

(20) 06 AFT CK 0028

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 577 Of 2020, Miscellaneous Application No. 767 Of 2020

Neeraj Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 22, 0020

Hon'ble Judges: Rajendra Menon, J; Philip Campose, Member (A)

Bench: Division Bench

Advocate: Mohan Kumar, K.S. Bhati

Final Decision: Disposed Of

Judgement

M.A. No. 767 of 2020:

1. Vide this application, the respondents seek exemption from filing notarized affidavit along with the short affidavit. In view of the averments made, the application is allowed. Short affidavit filed by the respondents is taken on record. M.A. No. 767 of 2020 stands disposed of accordingly.

O.A. No. 577 of 2020:

The applicant, who is presently holding the rank of 'Lieutenant Colonel (Lt Col)' and is posted in the Armed Forces Dental Centre, New Delhi, has invoked jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 seeking extension with regard to implementation of a posting order issued on 06.03.2020, whereby he has been directed to report for duty at the Military Dental Centre Jalandhar (Punjab).

2. The grievance of the applicant is two-fold. It is stated by the applicant that his wife was diagnosed to be suffering from "Pleural Effusion" of the right side with collapse of lungs (unusual amount of fluid around lungs) at the Army Hospital (Research and Referral), New Delhi and advised certain

treatment. It is stated that in view of the condition of his wife and the prevailing situation that has arisen in the entire country due to COVID-19, movement of the applicant with his wife to Punjab may be deferred till December, 2020. That apart, claiming that due to education of his children also, his movement may be deferred, this application was filed.

3. Considering the prevailing situation and, in particular, the ailment of the applicant's wife, we had directed the respondents to maintain status quo in the matter and we requested the respondents if the request of the applicant for extension can be considered sympathetically. However, the respondents have now filed a short counter affidavit explaining the position. They have also indicated various factors in the counter affidavit, which prevent them from granting extension of time to the applicant and it is averred that the extension cannot be granted.

4. We have bestowed our consideration on the various aspects of the matter that were canvassed before us and that on the ground of children's education and all other conditions mentioned in the application, except the ailment of the applicant's wife, no further indulgence can be made on any ground. It is only because of the extraordinary situation which has been created due to COVID-19 pandemic and the typical ailment of the applicant's wife supported by a medical evidence which clearly shows that she is suffering from collapse of lungs i.e. Pleural Effusion of the right side, which is the unusual accumulation of fluid around lungs and this requires specialised treatment and care.

5. Even though the respondents represented by Shri Bhati, learned Sr. CGSC vehemently argued that the applicant's wife was only taken for a check-up to the hospital and she was never admitted and her condition was not that serious, we can take judicial notice of the fact that in this period of pandemic, admission of a patient to the hospital is not advisable and the medical documents available on record do clearly show that the applicant's wife is suffering from the ailment as has been indicated hereinabove and it is in the interest of justice that he be granted some extension to facilitate in getting his wife treated, cured and thereafter move to the new place of posting in Punjab, as her shifting at this point of time may be detrimental to her.

6. Having considered various aspects of the matter, we find that on the ground of his wife's ailment, the applicant should be granted some more time

to join at the new place of posting. We are passing the aforesaid directions conscious of various facts which have been brought to our notice, but only

because the prevailing situation warrants the applicant to have an opportunity to facilitate the treatment of his wife, who is suffering from serious

ailment of the lungs, we are constrained to pass the following order :

(i) Accordingly, we direct that the applicant be granted extension for a period of thirty days from the date he is ordered for joining as directed by the

respondents at the new place of posting. After this period, the applicant shall move to the new place of posting and shall not seek any further

extension, until and unless any peculiar or compelling circumstances so require.

(ii) As far as all other grounds canvassed in the application are concerned, we see no reason to make any indulgence in the matter on such considerations.

7. It is made clear that we are leaving all other legal submissions canvassed before us, particularly with regard to the jurisdiction of the Tribunal to

entertain the present OA, open to be considered in an appropriate case as and when required. In the present case, looking to the prevailing situation,

due to COVID-19, ailment of applicant's wife and her medical conditions, we are constrained to make our indulgence into the matter with regard to

the limited/restricted proceedings now being held in various Courts and Tribunals, we deem it appropriate to invoke our jurisdiction and pass the

aforesaid order without entering into any question, but purely on humanitarian and sympathetic consideration.

8. With the aforesaid, OA stands disposed of.

No order as to costs.