

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**O.A.No. 78 of 2019**

Wednesday, the 30th day of March, 2022

CORAM :

**HON'BLE MR. JUSTICE K.HARILAL, MEMBER (J) &
HON'BLE AIR MARSHAL SRK NAIR, PVSM, AVSM, VM M-in-D, MEMBER (A)**

APPLICANT

P.Prabhakaran Nair, Ex-sep/Dvr (MT) 7106331. N,
Aged 70 years, S/o K.Gopalakurup,
S.R.K.Nagar, Palappuram,
Ottapalam, Palakkad District,
Pin - 679103.

(By Adv. Sri. Ravi.K.(Pariyarath)

VERSUS**RESPONDENTS**

1. Union of India, represented by its Secretary
Ministry of Defence,
South Block, New Delhi-110 011.
2. The Chief of Army Staff,
Integrated Head Quarters
of Ministry of Defence (Army),
D.H.Q P.O., New Delhi - 110 011.
3. The OIC Records,
EME Records,
Pin - 900 493,
C/o 56 A.P.O.
4. Principal Controller of Defence Accounts (Pensions)
Office of the P.C.D.A(P),
Draupadi Ghat, Allahabad, U.P-211 014.

(By Adv. Sri. Rajendra Kumar M, Senior Panel Counsel)

O.A No. 78 of 2019**P.Prabhakaran Nair : Applicant****Versus****Union of India and Ors. : Respondents****For Applicant :By Adv.Sri. Ravi K.(Pariyarath)****For Respondents :Sri.Rajendrakumar M.,Sr.Panel Counsel.****CORAM:****HON'BLE MR. JUSTICE K. HARILAL, MEMBER (J)
HON'BLE AIR MARSHAL S. R. K. NAIR, MEMBER (A)****ORDER
30.03.2022**

Ex Sepoy, P.Prabhakaran Nair, No.7106331N, has preferred this Original Application challenging the abrupt discharge, even at the time when the applicant was about to complete qualifying service for pension. Sri.Ravi.K., learned counsel for the applicant submitted that he joined the Indian Army on 16.06.1966 and thereafter served at different places. While serving at Station Workshop EME, Trivandrum, because of compelling domestic

problems, the applicant requested for discharge from service on extreme compassionate grounds (**Annexure A1**). The request for discharge was preferred essentially to look after his mother who was paralyzed and was bed ridden. He further submitted that while preferring the request for discharge, the applicant had completed 12 years of service. There was no action on the applicant's request for about two years and his mother expired in the meanwhile. But thereafter on the pretext of acting on the request for discharge, the applicant was discharged from service under the caption 'own request' wef 22.08.1980 abruptly (**Annexure-A2**). He submitted that the applicant has put 14 years, 02 months and 06 days of service with non-qualifying service of 167 days, by then, hardly few months away to qualify for pensionable service. The applicant was never put to notice or asked whether his requirement to have discharge from service still exists or not before discharging him under the caption 'own request'. The abrupt action worked out substantially against the applicant since after serving the nation for 14 years, 02

months and 06 days, he was sent out without any pensionary benefits.

2. The applicant was unable to challenge this high handed action by approaching higher authorities. Being dejected he was running from pillar to post for survival. The learned counsel for the applicant further stated that on the personal side too he lost his wife and his family life collapsed. The applicant worked as a driver for different private persons, without any permanent job after his abrupt discharge from service. The applicant in the year 2001, represented to the defence pension adalat ventilating his grievance, but his prayer was disallowed stating that the deficiency of qualifying service cannot be condoned **(Annexure-A3)**. Thereafter, belatedly the applicant approached 1st respondent ventilating his grievance **(Annexure-A4)**. But nothing happened thereafter. Further the learned counsel submitted that the organization like the Indian Army, where persons get recruited at their tender age, spend their youth serving the country under extreme

conditions, denied even certain basic rights that the common citizens has, legitimately expect that welfare of serving persons will be taken care of by the authorities. But in the case of this applicant on a closer analysis of the circumstances, it can be seen that his discharge on compassionate grounds was made with mala fide intention, a deliberate act for the reasons best known to the respondents, only to destroy the applicant's future.

3. In view of the above, the applicant has approached this Tribunal to set aside Annexure-A2 by declaring that the applicant's discharge is illegal, making him for the pensionary benefits to the applicant including monthly pension.

4. The respondents represented by Sri. Rajendrakumar M., submitted that the applicant Ex Sepoy Payoor Prabhakaran Nair was enrolled in the Army on 16 June 1966. The applicant while serving with Station Workshop EME, Trivandrum, had submitted an application dated 24 July

1978 for discharge from service on extreme compassionate grounds duly recommended by OC unit and Commanders in the Channel. Accordingly discharge order in respect of the applicant was issued by EME Records letter dated 11 June 1980 after completion of all procedural aspects. Subsequently, the applicant was discharged from service wef 21 August 1980 at his own request on extreme compassionate grounds before fulfilling conditions of his enrolment.

5. As regards service pension, since the applicant was discharged from service at his own request on extreme compassionate grounds after rendering 14 years, 02 months and 06 days of service, out of which the applicant had 167 days of non-qualifying service, which in effect makes his pensionable service only 13 years and 264 days qualifying service, was not granted pension as per Regulation 132 of Pension Regulations for the Army, 1961 (**Annexure R1**). The applicant has also rendered a certificate to this effect along with his application for

discharge from service on compassionate grounds **(Annexure R2).**

6. The applicant, after lapse of 28 years from his discharge, had submitted his grievance on 11 February 2009 to Hon'ble Defence Minister for grant of service pension. This was replied to by EME Records, vide **Annexure R4.** Thereafter, the applicant made a petition dated 25 September 2008 to the Secretary, Ministry of Defence and that too was suitably replied vide **Annexure R5.**

7. The applicant has preferred this OA after very long and unsustainable delay of 38 years. Hence the same is required to be dismissed on the grounds of delay and latches and also in the light of judgments of the Apex Court passed in **C.Jacob Vs. Director of Geology and Mining and another, reported in (2008) 10 SCC 115,** the Hon'ble High Court of Judicature at Allahabad order dated 4th August 2004 in Civil Miscellaneous Writ Petition No.8524 of 2000 titled **"Inderapal Singh Vs. Union of India &**

Others, the Hon'ble AFT (RB) Kochi order dated 18th October 2016 in M.A.No.19 of 2016 and O.A.No. 154 of 2015 titled as **Mathai M.D. Vs. Union of India & Others**, and the Hon'ble AFT (RB) Lucknow has also dismissed MA No.1665/2016 in O.A.No.'nil'/2017 titled "**Ex Sepoy Goverdhan Viswakarma Vs. Union of India & Others** vide the order dated 08th March 2017. The learned counsel for the respondents submitted that in view of the above, the OA may be dismissed as it is devoid of any merit.

8. We heard the learned counsel for the applicant and the learned Senior Government Panel counsel for the respondents. Also, we perused the various documents submitted by the rival counsels in support of their respective claims.

9. It is an undisputed fact that this applicant was enrolled on 16 June 1966 and submitted a request for discharge from service on extreme compassionate grounds on 24 July 1978, based on which the applicant was

discharged from the Indian Army on 21.08.1980. The discharge was at his own request on extreme compassionate grounds and before fulfilling the conditions of his enrolment under Item III(iv) of table annexed to Rule 13(3) of Army Rules 1954. The learned counsel for the applicant has contended that while it is the fact that the applicant applied for discharge on extreme compassionate grounds, there was no action taken by the applicant for about 02 years. In the meantime, his mother who was seriously ill at home and whom he intended to support, passed away. Abruptly, the applicant was discharged from service on 22.08.1980 without checking if the requirement to be discharged from service still exists or not. He further submitted that this abrupt action was done by the respondents when he had completed 14 years, 02 months and 06 days of service, a few months short of qualifying service of pensionary benefits. The learned counsel for the applicant has alleged that his discharge on compassionate grounds in an abrupt manner was a deliberate act with mala fide intention. This needs interference in the matter.

10. Per contra, the learned Central Government Counsel for the respondents stated that the applicant had indeed requested for discharge from service on extreme compassionate grounds and after completing all procedural aspects the applicant was discharged from service. He further advanced his arguments stating that the applicant had rendered 14 years, 02 months and 06 days of service, but had 167 days of non-qualifying service, resulting in him having effectively rendered only 13 years and 264 days of qualifying service. The learned Central Govt. Counsel drew our attention to Annexure R2, a certificate rendered by the applicant, which says that he is willing to go on discharge from service on compassionate grounds and that he fully understand that he has not completed 15 years service and as such will not be eligible for pension.

11. To address the grievance of the applicant, what needs to be determined is, whether the discharge of the applicant before completing qualifying service for pension was arbitrary, illegal and with mala fide intentions?

12. We have analysed the case in its entirety, and it is clearly evidenced that the applicant had put in his request for discharge on extreme compassionate grounds because of his mother's illness. There has been a delay in processing and granting discharge to the applicant. However, in spite of the fact that his mother unfortunately passed away before his date of discharge, the applicant has made no representation whatsoever to cancel his request for discharge. If that be so, we find no fault with the third respondent in issuing the discharge order. Also, we have seen that the applicant has rendered a certificate in which he accepts that he needs to be discharged on extreme compassionate grounds and that he will be discharged without service pension.

13. In view of the clear evidences that the applicant had applied for discharge on extreme compassionate grounds and that he made no representation whatsoever thereafter to cancel his request for discharge from service, we find no irregularity in the decision of the respondents to discharge

him from service. The applicant was very well aware that he is being discharged from service on own request with deficiency in qualifying service for pensionary benefits.

14. We considered this OA, which was filed with an inordinate and unexplainable delay of almost 38 years, in the interest of delivering justice to the applicant. But we find no merit in the allegation that his abrupt discharge from the Indian Army was arbitrary, illegal and with mala fide intentions. Therefore, we find no reason to interfere in the discharge of the applicant. Consequently, the applicant is ineligible for service pension owing to inadequate qualifying service.

15. The O.A. stands dismissed.

16. No order as to costs.

Sd/-
JUSTICE K. HARILAL
MEMBER (J)

Sd/-
AIR MARSHAL S. R. K. NAIR
MEMBER (A)

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(true copy)