Policy issued vide Air Force Order 16/2008 which is binding and within the provisions of subject HR Policy of Air Force. The petitioner would quote cases of Sgt P. Sugunan, Sgt Ramesh Ramachandran and Sgt PAK Asaf Pookoya PJI who were granted pre-mature retirement.

3. The respondents in their reply-statement would submit that the petitioner is from Madurai and was on posting at 5 BRD with effect from 4th April 2011 on co-location cum compassionate grounds (infertility) for two years. The couple has since been blessed with a male child on 10th May 2012. Earlier too, the petitioner had availed a

posting at 8 BRD, Avadi on Hard Area choice from September 03 to May 2007. The petitioner had undergone various IT Courses and to fully exploit his expertise, knowledge and skills he has been posted to Office of DG I&S, Delhi with effect from 17th June 2013. While on the strength of 5 BRD, the applicant had applied for discharge on compassionate grounds on 20th March 2013 stating the reasons that his wife is a Government High School Teacher since 16th March 2007 and posted to Tirupur which is 30 kms away from Air Force Station, Sulur. He further stated that his old-aged widowed mother is suffering from various old age ailments and his wife will not be able to look after his mother alone. The petitioner's request for discharge on compassionate grounds was not approved by the competent authority for the reasons 'grounds does not merit consideration'. The request to the second respondent to reconsider the case was not considered in terms of Para-11 of Air Force Order 16 of 2008. The respondents would submit that as laid down in Air Force Order 16 of 2008, discharge from service cannot be claimed as a matter of right. The respondents would further submit that the petitioner had two (2) Home Zone postings and two (2) postings to Delhi. Seeking extended stay on one or the other grounds is not in order and sets a wrong precedence especially when the purpose of the posting on compassionate grounds has been met. The respondents would

submit that the petitioner while seeking posting of co-location/infertility grounds had given an undertaking that he is aware that the postings on compassionate grounds is for two years only and on expiry of the tenure, he would move to any unit to which he stands posted without seeking cancellation/change or deferment of posting. The respondents confirmed that the petitioner reported on posting to Dte of DG I&S on 10th July 2013. They would further submit that the petitioner had not made any effort to get his spouse transferred to her choice of residence as he was predetermined to seek screening of posting and continue to remain in Sulur, failing which he would put up an application for premature discharge. The application for pre-mature discharge was considered within the ambit of guidelines for discharge on compassionate grounds and was rejected in order to safeguard the interest of the organisation in the light of overall manning in the trade of the petitioner, special training and courses attended by him and posting of the petitioner to his hometown on his own request. The cases of three airmen cited by the petitioner are not similar to that of the petitioner. Sergeant P.Sugunan had already completed his initial term of engagement of 20 years, his father had expired, his mother was a chronic patient and the entire burden to look after his family and ancestral property vested on him. Sergeant Ramesh Ramachandran was granted pre-

mature retirement on the grounds that his father was a prolonged cancer patient, his four year son was unable to speak and was undergoing speech therapy and his only sister's husband committed suicide leaving behind his sister and her children to be looked after by Sergeant Ramachandran. Sergeant PAK Asaf Pookoya PJI belonged to Lakshadweep Islands. He had to look after his old aged ailing mother since his brother was unemployed and lived on a different island in Lakshadweep and could not extend any support to his mother. Both his mother and mother-in-law were suffering from old age ailments and both of them were looked after by his wife who had never accompanied her husband during his entire span of service. He was also unable to provide assistance to his family in case of emergency due to lack of connectivity to Lakshadweep Island. In the light of the above, the respondents would request that the O.A. be dismissed being devoid of merit.

4. Having heard both sides, the only point that needs to be determined is, *Whether or not the petitioner deserves to be granted premature retirement?*

5. A careful perusal of the documents indicates that the petitioner was posted to Air Force Station, Sulur on extreme compassionate

grounds for treatment of infertility. This requirement had been made and the couple was blessed with a child. Since it was a posting on compassionate grounds, the rules governing a normal tenure of 4 to 5 years do not apply and the petitioner is expected to move out to a new place of posting on completion of two years. Accordingly, his posting order was issued. Since this posting order was not cancelled, the petitioner has resorted to an application for discharge on compassionate grounds. It appears that the petitioner wishes to continue to stay with his family. Admittedly, he has been well-trained in IT related work and the organisation needs his service for full exploitation of skill and knowledge particularly in IT trade and the respondents claim that there is an acute deficiency of such trained personnel. The medical treatment of the petitioner's mother indicates that she was admitted in hospital from 04 March to 17 March 2008 for probably a surgical procedure. The treatment mentions local anaesthesia. Rest of the record consists of issue of medicines some of which could be for controlling blood pressure. In our view medical condition of the petitioner's mother does not indicate a criticality that needs constant looking after by the petitioner. Petitioner's child is more than a year old now and is being taken care of by his mother while his wife goes to school. Had the request for cancellation of posting, which was the request made

by the petitioner before this request for discharge, both he and his wife would have been out on work and petitioner's mother would have taken care of the child. This argument by the petitioner thus is not convincing.

6. Admittedly, the petitioner was posted to Air Force Station, Sulur for two years only on compassionate grounds vide Air Force Reference No.6091/28, dated 28th February 2011. On completion of two years, he was ordered to be transferred to an establishment in Delhi. Once his request for cancellation of the said posting order was turned down, he applied for discharge on compassionate grounds. The Air Force Order No.16 of 2008 lays down the compassionate grounds on which pre-mature discharge from service may be granted which reads as under:

" 2. Compassionate Grounds: *The cases in which it is clear that undoubted material hardship to airmen or to their dependents is caused by their continuation in service, can be considered of compassionate nature. These can be broadly viewed as:*

- (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.*
- (c) Absence of the airman from his family will cause heavy financial loss of the family.*
- (d) Acute sickness of direct dependents like wife and children of the airman requiring the latter's continuous presence/attendance and care.*
- (e) Unprecedented calamities/developments in the family including death, serious illness/disability of a member of the family who was hitherto supporting the family resulting in a change in the family standing.*
- (f) Other valid personal reasons deserving sympathetic consideration. "*

The petitioner would claim discharge under the provisions of Para 2 (a) and (b) of this order. The application was considered by the

respondents and the same was turned down vide Air Force letter which is as follows:

*" DISCHARGE FROM SERVICE ON COMPASSIONATE GROUNDS AIRMAN (.) DISCHARGE FROM SERVICE I/R/O 772131 SGT MOHANA KRISHNAN T EQPT ASST **NOT APPROVED** (R) **NOT APPROVED** BY COMPETENT AUTHORITY VIDE THEIR LETTER AIR HQ/40602/1623/PA-I MAY/17 FOR REASONS GROUNDS DOES NOT MERIT CONSIDERATION. THE UNIT/INDIVIDUAL CONCERNED MAY BE INFORMED ACCORDINGLY. "*

Therefore, we are inclined to agree with the respondents and are of the view that the parent's illness is not so serious as to endanger her life if the petitioner is not present and presence of the petitioner is not 'absolutely necessary'. We have examined in detail the applications forwarded by three Air Force personnel quoted by the petitioner in his application and find that the three cases are different from that of the petitioner and the petitioner cannot take shelter from these cases. The petitioner has also quoted the case of Sergeant P. Premkumar who was the Applicant No.1 in O.A.No.7 of 2010 before the Kochi Regional Bench of AFT seeking pre-mature

retirement was allowed. In this case, we find that the father of Sergeant P.Premkumar was also an applicant (Applicant No.2) in that O.A. who was suffering from chronic ailments. In this case, the Air Force authorities had responded by stating that there was shortage of manpower, however, it was held that there was no shortage of manpower in the trade to which Sergeant P.Premkumar belonged and accordingly, the application was allowed. The second case cited is O.A.No.23 of 2013 by this Tribunal in O.A.No.23 of 2013 wherein a Naval personnel was allowed to retire prematurely on extreme compassionate grounds. In this case, the petitioner suffered from a disease and was placed in Low Medical Category. His mother was suffering from Cervical Spondylitic Myelopathy and Osteoporosis of entire spine. Considering the merits of that case, the authorities were directed to consider the prayer of the applicant for premature discharge and to issue necessary release order within a period of 60 days. Once again, we find that the circumstances of this case are different from that of the petitioner.

7. The petitioner's Commander Air Commodore S. Choudhary who was the AOC, Air Force, Sullur had recommended petitioner's case for discharge vide his DO letter dated 4th June 2013 which was not considered favourably as the request once turned down can only be

re-considered after one year and the petitioner was posted to DG I&S against an IT vacancy, a trade in which there are critical deficiencies. The petitioner has now just over two years service left before he finally superannuates whereupon he can be with his family and devote his entire time and energy to ensure that his child gets school education as the child would be of school going age at that point of time. Therefore, we are of the view that the pre-mature retirement of the petitioner is not in the best interest of the organisation.

8. In fine, the application is dismissed being devoid of merit. No costs.

Sd/
LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

09.10.2013
(True copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

vs

To:

1.The Director
Directorate of Personnel Airmen
Air Head Quarters
Rafi Marg
New Delhi 110 006

2. The Air Officer Commanding
Air Force Record Office
Suboroto Park
New Delhi 110 010

3. The Air officer Commanding
Air Force Station Sular
Coimbatore-641401

4. M/s. Akbar Row, S. Sivashankar
MD Noorulla & N MD Jalal
Counsel for Petitioner

5. Mr. B. Shanthakumar, SPC
Counsel for respondents

6.OIC, Legal Cell, Air Force, Avadi

7.Library, AFT, Chennai

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Dt: 09.10.2013