

**ARMED FORCES TRIBUNAL**  
**REGIONAL BENCH AT KOLKATA**  
**(Through Video-Conferencing)**

**O.A. No. 37 of 2019**

**In the matter of :**

**Sgt Prasenjit Roy**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Miss Manika Roy, Advocate**

**For Respondents : Shri Mukesh Kumar, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, applicant, who is a Sergeant (Sgt) in the Indian Air Force, has filed this application and the relief claimed in the application is to pass an appropriate order directing the Competent Authority to grant discharge to the applicant on extremely compassionate grounds and set aside the order dated 14.03.2019 passed by Respondent No. 3 rejecting his prayer for premature discharge from service.

2. The facts in a nutshell indicate that the applicant was enrolled in the Indian Air Force on 16.06.2003. In December, 2012, he was promoted to the rank of Sgt and

was posted at Trivandrum. On 26.12.2017, he applied for posting to Kolkata on compassionate grounds indicating certain family problems, namely, the health issues of his parents. The application was considered and on 21.02.2018, the applicant was posted to 337 TRU with effect from 13.08.2018 vide order dated 20.02.2018 for a restricted tenure of two years on compassionate grounds. Since then, the applicant is posted in the Unit near his hometown in Kolkata.

3. It is the case of the applicant that sometimes in August, 2018, his mother's mental health started deteriorating rapidly and she started getting more and more vulnerable and violent. Her psychological disorder increased and the applicant's father had to take care of himself and his mother. Faced with this situation, on 27.11.2018, applicant sought discharge from service on compassionate ground by filing an application before Respondent No. 4. It is said that, on 27.11.2018, the applicant was interviewed by the Section Commander regarding discharge of the applicant and on 13.02.2019, the applicant sought personal interview with the Station Commander.

4. On 11.01.2019, the application for discharge along with all supporting documents was forwarded to the Office

of Respondent No. 3 for further consideration along with recommendations not only of the Section Commander but also of the Station Commander. Grievance of the applicant is that by the impugned order dated 14.03.2019, Respondent No. 3, without assigning any reason, found that there is no merit in his prayer for discharge on compassionate grounds and rejected the application. Aggrieved thereof, this application has been filed.

5. Learned counsel appearing for the applicant, Miss Monika Roy, took us through the pleadings in detail along with relevant documents and emphasised that ever since the beginning of his service career, the applicant had been posted in different locations throughout the country including hard areas. He has always remained out of his hometown except after the present assignment and posting in August, 2018. It is said that he is unmarried and his mother is suffering from psychological disorder named 'Paranoid Schizophrenia' along with 'Hyper Tension, Insomnia, Obesity, Diabetes and Thyroid related ailments. His father is also suffering from 'Hypertension, Insomnia, High Cholesterol and Uric Acid related ailments'. As there was nobody to look after his ailing parents, the applicant sought discharge from service. It is stated that his mother

is getting regular treatment from the Department of Health & Family Welfare, Government of West Bengal, Calcutta National Medical College & Hospital and Calcutta Pavlov Hospital in Kolkata and his father, being a retired Central Government employee, parents of the applicant are availing the benefits of Central Government Health Scheme (CGHS) for their treatment. Referring to the application submitted for discharge from service, the medical record pertaining to his parents, particularly his mother, collectively filed as Annexure A-1 along with forwarding Memo of the Competent Authority, learned counsel argued that taking note of all these documents, the Competent Authority recommended the case of the applicant for grant of discharge from service on compassionate ground. Referring to the Note-sheet available at Page 70, the Competent Authority said to have observed that the applicant is an unmarried person; his parents are not dependent financially on him; they are availing the benefits of CGHS, however, his both parents are ailing and dependent upon him for their well-being; they are suffering from multiple disabilities and old-age ailments and recommendation was made for considering the request for discharge favourably.

6. It is said that even the Section Commander and Station Commander recommended for discharge, however, without taking note of the recommendations made by the Competent Authority, Respondent No. 3 rejected the application and while doing so, did not record any reason nor did he indicate as to why the recommendations made by the authorities concerned have to be rejected. Referring to the Air Headquarters Air Force Order No. 16/2008 at Annexure A-9 and the Policy laid down for discharge from service on compassionate ground, learned counsel points out that in Para 9, the procedure for submission of application and its processing are indicated and in Para 2 of the same, the compassionate grounds on which a premature discharge can be claimed are indicated. Referring to Clauses 2(a) and 2(b) of Annexure A-9, at Page 88, which read 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.”***

learned counsel argues that the applicant's case comes within both the aforesaid categories and without taking note of the totality of the circumstances and without considering the grievance of the applicant in its right perspective, the application has been rejected.

Learned counsel argues that it is a fit case where the application should be allowed and the impugned action quashed.

7. Respondents have filed a detailed counter affidavit and have indicated that the applicant was enrolled in the Indian Air Force on 16.06.2003 and he filed an application seeking discharge on 27.11.2018 immediately after he had completed 15 years and 5 months of service. It is the case of the respondents that the conduct of the applicant strongly suggests that he may have been waiting for completion of service in Air Force in order to be eligible for pension and thereafter, seeking compassionate discharge.

8. It is argued by the counsel for the respondents that the Competent Authority examined the matter and rejected the claim as it was devoid of merit and subsequently when the present application was filed and this Tribunal on 06.02.2020, passed an order indicating that in the

impugned order at Annexure A-8 dated 14.03.2019, no reason has been assigned and when a direction was issued to the Competent Authority, namely, Air Force Record Office (AFRO) to pass a speaking order, the speaking order has been passed on 26.02.2020 and in the said application in Para 4, the following reasons have been given for rejecting the application :

*“(a) That, you were posted to 337 TRU (Kancharapara), Dist - 24 PGNS (N) wef 13 Aug 18 on compassionate grounds in order to enable you to look after your parents. This unit is not far away from your native place i.e, Salt Lake City, Kolkata. Therefore, adequate relief has already been granted to you by considering your request for posting to Home Zone. Being a retired government employee, your parents are eligible to be treated under CGHS offered by your father's organization.*

*(b) That, your father is suffering from age related ailments. It was also observed while deliberating in your discharge case that the ailment of your mother has been continuing since 2011 but you have applied for discharge from service only in Nov 2018. This appears to be a planned move mere to qualify with minimum pensionable service of 15 years.*

*(c) That, Medical authorities have not recommended your discharge from service on medical grounds. Further, taking all the facts into consideration, it appears that the effort*

*to align your discharge from service is the prime reason for your application for discharge when compared to the medical condition of your parents.*

*(d) That, your initial regular engagement period in the IAF is upto 15 Jun 2023.*

*(e) That, you had volunteered to join the IAF on your own accord for an initial term of engagement for the period of 20 years. You have been given training by service in ADSO trade with an aim to meet the organizational requirement of IAF for the said period.*

*(f) That, grant of discharge from service prematurely without sufficient compassionate grounds will invariably affect the manning of IAF units and operational preparedness of the organisation, which are already facing constraints owing to lack of experienced manpower in the trade.”*

9. Learned counsel, Shri Gupta, appearing for the respondents emphasized that now as a detailed speaking order has been passed, there is no ground for any interference into the matter. He further argued that grant of permission for premature discharge from service in accordance to Para 8 of Air Force Order No. 16/2008 clearly stipulates that discharge from service cannot be claimed as a matter of right and the Competent Authority is empowered in his discretion to grant or reject the application after evaluating the same on merit. It is the case of the

respondents that right from 2011, the applicant continued to work without any hindrance, waited for completion of 15 years of service and once he had qualified to receive pension, he has come out with a case for grant of discharge. It is the case of the respondents that in this case, the Competent Authority having considered all relevant factors and having taken a decision based on the requirements of law, no interference is called for.

10. Learned counsel for the applicant, Miss Monika Roy, in rebuttal, refuted each and every contention, took us through the medical evidence available on record and argued that the applicant's case for transfer to his hometown was considered only because it was found to be a genuine case and the applicant's requirements of being near his parents was found to be justified to look after them and having done so, it is stated that the respondents cannot turn back and contend that the application is for some extraneous purpose only to get discharged by earning pension. She argued that when the respondents found bonafide reason and justification for permitting posting to his hometown in August, 2018, the same consideration should have been applied in the matter of discharge also and, therefore, in rejecting the application on the grounds which are not

tenable in law, a grave illegality has been committed by the respondents, which warrants interference.

11. In support of their submissions, learned counsel for the parties have referred to the following judgments rendered by the Hon'ble Supreme Court and this Tribunal :

1. **Union of India Through Its Secretary, Ministry of Defence, DHQPO, New Delhi and Others Vs. Wg. Cdr. Subrata Das [(2020) 12 Supreme Court Cases 784]** passed by the Hon'ble Supreme Court on 29.01.2019
2. **Lt Col Hardeep Sandhu and Others Vs. Union of India and Others [O.A. No. 15 of 2011]** passed by the Armed Forces Tribunal, Principal Bench, New Delhi on 03.02.2012
3. **Sgt Beylinedas Yesudas Vs. The Chief of Air Staff and Others [O.A. No. 167 of 2013]** passed by the AFT, Regional Bench at Chennai on 30.04.2014
4. **Sgt Satish Yadav Vs. Union of India & Ors. [O.A. No. 112 of 2017]** passed by Armed Forces Tribunal, Principal Bench, New Delhi on 20.12.2017

12. Having heard the learned counsel for the parties and on consideration of various aspects of the matter including the judgments rendered by the Hon'ble Supreme Court and this Tribunal so also the requirement of AFO 16/2008, we find that discharge from service cannot be claimed as a matter of right and the Air Force Order i.e. AFO 16/2008, empowers the Air Headquarters to refuse or to grant discharge in a particular case. The claim for discharge and

the provisions of the AFO 16/2008 have to be evaluated by the Competent Authority, and in his discretion, a decision has to be taken after considering various aspects of the matter including the requirement of administration, the requirement and difficulties of the employee, and the interests of the force has to be balanced taking note of the expenditure incurred by the Union of India in training the employee for the service courses etc. Once a discretionary power is vested with the Competent Authority and there is nothing to indicate that the discretion has been exercised in an arbitrary, malafide or unjustified manner, then in the absence of any reasonable ground or justification established by the officer, interference into the matter under the limited Statutory provisions of judicial review by this Tribunal is not permissible. If we analyse the case of the applicant in the backdrop of the requirement of law, as indicated hereinabove, it can be seen that the applicant's father is a retired employee of the Central Government, he is getting pension and benefits of CGHS and, therefore, financially the parents are not dependent on the applicant. The ailment of his father, who is 63 years of age, is hypertension and certain lifestyle ailment. His mother's ailment is 'Paranoid Schizophrenia' along with 'Hyper

Tension, Insomnia, Obesity, Diabetes and Thyroid related problems etc. and medical evidence of the ailments available on record indicated that she has been undergoing treatment in various hospitals. Furthermore, right from 2011 upto 2018, the applicant did not seek any discharge or benefit of posting near his hometown. It was only in August, 2018 that he sought posting near his hometown, which was permitted for a period of two years and immediately after completing 15 years of service, he sought discharge. These reasons have weighed with the Competent Authority for rejecting the prayer for compassionate discharge.

13. At this stage, it would be appropriate to analyse the legal principle with regard to the issue in question as has been analysed by the Hon'ble Supreme Court and this Tribunal in some of the cases referred to hereinabove.

14. In the case of *Wg Cdr Subrata Das (supra)*, even though the issue pertains to withdrawal of request made for premature separation from service after its acceptance by the department, certain observations have been made by the Hon'ble Supreme Court after analysing the statutory provisions as are contained in the Air Force Act of 1950, the Air Force Rules of 1969 and the Human Resources Policy formulated by the Air Headquarters, particularly with regard

to the officers cadre. After taking note of various statutory provisions pertaining to retirement, release and discharge, it has been observed by the Hon'ble Supreme Court that the policy brought in place seeks to lay down comprehensive guidelines for premature separation from service by officers working in the Air Force, other than those from the medical and dental branches. It is observed that the object of the policy for granting premature release is to strike a balance between the requests made by the officers to leave service and the interests of the force. It is indicated by the Hon'ble Supreme Court that the statutory provisions and the rules framed under the Air Force Act of 1950 are a necessary concomitant of the intention of the Legislature to establish the Air Force as an armed force of the Union and the members of this force are subjected to the Act and the Rules and regulations framed thereunder, which contemplate rigorous disciplinary measures. In fact, the rationale which underlies the Article 33 of the Constitution empowers the Parliament by law to restrict or abrogate the provisions of Part-III of the Constitution in its application to the members of the Armed Forces. It has been emphasised by the Hon'ble Supreme Court that the purpose of these restrictions is to

ensure that proper discharge of duties and proper maintenance of discipline is given paramount consideration.

15. It has been observed by the Hon'ble Supreme Court that the entry into and departure from the service of the Air Force is strictly governed by the provisions of the statutory rules and guidelines framed under the Act and the matter will not lie within the sweet-will of the members of the Air Force. Various aspects of the matter have to be taken note of and consistent with the requirement of maintaining efficiency and discipline in the force, a decision has to be taken. This, in fact, is the founding principle which has been observed by the Hon'ble Supreme Court and, therefore, if we analyse the provisions of Para 8 of the AFO 16/2008, it clearly mandates that the discharge from service is not a right available to the employee or a member of the forces, but it is based on various considerations and the discretion is vested with the Competent Authority.

16. In the backdrop of the aforesaid fundamental legal principle, if we analyse the consideration made in the case of a member of the Air Force decided by the Regional Bench at Chennai, in the case of *Beylinedas Yesudas (supra)*, we find that in Para 7 of the said judgement, the entire policy as contained in the AFO 16/2008 including Para 2(a) and (b)

and Para 8, which was placed before us have been taken note of and the learned Regional Bench goes on to emphasise that this Air Force Order (AFT 16/2008) lays down the grounds and process for giving discharge from service. It is observed that the ground for discharge should be based on undoubted material hardship to the airmen or to their dependents by continuation in service and this hardship has to be ascertained by the Commanding Officer of the individual who is in close contact and is in regular interaction with the person concerned. It has been emphasised by the Bench that the inputs and recommendations made by the Commanding Officer are vital in the matter of examination for discharge from service. The application is thereafter processed in the Air Headquarters and scrutinised by the Air Force Record Office and the final determination undertaken. The Bench goes on to hold that a perusal of the Policy and the guidelines clearly indicates that the recommendations of the Commanding Officer with regard to veracity and genuineness of the grounds has primacy while deciding the merits of the case. On the other hand, the examination at Air Force Record Office and the Air Headquarters is focussed on issues such as deficiencies in trade, manning constraints, specialised courses/training

imparted to the applicant and emergent security and administrative necessity involved in the matter.

17. It is further observed that rejection of request for discharge should be based on sound reasoning and the grounds of deficiency in trade, particularly specialised trades, obligatory service undertaking or emergency situation have to be considered and the well-settled principle of exercising discretionary power should be exercised after due caution, prudence and not in an arbitrary manner.

18. If the consideration made in the present case is analysed in the backdrop of the aforesaid principles laid down by the Regional Bench, Chennai, we find that even though in the reasoned order passed by the Air Force Record Office on 26.02.2020, six grounds are indicated, but they do not refer to the recommendation of the Commanding Officer and the weightage required to be given to the recommendation of the Commanding Officer seems to have been ignored. That apart, the requirement of the service, particularly with regard to the administration and security concerned as has been classified in detail in Para 8 of the order passed by the Regional Bench, Chennai in the case of *Beylinedas Yesudas (supra)* have not been taken note of.

19. Similarly, if we consider the law laid down by the Principal Bench (AFT) in the judgment rendered in the case of **Lt Col Hardeep Sandhu Vs. Union of India and Others [O.A. No. 15 of 2011] on 03.02.2012**, we again find that it has referred to a judgment of Delhi High Court in the matter of **Major Rahul Shukla Vs. Union of India & Ors. [59 (1995) DLT 573 (DB)]**, wherein again the Division Bench of the Delhi High Court observes that a decision or finding is to be arrived at after taking note of the observations and review made by the Commanding Officer and the Higher Authority may form a different opinion expressed by the Commanding Officer but the higher officer should have processed the material concrete enough to form a different opinion and then only the matter can be justified. Reference is also made in the said judgment to certain other judgments of the Delhi High Court in Paras 31, 32 and 33 thereof, which read as under :

***“31. In support of his contentions, learned counsel for the respondents cited the judgment of Hon’ble High Court of Delhi given in WPC No.4646/2005 in the matter of Sqn. Ldr. Shkul Tyagi Vs UOI & Ors., wherein the Hon’ble High Court has held that “In any case, this is not a case where this Court while exercising powers under Article 226 of the Constitution of India should interfere in the***

*decision of the authorities as no case of malice, bias or discrimination has been made out by the petitioner in the challenge to the rejection of the plea of the petitioner for premature discharge.”*

32. *He also cited the judgment of Hon'ble High Court of Delhi passed in WP (C) 2751/2007 in Wg. Cdr. RVR Prasad Vs. Union of India & Ors., wherein the Hon'ble High Court has observed as under:-*

*“9. The decision of the Respondents not to accede to the Petitioner's request for premature retirement or for that matter for resignation cannot be seen as perverse. Wherever the Armed Forces are concerned the Writ Court must be constantly mindful of the fact that discipline is the foremost consideration. An eloquent argument was put forward that the Petitioner is quite willing to forgo all his pensionary and other benefits. This argument, however, assumes that these rights have already come into force in his favour, which is a fallacious assumption. The Petitioner must serve for twenty years before any such entitlement ensure to his benefit.*

*10. This is not a case where it would be appropriate to exercise the extraordinary powers under Article 226 of the Constitution of India.”*

33. *Learned counsel for the respondents also cited the judgment of AFT (PB) passed in OA No.423/2010 in the matter of Maj Sumit Sharma Vs Union of India and Another wherein the Hon'ble Tribunal observed as under:-*

*“A reply was filed by the respondents and respondents have definitely taken the position that applicant received specialist UAV training as an observer in 2006 for UAV MK-II Systems. Subsequent to the said training, applicant is being suitably employed as per the specialisation. It is further submitted that there is an acute shortage of officers in the Regiment of Artillery and the criticality is more profound for specialist officers. Applicant was duly considered and his application was rejected by the competent authorities. Since applicant is a specialised officer in particular branch and that branch is already running short of officers, therefore, his resignation was rejected. We do not think proper to interfere in this matter as the National interest has higher priority than any other priority. Since his services are indispensable to the Army because of the specialised training, therefore, we are not inclined to*

***interfere in the matter. Petition is dismissed. No order as to costs.”***

20. A perusal of these judgments and the observations made therein clearly shows that even though in the matter of interfering with the discretion exercised by the Competent Authority, a writ court exercising limited jurisdiction under Article 226 does not interfere but the Competent Authority has to take a decision based on various aspects such as, the training imparted to the official concerned, shortage of officers and various other administrative consideration, they all require consideration and should form part of the decision-making process. Both the Regional Bench at Chennai and Principal Bench at New Delhi, in the cases of *Beylinedas Yesudas (supra)* and *Lt Col Hardeep Sandhu (supra)* and the Delhi High Court judgments rendered in the cases referred to therein, remanded the matter back to the department for re-consideration based on all these aspects of the matter. In the present case also, we find that in pursuance to the order passed by this Tribunal on 06.02.2020, when the speaking order dated 26.02.2020 was passed and the six reasons as referred to in the Para 8 hereinabove, are taken note of, there is no reference to the recommendations made by the Station Commander and the

Section Commander and the administrative requirement in the backdrop of imparting of training, shortage of staff etc. have not been analysed. That being so, we find this to be a fit case where the matter should be remanded back to the Competent Authority with a direction to re-examine the matter in the backdrop of the observations made hereinabove and take a decision afresh in accordance with law.

21. We are constrained to pass this order taking note of the observations made by the Regional Bench at Chennai in the case of *Beylinedas Yesudas (supra)*, wherein it has been observed that the requirement of the service even though has to be given paramount consideration, but while examining a case for premature retirement, the institutional needs override the individual requirement, nonetheless, the Competent Authority should keep in mind the fact that catering to the social and emotional needs of the soldier is *sine qua non* for maintaining motivational and moral standards in the organisation.

22. Accordingly, in view of the totality of the circumstances, we allow this petition in part, quash the impugned order dated 14.03.2019 and also the speaking order dated 26.02.2020 and remand the matter back to the

Competent Authority for re-consideration. The Competent Authority may take note of the observations made hereinabove, the principles culled-out in various judgments, not only referred to hereinabove but any other judgment which may be within the notice of the Competent Authority, take a decision by way of speaking order in accordance to law, within a period of three months from the date of receipt of the copy of this order and the order so passed be communicated to the applicant.

23. With the aforesaid, OA stands disposed of. No order as to costs.

Pronounced in open Court on this 24<sup>th</sup> day of February, 2021.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[LT GEN P.M. HARIZ]  
MEMBER (A)**

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