

# **ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O A No.33 OF 2013

FRIDAY, THE 5TH DAY OF APRIL, 2013/ 15TH CHAITHRA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)  
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

## **APPLICANT:**

LIEUTENANT COLONEL SURESHKUMAR.A., VSM,  
AGED 50 YEARS, PERSONAL No.IC 48933 M,  
S/O.LATE N. ACHUTHA KURUP,  
ADDITIONAL CHIEF ENGINEER (LIAISON),  
HQ TRAINING COMMAND (AIR FORCE),  
J.C. NAGAR P.O., HEBBAL, BANGALORE – 560 006.

BY ADV. SRI. V.K. SATHYANATHAN

**versus**

## **RESPONDENTS:**

1. UNION OF INDIA, REPRESENTED BY ITS  
SECRETARY, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI - 11.
2. THE CHIEF OF ARMY STAFF, COAS'S SECRETARIAT,  
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY),  
DHQ P.O., NEW DELHI 110011.
3. THE MILITARY SECRETARY, M.S. BRANCH,  
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY),  
DHQ P.O., NEW DELHI 110011.
4. THE COMMAND WORKS OFFICER,  
HQ TRAINING COMMAND (AIR FORCE),  
J.C. NAGAR P.O., HEBBAL, BANGALORE – 560 006

R1 TO R4 BY ADV. SRI.S. KRISHNAMOORTHY, SR. PANEL COUNSEL

## **ORDER**

### **Shrikant Tripathi, Member (J):**

1. Heard Mr.V.K.Sathyanathan for the applicant and  
Mr.S.Krishnamoorthy for the respondents and perused the

record.

2. The applicant, Lt.Col.Sureshkumar.A., Personal No.IC 48933 M, has challenged the impugned order dated 26.2.2013 (Annexure A8) whereby his request for premature retirement with effect from 31.7.2013 was denied, by making a direction that he will be relieved of his duties as early as possible, but not later than 15.4.2013 (AN). The applicant has further prayed for a direction to the respondents to implement the premature retirement with effect from 31.7.2013 instead of 15.4.2013.

3. The facts are almost admitted. The applicant holds the rank of Lieutenant Colonel in the Indian Army and is presently working as the Additional Chief Engineer (Liaison) in the Headquarters Training Command of Indian Air Force, Bangalore with effect from 1.8.2011. According to him, he has an unblemished service career with various commendations and Vishist Seva Medal. He submitted the application (Annexure A1) dated 2.02.2012, for premature retirement on various grounds disclosed in the application. The letter was forwarded by his superiors with recommendations. Accordingly, the respondents gave due consideration to the

request of the applicant for premature retirement and allowed the same vide letter No.33001/3275/192/MSPR dated 25.9.2012 (Annexure A2), whereby it was directed that the applicant will be relieved of his duties as early as possible but not later than 23.12.2012 (AN). It is also significant to mention that the applicant made another request for extension of the date of premature retirement from 23.12.2012 to 31.3.2013 vide his letter dated 16.10.2012 (Annexure A4), which was recommended by his superiors and also by the Air Vice Marshal, Mr.M.K.Malik. The respondents gave due consideration to the modified request of the applicant and communicated the decision to him vide letter No.33001/3275/MSPR dated 23.11.2012 (Annexure A5). Accordingly, the applicant was allowed to continue in service up to 31.3.2013, but the applicant did not feel satisfied with the extension so granted. Hence, he moved the application dated 28.1.2013 (Annexure A7/3) for extension of the date of premature retirement from 31.3.2013 to 31.7.2013. The request dated 28.1.2013 was again forwarded by his superiors with positive recommendations. The respondents, after giving due consideration to the said request, partly allowed the same

vide letter No.33001/3275/MSPR dated 26.2.2013 (Annexure A8). By that letter the respondents required that the applicant will be relieved of his duties as early as possible, but not later than 15.4.2013. The said decision has been impugned in the present O.A.

4. Mr.V.K.Sathyanathan submitted that, no doubt, the applicant moved the application for premature retirement due to his personal problems, but apart from the personal problems, there was housing problem to lodge the applicant and his family members after retirement. Therefore, he requested for extension of the date of premature retirement from time to time. The house allotted to the applicant by the Army Welfare Housing Organisation is not ready for occupation, therefore, in the event of the applicant's retirement on 15.4.2013, he will be on road. So, he may be granted time up to 31.7.2013 to voluntarily retire, so that the house is completed within three months from the date of retirement.

5. Mr.Sathyanathan then submitted that the request for extension of the date of premature retirement could not be denied as there had been genuineness of the grounds set forth

by the applicant. He could modify the request for premature retirement with effect from some other date before its implementation. Therefore, his request to continue in service up to 31.7.2013 was bona fide and genuine, particularly, in view of the housing problem of the applicant and his family.

6. Mr. Sathyanathan lastly submitted that in the Air Force/Army, Officer/PBOR etc. are not permitted to choose any particular date for voluntary retirement, therefore, the applicant had no option to seek the discharge with effect from a particular date, but when his request was accepted, he got the opportunity to make a further request to implement the voluntary retirement by a particular date. Therefore, the respondents were not justified in denying the extension.

7. Mr.Krishnamoorthy, learned counsel for the respondents, on the other hand, submitted that the applicant's request for premature discharge has already been accepted, therefore, there was no question to modify the same. The applicant's first request for premature retirement was initially decided to be implemented not later than with effect from

23.12.2012. But on his own request to extend the date of premature retirement from 23.12.2012 to 31.3.2013, he was permitted to continue in service unto the requested date, i.e. 31.3.2013, and then on the basis of subsequent request upto 15.4.2013, therefore, he could not be permitted to move another application for extending the date from 15.4.2013 to 31.7.2013. Once the request for premature retirement was accepted and a final date was specified for giving effect to the retirement, it could not be extended again and again on the request of the applicant. But, keeping in view his problems, extension of date of premature retirement was granted twice. Mr.Krishnamoorthy, next submitted that in case the applicant was permitted to serve up to 31.7.2013, there was no guarantee that he would not move another application for extension after 31.7.2013.

8. So far as the submission that the applicant had a right to request the extension of the date of commencement of the voluntary retirement on the ground that it has not yet been made effective is concerned, extension request cannot be equated with a request to withdraw the prayer for the

voluntary retirement. The applicant is still insisting for his voluntary retirement and is not willing to withdraw the same. He, however, prays for a direction to the respondents to extend the date of the commencement of the premature retirement. Mr.Sathyanathan submitted that such request was tenable in view of the decision of the Apex Court in the matter of ***Union of India and Anr. vs. Wing Commander T.Parthasarathy***, decided on 10.11.2000. In our view, the said decision does not appear to be relevant in the present matter. In the matter of ***T.Parthasarathy*** (supra), the respondents therein applied for premature retirement from service with effect from 31.8.1986. He then requested for certain modification, but lastly he moved an application seeking to withdraw the application for premature retirement much before its acceptance. The Apex Court, in such situation, held that the respondent therein could withdraw the request for voluntary retirement before its acceptance. The Apex Court further held that the request for premature retirement which require the acceptance of the competent/appropriate authority will not be complete till accepted by such authority and the request could be withdrawn before it becomes so complete. This principle

was laid down on the basis of a Constitution Bench decision of the Apex Court in the matter of ***Union of India vs. Gopal Chandra Misra and Others*** (AIR 1978 SC 694). The Constitution Bench in that matter held that a prospective resignation can be withdrawn at any time before it becomes effective. It was further held that resignation becomes effective when it operates to terminate the employment or the office tenure of the resignor. However, that proposition was held to be general in nature, subject to absence of a contrary legal, contractual or constitutional provision. The observations made by the Constitution Bench in para 51 of the judgment being relevant, are reproduced as follows:

*"51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is*



*a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal."*

9. The aforesaid decisions are hardly of any help to the applicant. The applicant does not press for withdrawal of the request for premature retirement. Even during the course of hearing, the learned counsel for the applicant made a statement at the Bar that the applicant was not willing to withdraw the request for premature discharge. If the applicant had such an intention, and wanted to withdraw the request for premature discharge, in that eventuality, in view of the aforesaid decisions, he could do so before the effective date, i.e. 15.4.2013, but when the applicant is still willing to

move on premature retirement and does not intend to withdraw the request for premature retirement, the aforesaid decisions cannot be applied for extending the date of premature retirement from 15.4.2013 to 31.7.2013 or to some other date. When the applicant's second request to extend the date up to 31.3.2013 was allowed by the respondents and even his next request was partly allowed to continue in service upto 15.4.2013, we do not find any justification to issue a mandatory direction to the respondents to extend the date of voluntary retirement as per the prayer of the applicant. A mandatory direction could only be issued if the applicant has a legal right to claim the extension, particularly when two extensions as prayed by the applicant have already been granted, and more so, the grant of extension is a discretionary matter, which has been applied in a just and proper manner and there does not appear to be any arbitrary or whimsical approach on the part of the respondents in refusing to grant further extension.

10. The housing problem raised by the applicant cannot be taken as a valid ground to interfere with the decision taken by the respondents. This problem ordinarily happens in every

case of retirement, where the person retiring does not possess any suitable accommodation. The retiring person is provided with several retiral monetary benefits besides pension etc., therefore, he can hire suitable accommodation on rent. More so, according to the applicant himself, he was being considered for civil employment befitting to his qualifications and experience, and he did mention this fact as one of the grounds for the premature discharge. We were told by the learned counsel for the parties that three month's time is ordinarily granted to the retiring person to vacate the government accommodation after retirement. But none of them could show any relevant rule or order on the point. According to our own experience, ordinarily one month is granted in every case for vacating the government accommodation after retirement. Be that as it may, no irreparable injury or hardship will be caused to the applicant, if the premature retirement is implemented with effect from 15.4.2013. However, we direct the respondents to follow the rules/orders regarding applicant's continuance in the occupation of the government accommodation after the premature retirement.

11. In view of the aforesaid, the applicant has only two options. Firstly, to accept the voluntary retirement with effect from the date lastly allowed by the respondents and secondly, to withdraw the voluntary retirement before the effective date, i.e. 15.4.2013. But, he cannot be permitted to claim the extension as a matter of right.

12. We, therefore, do not find any merit in the Original Application to admit the same for hearing. Accordingly, the OA is dismissed summarily at the stage of admission.

13. No costs.

14. Issue free copy of this order to both side.

Sd/-  
LT. GEN. THOMAS MATHEW,  
MEMBER (A)

Sd/-  
JUSTICE SHRIKANT TRIPATHI,  
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary