

K.S. Bhimwal Mohs (Lt. Col.) Vs. Union of India and anr.

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Court : Delhi

Decided On : Mar-22-1999

Reported in : 1999IIAD(Delhi)759; 79(1999)DLT297; 1999(50)DRJ134

Judge : K. Ramamoorthy, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W.P. No. 3064/98

Appellant : K.S. Bhimwal Mohs (Lt. Col.)

Respondent : Union of India and anr.

Advocate for Def. : Ms. Geeta Luthra, Adv.

Advocate for Pet/Ap. : Mr. R.P. Sharma, Adv

Judgement :

ORDER

K. Ramamoorthy, J.

1. The petitioner, who has served in the Indian Army for more than 26 years, sought for premature retirement on the ground that he has to look after his mother afflicted with cancer and his father retired Air force Officer who is visually handicapped. The petitioner in his writ petition in paragraph 28 of the writ petition

has given instances where in the case of officers similarly situated the respondents had permitted them to retire prematurely. The request of the petitioner has been rejected by the Adjutant General. It is not necessary to go in details the averments in the counter affidavit. The stand taken by the respondents is that the services of the petitioner are very much required and, therefore, the respondents have not permitted the petitioner to retire prematurely.

2. At the time of arguments it was submitted by the learned counsel for the petitioner Mr. R.P. Sharma that the Adjutant General is not the competent authority to deal with the request of the petitioner for premature retirement. The authority competent to deal with the same, according to the learned counsel, is the Central Government. The learned counsel relied upon Rule 16-B of the Army Rules.

The learned counsel also referred to sub para (F) of para 105 of the defense Service Regulations. The stand taken by the respondents in the counter is:-

'Further it is submitted that though the appointing authority is the President of India, it is incorrect that the resignation can be considered only by the Central Government. As already submitted in reference to para 105 DSR, applications for Premature Retirement/Resignation are to be rejected or recommended to be accepted by the COAS/Adjutant General in respect of the officers of the rank of Brigadier and above and Colonel and below respectively.'

3. The learned counsel for the respondents Ms. Geeta Luthra submitted that the petitioner must have been aware of the fact that if his premature retirement is to be accepted it can be done only by the Central Government but if it is rejected it can be considered by the Adjutant General as mentioned in sub para (F) of Regulations 105.

4. Army Rule 16-B reads as under :-

'16-B. Retirement of an officer at his own request- (1) The retirement of an officer at his own request before he becomes liable to retirement under rule 16-A shall require the sanction of the Central Government.

(2) An officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request. The Central Government may at his discretion, grant such withdrawal of his application.'

It is clear from this provision that it is the Central Government who is the competent authority to deal with the acceptance of the premature retirement of the petitioner. Sub Para (F) of Para 105 of the Regulations for the Army Revised Edition, 1987 reads as under :-

'The applications for premature retirement or resignation of officers up to the rank of Colonel except in the case of Officers of SAMC, ADC, and MNS, will be examined by Army HQ and submitted to the Military Secretary. The cases of officers of AMC, ADC and MNS up to the rank of Colonel will be submitted to Adjutant General. However, the application for premature retirement or resignation of all categories of offices of the rank of Brig. and above will be submitted to the Chief of the Army Staff. The Chief of the Army Staff or Military Secretary of Adjutant General as the case may be, may if the considered appropriate, recommend the application of premature retirement or resignation of the applications to the Central Government. However, they may reject an application submitted to them, if it is not based on adequate and justifiable reasons at their level itself without referring it to the Central. In case the Officer feels aggrieved by the decision of the Chief of the Army Staff or Military Secretary or Adjutant General, as the case may be can, if he so choices, submit a statutory complaint under the provisions of Section 27 of the Army Act. The Decision of the Central Government on the application will be final.'

For the purpose of administrative convenience, Adjutant General is given the power to consider and reject.

5. The learned counsel for the petitioner Mr. R.P. Sharma challenged the virus of Regulation 105 (F).

6. In my view, it is not necessary on the facts and circumstances of this case to deal with the question of vires.

7. The learned counsel for the petitioner Mr. R.P. Sharma referred to the judgment by a Division Bench of this Court in Major Rahul Shukla v. Union of India & Ors., C.W. No. 770/95 dated 9.8.1995 and the judgment in Major Rahul Shukla v. Union of India & Ors., C.W. 4220/97 dated 17.11.1997.

8. It is not necessary to deal with these cases in detail. In paragraph 28, the petitioner has stated :-

'That, the petitioner ventures to bring to the notice of the Hon'ble Court that the respondents have invidiously discriminated the petitioner in the matter of acceptance of his request for PR in as much as only in the last one year, similar requests made by three similarly placed officers, who were specialists in different disciplines and were posted in the Army Hospital along with the petitioner were accepted in the first instance itself. They were:-

(i) Lt Col Arun Kumar : A Specialist in Medicine and Super Specialist in Gastro enterology with 24 yrs service on the ground of his father's illness (Cancer), the same disease with which petitioner's mother is afflicted.

(ii) Lt Col ATK Rau : A Paediatrician with 18 years of service and his request too was accepted in the first instance. The ground was the property problems.

(iii) Major R K. Bhardwaj : An ENT specialist with 16 years service was allowed to quit the service prematurely on account of his father's affliction with Cancer (the same disease with which the petitioner's mother is suffering from).

It is pertinent to point out that all these three officers were not only Specialists but also super specialists in their respective disciplines which qualification they had acquired at the expense of the Govt. On the other hand the petitioner is not a specialist nor has he acquired any qualification at Govt. expense. Despite that the respondents chose to accept their request and reject that of the petitioner. There cannot be a worse case of arbitrariness and colourable exercise of power by the concerned authorities.'

9. The respondents have not disputed the position of the petitioner and his obligation to his parents. therefore, the petitioner cannot be denied his right to

seek premature retirement. The respondents have acted illegally in rejecting the request of the petitioner for premature retirement and the respondents have not taken into account the relevant factors to come to the decision relating to the request of the petitioner for premature retirement. The respondents are directed to retain the petitioner in Delhi until orders are passed on the petitioner's application for premature retirement.

10. I am of the view that the order passed by the respondents rejecting the request of the petitioner cannot be sustained and order dated 1.6.1998 is quashed. Accordingly, the respondents are directed to intimate the petitioner on or before 30.4.1999 as to from which date his premature retirement would be accepted.

The writ petition stands allowed. There is no order as to costs.

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