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Hay Pawar Manoj Ravindra Vs Union of India & Ors

OA 345 Of 2021

Court: Armed Forces Tribunal Principal Bench, New Delhi

Date of Decision: July 4, 2022

Citation: (2022) 07 AFT CK 0003

Hon'ble Judges: Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench: Division Bench

Advocate: Archana Ramesh, Rajesh Kumar Das

Final Decision: Dismissed

Judgement

1. Invoking the jurisdiction of this Tribunal under SectionÃ, 14 of the ArmedÃ, Forces Tribunal Act,Ã, the applicant hasÃ, prayedÃ, for the following

reliefs.

(a) Ã, IssueÃ, directions to theÃ, Respondents to quash andÃ, set aside the Army HQ, ADGMP Letter datedl 7 Nov 2020 read with AMC Records letter dated 02Ã,

Dec 2020 assailed as the Impugned Orders in the OriginalÃ, Application and placed as Annexure A-1 (Colly) Ã, being arbitrary and whimsical on the face of it;

(b) Ã, IssueÃ, directions to theÃ, Respondents toÃ, allowÃ, theÃ, PMR Applications of the Applicant soÃ, that the Applicant could be discharged from military

service with immediate effect based on the extreme genuine circumstances as discussed inÃ, theÃ, Original ApplicationÃ, toÃ, meetÃ, theÃ, endsÃ, of equity, justice

and fair play;

(c) Ã, Pass such other and further orders to the Respondents by way ofÃ, an adequate exemplary compensation in the attendant genuine circumstances of the case,

to meet the ends of justice.

2. The applicant is aggrieved by the impugned order issued by the Competent Authority on 17th November, 2020 vide Annexure A-1 whereby the

request of the applicant for premature retirement has not been considered.

3. Ã, The facts in nutshell indicate that the Applicant was enrolled in service on 18thMay,Ã, 2004 in the ArmyÃ, MedicalÃ, Corps andÃ, has now

Ã, put in Ã, more than 16 years of service. Ã, Presently, the applicantÃ, isÃ, postedÃ, atÃ, MilitaryÃ, Hospital,Ã, PulgaonÃ, asÃ, a Havildar

(Laboratory Assistant). It Ã, is Ã, the Ã, grievance Ã, of the applicant that thoughÃ, on account of various domestic and family problems, the applicant

had applied for premature retirement from the Army Medical Corps right in the year 2018, till date the Competent Authority has not consideredÃ, his

claim.Ã, It is the case ofÃ, theÃ, applicantÃ, thatÃ, on 19thÃ, November, 2018 vide AnnexureÃ, A-2Ã, heÃ, hasÃ, forwardedÃ, aÃ, complaintÃ,

toÃ, the District Collector, Jalgaon (Maharashtra) seeking protection to his familyÃ, membersÃ, living in hisÃ, houseÃ, from miscreants. ItÃ, isÃ,

the case of the applicant that he was, at that point of time, serving in Military Hospital, AvadiÃ, andÃ, he was aÃ, resident of Plot No - 10A,

KrushiÃ, Nagar,Ã, DhekuÃ, road, Tehsil andÃ, PS-Amalner,Ã, Distt-Jalgaon (Maharashtra).Ã, His family consists of his agedÃ, parents,Ã, wife

and daughterÃ, and hisÃ, youngerÃ, brother, whoÃ, wasÃ, preparingÃ, forÃ, PG after completing Ã, his MBBS course at Delhi, which is about

1500Ã, kmsÃ, awayÃ, fromÃ, theÃ, nativeÃ, placeÃ, of theÃ, applicant. ItÃ, was pointedÃ, outÃ, inÃ, theÃ, complaintÃ, toÃ, theÃ, DistrictÃ,

CollectorÃ, thatÃ, his neighbour named Smt. VP Saner had illegally constructed a house/compoundÃ, wallÃ, on theÃ, back side of the applicant's

house blocking the natural air and light to his house. A complaint was, therefore, filed byÃ, the applicantÃ, againstÃ, this lady beforeÃ, the Municipal

Corporation, Amalner and they sent aÃ, notice to her to removeÃ, theÃ, obstruction.Ã, ItÃ, isÃ, saidÃ, thatÃ, sinceÃ, thisÃ, neighbouring lady'sÃ,

sonÃ, and herÃ, brotherÃ, wereÃ, harassing and ill-treating his parents by using unparliamentary language, they indulged in rudeÃ, behaviourÃ, inÃ,

front of applicant'sÃ, wifeÃ, andÃ, hisÃ, mother and threatened to kill his family. On 20th November 2018, though the Commanding OfficerÃ, ofÃ,

the applicant had also requested the District CollectorÃ, to protectÃ, the house ofÃ, the applicantÃ, from miscreants and take necessary measures to

safeguard his family and aged parents, no action has been taken. Since Ã, the harassmentÃ, continued,Ã, theÃ, applicantÃ, soughtÃ, premature

retirement from Ã, service Ã, and Ã, the Ã, application Ã, for Ã, premature retirement datedÃ, 1st July, 2019 filedÃ, is at page 21.Ã, It is pointed outÃ,

inÃ, thisÃ, applicationÃ, that theÃ, earlier applicationÃ, submittedÃ, on z April 2018 was also not considered. The learned counsel took us through

various documents andÃ, material available onÃ, record, theÃ, strong recommendationsÃ, madeÃ, byÃ, theÃ, applicant'sÃ, superior officers Ã, for

Ã, his premature retirement Ã, and the Ã, fact Ã, about applicant'sÃ, father'sÃ, deathÃ, inÃ, betweenÃ, asÃ, isÃ, evidentÃ, fromÃ, death certificate

(Annexure Ã, A-4) on 27th September, 2019. The learned Ã, counsel Ã, also Ã, submitted Ã, about the Ã, recommendations madeÃ, by theÃ,

Competent Authority andÃ, theÃ, CommandingÃ, Officer and inabilityÃ, ofÃ, the respondentsÃ, inÃ, considering hisÃ, application properly andÃ,

passing an order.Ã, Referring to the impugned order, learnedÃ, counselÃ, argues that the matter relatingÃ, to the applicant hadÃ, beenÃ, deferredÃ,

without takingÃ, anyÃ, actionÃ, onÃ, theÃ, groundÃ, of want of manpower,Ã, etc.,Ã, whereas onÃ, 1st September,Ã, 2020 three officers in the

rank of Lt Col Ã, had Ã, been granted Ã, premature retirement in Base Hospital, Lucknow, Military Hospital, Bhuj and Air Force Hospital, Bangalore.

Similarly, one Zeenath Mary, Lt Col (TS) in MH, Avadi unit was also granted premature retirement on 10th December, 2020. In spite of all these

factors contending that applicant's claim, which is based on genuine family problems has not been considered and the matter has been deferred from

time to time. The learned counsel also argued that in somewhat identical Ã, situation, Ã, a Ã, Coordinate Ã, Bench Ã, of this Tribunal Ã, has granted

premature retirement and it is a fit case where the claim ofÃ, the applicant could also be considered. In support of his contentions, he placed reliance

on the following decisions:

(i) Ã, Union of India and othersÃ, v.Ã, R.P.Ã, Yadav (2000 AIR SCW 2370);

(ii) Ã, Cp/. Abhishek Joshi v. Union of India & Ors. (OA No. 2309/2021 decided by AFT (PB) on 17.11.2021.

(iii) Hav/STA Mukesh Kumar v. Union of India & Ors. (OA No. 517/2021decided by AFT RB (Lucknow) on 03.12.2021

(iv) MajÃ, PiyushÃ, BansalÃ, v. Union of IndiaÃ, &Ã, Ors. Ã, (OA No.1876/2020 decided by AFT (PB) on 18.02.2022.

(v) Ã, Cpl Shaju M v. Ã, Union ofÃ, India & Ors. Ã, (OA No. 1963/2017 decided by AFT (PB) on 23.02. 2022.

4. Ã, The Respondents have filed a detailed counter affidavit and it is their case inÃ, Para 8(a) andÃ, (b) of the counter affidavit that discharge on

compassionate groundÃ, is not aÃ, matter of right and in a routine manner Ã, applications Ã, are Ã, filed Ã, for Ã, premature retirement,Ã, InÃ, Para 9,

10Ã, and 11Ã, of theÃ, counterÃ, affidavit,Ã, the following submissions are made to say that premature retirement cannot be granted.

Ã,

(9) It is evident from the preceding paragraphs that, the applicantÃ, hadÃ, submitted the applications thrice Ã, for premature Ã, retirement Ã, from Ã, service Ã, on

compassionate grounds of routine nature like demise of father,Ã, lookingÃ, after old aged mother,Ã, court case pertaining Ã, to property dispute Ã, and case Ã, filed

at municipal corporation etc. The same were examined in detail in accordance with existing policies in vogue by Army Medical Corps Record Office and not

agreed to byÃ, theÃ, competent authority as per theÃ, merit of the case and alarming deficiency in the trade to which the applicant belongs.

(10) AsÃ, perÃ, norms, theÃ, premature retirement from service at own request is being dealt with as per guidelines issued Ã, by Ã, integrated Headquarters of

Ministry of Defence (Army).Ã, InÃ, the past,Ã, it has been noticedÃ, thatÃ, theÃ, casesÃ, of prematureÃ, retirement has gradually increased and hence, only

genuine cases are being recommended after verifyingÃ, the merits of the cases and Corps manpower state.Ã, With respect to the reasonsÃ, mentionedÃ, byÃ, theÃ,

applicantÃ, inÃ, his applications, regarding medical condition of Ã, the applicant's mother, he can provide better medical care to herÃ, inÃ, serviceÃ, hospitals

wereverÃ, heÃ, isÃ, posted. Further, regarding cases pertaining to property dispute and social dispute filed at Honble Court and municipal corporations

respectively, he can be granted leave by military authorities in case his physical presence is mandated during the respective hearings. InÃ, addition,Ã, theÃ,

individual hasÃ, beenÃ, granted compassionateÃ, posting to Military Hospital Pulgaon nearbyÃ, toÃ, hisÃ, hometownÃ, JalgaonÃ, whichÃ, is approximatelyÃ,

350Ã, kmÃ, fromÃ, PulgaonÃ, andÃ, hence,Ã, he mayÃ, alsoÃ, exerciseÃ, theÃ, optionÃ, toÃ, followÃ, upÃ, withÃ, the ongoing Ã, cases accordingly Ã, while

Ã, being posted to MilitaryÃ, Hospital Pulgaon.Ã, Therefore,Ã, premature retirement will serve Ã, no Ã, specific purpose Ã, to Ã, the applicant.

(11) It Ã, is Ã, pertinent Ã, to Ã, mention Ã, that, Ã, Army Medical Corps is meant for providing medical cover to all serving personnel of Indian Armed Forces and

their dependents. Ã, Every personnel serving in the Army Medical Corps inÃ, various trades are assigned important duties in accordance Ã, with Ã, their trades.

Here,Ã, the applicant is a servingÃ, Laboratory Assistant and has an important role to play in service hospitals i.e. generationÃ, ofÃ, variousÃ, laboratoryÃ,

related reports of Ã, the patients which requires specific qualification and competence on the subject. As such Laboratory AssistantÃ, categoryÃ, isÃ, grosslyÃ,

deficientÃ, in theÃ, Corps. The applicant being aÃ, Non-Commissioned Officer and anÃ, experienced person,Ã, hisÃ, servicesÃ, are being considered inescapable

in the organization till he completed hisÃ, terms of engagement i.e.Ã, 24Ã, years of colour service.Ã, Deficiency of even a single Laboratory AssistantÃ, inÃ, anyÃ,

of theÃ, serviceÃ, hospitalsÃ, hasÃ, direct bearing on patient care and clientele satisfaction, whichÃ, isÃ, very important and crucial in saving life an limb of a

patient.

5. Ã, It is argued Ã, that the applicant has earned Ã, maximum benefitsÃ, outÃ, of theÃ, service,Ã, heÃ, hasÃ, completedÃ, hisÃ, pensionable

service, Ã, availedÃ, deputationÃ, toÃ, UnitedÃ, Nation'sÃ, MissionÃ, at Congo from September 2014 to June 2015 and earned substantial

monetaryÃ, benefitsÃ, out of thisÃ, service.Ã, HeÃ, wasÃ, promotedÃ, to the rankÃ, ofÃ, HavildarÃ, and hisÃ, termÃ, ofÃ, engagementÃ,

increasedÃ, from 20 years to 24 years of colour service and taking into account all his family problemsÃ, stated in AnnexureÃ, R-10Ã, on 25th

February, 2020 he was posted to Military Hospital Pulgaon in District Maharashtra very near to his home town so that he could resolveÃ, his family

problems and facilities wereÃ, beingÃ, granted to theÃ, applicant toÃ, resolveÃ, hisÃ, familyÃ, disputesÃ, pendingÃ, inÃ, various Courts. The

Respondents also referred to the administrative necessity indicated in the matter as contended in the note sheet atÃ, PageÃ, No. 91Ã, toÃ, showÃ,

that grant of prematureÃ, retirement at this stage to the applicant is not possible and theÃ, following administrativeÃ, reasonsÃ, areÃ, indicatedÃ,

inÃ, theÃ, noteÃ, sheet atÃ, page Ã, 91. It is indicated that a total ofÃ, 51 Ã, premature retirement applications have been receivedÃ, through

properÃ, channelÃ, from various individuals working in the Corps. The grounds for seeking premature retirement have been thoroughly scrutinized

and it is foundÃ, thatÃ, itÃ, isÃ, aÃ, routine,Ã, domestic,Ã, health, landÃ, disputeÃ, and children education related problems. However, in the Corps

there is an acute shortage ofÃ, technical hands, Ã, particularly in the pharmaÃ, andÃ, department of medicineÃ, where thereÃ, isÃ, more than 20%

deficit and in technical trade the deficit is more thanÃ, 10%. Furthermore, during the current year, the sanctionedÃ, manpower has beenÃ,

reduced.Ã, No recruitment process has beenÃ, undertaken due to Covid-19 pandemic and on account of various administrativeÃ, reasons,Ã, theÃ,

applicationsÃ, are Ã, beingÃ, deferred.Ã, A detailedÃ, note sheet from page 91 to 94 has been filed indicating the administrative reasons which

prevented the respondents fromÃ, grantingÃ, prematureÃ, retirementÃ, toÃ, theÃ, applicant. Accordingly,Ã, itÃ, is theÃ, caseÃ, of theÃ,

respondentsÃ, thatÃ, inÃ, the facts and circumstances of the case, there is no illegality or irregularity in notÃ, granting prematureÃ, retirementÃ,

toÃ, theÃ, applicantÃ, atÃ, this stage.

6. Ã, We have heard learned counsel for the parties and perused the records.

7. Ã, While enrolling a person to the service in the Forces, certain terms andÃ, conditions areÃ, laidÃ, downÃ, in theÃ, offer of appointment and the

individual joins the service in the Forces after accepting the said terms and conditions. An individual who joins the Forces is governed by the terms and

conditions of appointment and it is a well-settled principle of law that grant of premature retirement is not aÃ, right but it is done on the basis of

various circumstances prevailing in the environment. The requirements of service are of paramount importance and grant of premature retirement is

normallyÃ, takingÃ, intoÃ, accountÃ, variousÃ, administrativeÃ, and executiveÃ, reasons. InÃ, R.PÃ, YadavÃ, (supra),Ã, whileÃ, consideringÃ,

the right of anÃ, employee toÃ, seekÃ, prematureÃ, retirement,Ã, theÃ, Hon'ble Supreme Court has made the following observations:

An incidentalÃ, question thatÃ, arisesÃ, is whetherÃ, the claimÃ, madeÃ, byÃ, theÃ, respondentsÃ, toÃ, beÃ, released fromÃ, the forceÃ, asÃ, of right isÃ, inÃ,

keepingÃ, withÃ, theÃ, requirementsÃ, of strict Ã, disciplineÃ, of theÃ, NavalÃ, Service. InÃ, ourÃ, considered view the answer to the question has to be in the

negative. To vest a right in a member of the Naval Force to walk out fromÃ, theÃ, serviceÃ, at any point of timeÃ, accordinglyÃ, toÃ, his sweet will is a concept

abhorrent to the high standard of disciplineÃ, expected of membersÃ, of defenceÃ, services. The consequence in accepting such contention raised on behalf of the

respondents will lead to disastrous results touching upon security of the nation. It has to be borne in mind that members of the defence services including the Navy

have theÃ, proudÃ, privilegeÃ, of beingÃ, entrustedÃ, withÃ, theÃ, taskÃ, of security of theÃ, Nation.Ã, It is aÃ, privilegeÃ, whichÃ, comesÃ, the way ofÃ, onlyÃ,

selectedÃ, persons who have succeededÃ, in enteringÃ, the service and have maintained high standards of efficiency. Ã, It is also clear from Ã, the provisions in

Regulations like Regulation 217 and 218 that persons who inÃ, theÃ, opinionÃ, of the prescribed authority,Ã, are not found permanentlyÃ, firÃ, forÃ, anyÃ, form

ofÃ, navalÃ, serviceÃ, mayÃ, be terminated and discharged fromÃ, the service.Ã, The position isÃ, clearÃ, thatÃ, aÃ, sailorÃ, isÃ, entitledÃ, toÃ, seekÃ,

dischargeÃ, from serviceÃ, atÃ, theÃ, end of theÃ, periodÃ, forÃ, whichÃ, heÃ, hasÃ, been engaged and evenÃ, this right is subject toÃ, the exceptions provided in

Ã, the Ã, Regulations. Such Ã, provisions, Ã, in Ã, our consideredÃ, view, ruleÃ, outÃ, theÃ, conceptÃ, of anyÃ, rightÃ, inÃ, a sailorÃ, toÃ, claimÃ, asÃ, of rightÃ,

releaseÃ, duringÃ, subsistenceÃ, of period of engagement or re-engagement as the case may be. Such a measure is required in the larger interest of the country. A

sailorÃ, during the 15 orÃ, 20 years ofÃ, initial engagement which includes the period of training attains a high Ã, degree Ã, expertise and skill for which

Ã, substantial amounts are spent from the exchequer.

8. Ã, Even Ã, in Ã, the Ã, case of premature Ã, retirement, Ã, the Ã, same principle Ã, is applicable. The applicant has sought premature retirement

Ã, only because Ã, of Ã, his Ã, family Ã, circumstances. Ã, The respondents have considered the same and he was granted compassionate ground

Ã, posting Ã, to Ã, Military Ã, Hospital, Ã, Pulgaon, whichÃ, isÃ, closeÃ, toÃ, hisÃ, homeÃ, townÃ, i.e.Ã, Jalgaon. ThatÃ, apart,Ã, the

administrativeÃ, necessitiesÃ, which preventÃ, theÃ, respondentsÃ, from considering the application of the applicant have been detailed in the

counterÃ, affidavitÃ, which we have considered. AsÃ, grantÃ, of premature retirement is not a Ã, right but is a factor to be consideredÃ, basedÃ,

onÃ, administrativeÃ, requirementsÃ, and organisational Ã, necessity, Ã, when Ã, in Ã, such Ã, cases, the scope of judicial review is limited,

interference by Court can be made only in exceptionalÃ, circumstances.Ã, WeÃ, findÃ, noÃ, exceptional circumstances existingÃ, in theÃ, present

case andÃ, if the circumstances pointed out by the applicant for seeking premature retirementÃ, areÃ, balancedÃ, inÃ, theÃ, backdropÃ, of theÃ,

administrative requirements indicated, particularly with reference to shortage of manpower onÃ, theÃ, technicalÃ, side,Ã, thisÃ, CourtÃ, cannotÃ,

exerciseÃ, its powerÃ, of judicial reviewÃ, inÃ, such matters. InÃ, theÃ, caseÃ, ofÃ, Cpl. Abhishek JoshiÃ, (supra), noÃ, principleÃ, hasÃ, been

laidÃ, down.Ã, The respondents Ã, were Ã, directed to Ã, consider Ã, granting premature retirement Ã, to Ã, Hav/STA Ã, Mukesh Ã, Kumar (supra)

Ã, taking into account the Ã, serious ailments of the Ã, applicant viz, Ã, he Ã, was suffering from Hansen's disease and he was placed in LMC P3 (T-

24) andP2 (T-24) and treating his case Ã, as Ã, an extreme compassionate case. The facts ofÃ, the said case are entirely different and will not help

the applicant. In the case of Maj Piyush Bansal (supra) also, after evaluating various factors, it was found that the application ofÃ, the employee was

not considered in accordanceÃ, withÃ, theÃ, policyÃ, andÃ, theÃ, matterÃ, wasÃ, onlyÃ, remanded back for reconsideration. In the case of Cpl

Shaju M (supra), this wasÃ, againÃ, aÃ, caseÃ, whereÃ, theÃ, applicantÃ, whoÃ, hadÃ, sufferedÃ, from Chronic Otitis MediaÃ, Right was

granted premature retirement.Ã, It was a case of lowÃ, medicalÃ, category andÃ, inÃ, accordance with the mandateÃ, of AirÃ, ForceÃ, OrderÃ,

No 16/2008,Ã, theÃ, interferenceÃ, was made.Ã, TheÃ, caseÃ, of theÃ, applicantÃ, isÃ, notÃ, identicalÃ, toÃ, theÃ, cases reliedÃ, uponÃ, byÃ,

himÃ, andÃ, areÃ, allÃ, distinguishableÃ, onÃ, facts.Ã, ItÃ, isÃ, a well settled legalÃ, principle that grant of premature retirement or premature

retirement is not a right. It is granted on evaluation of various administrative and executive reasons and if Ã, the consideration indicated byÃ, the

respondent'sÃ, showsÃ, justiceÃ, for keeping the matter pending, in the limited scope ofÃ, judicial review available, this Tribunal should not interfere.

In the present case, the applicant wanted premature retirement only because of certain Ã, family issues. The Ã, respondents have Ã, evaluated his

applicationÃ, and postedÃ, toÃ, a placeÃ, about 300 kmsÃ, nearÃ, to his homeÃ, town, given him permission toÃ, visit his homeÃ, town by granting

leaveÃ, asÃ, andÃ, whenÃ, requiredÃ, and keptÃ, hisÃ, application pending for consideration till the administrative situation improves.

9. Ã, Taking note ofÃ, all these factors, we find no justifiable reasons to interfere with the matter. The respondents have acted fairly to the applicant,

their action cannot be said to be arbitrary, irrational orÃ, illegal in any manner, whatsoeverÃ, and onceÃ, the administrative actionÃ, is found to be

reasonable and justifiable in nature, interference within the limited scope of judicial review, in our considered view, is not possible.

10. Ã, Accordingly, finding no ground for interference into the matter, the OA stands dismissed.

11.Ã, Pending miscellaneous application(s), if any, stands closed.

PronouncedÃ, inÃ, openÃ, Court onÃ, thisÃ, theÃ, 4th dayÃ, of July 2022.