

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.28295 of 2016

ORDER:

1. The petitioner joined the service of Indian Army as Sepoy on 21.05.1996 and was assigned to the duties of the clerk. He appeared for the Service Selection Board Examination and interview on 04.08.2008 and was recommended for permanent commission on 24.07.2009. Accordingly, he was commissioned into permanent commission (Special List) as a Record Officer in the year 2009. He was promoted as Lieutenant and thereafter as Captain on 24.07.2011 and 24.07.2015 respectively. Now, he is in the rank of Major and working as Senior Record Officer in the office of the EME Records from 15.07.2013. While so, he submitted an application to the 5th respondent on 01.01.2016 seeking premature retirement in view of his domestic problems. The said application was submitted through proper channel and as per rules. He had to submit the application before six months from the completion of tenure of three years and accordingly he made an application on 01.01.2016 within the statutory period of six months as per MS Policy. The 5th respondent received his application and recommended to the Initiating Officer and Reviewing Officer, who forwarded the same to the 4th respondent. But, the application was received by the 4th respondent after nearly one month and six days and was returned on 10.02.2016 as unactioned. Since the 4th respondent was not competent to deal

with the application, the 5th respondent forwarded the same to the 2nd respondent on 17.02.2016. But, the 2nd respondent returned his application on 11.03.2016 stating that the disciplinary aspect of the petitioner was not commented by the Enquiry Officer and Review Officer; the conditional request is not acceptable and the premature retirement application has been received in the last six months of tenure. On the request of the petitioner, the 5th respondent complied with the objections raised by the 2nd respondent and addressed a letter on 31.03.2016. After receipt of the same, the 2nd respondent passed an order on 09.05.2016 returning the application for premature retirement on the ground that the application falls during the last six months of tenure. Though the 5th respondent addressed a letter on 06.06.2016 requesting the 3rd respondent to grant waiver, the 3rd respondent passed an order on 26.07.2016 rejecting the request for grant of waiver. In the meanwhile, the petitioner was transferred from EME Records, Secunderabad to Records Punjab Regt Comma, Ramgarh while directing to report on 31.08.2016. The petitioner received the said order and made an application on 09.08.2016 requesting for interview of the Military Secretary. But, the same was rejected on 18.08.2016 by the 3rd respondent. In those circumstances, the present writ petition is filed challenging the order dated 09.05.2016 rejecting the premature retirement application and transferring the petitioner by proceedings dated 01.08.2016.

2. A counter-affidavit is filed by the respondents stating that the issues with regard to the premature retirement and the transfer are not inter-connected and so far as the issue of premature retirement is concerned, the Armed Forces Tribunal (AFT) alone is having jurisdiction. So far as the transfer is concerned, though this Court is having jurisdiction since the petitioner completed the required period of three years in the routine administrative course, he was transferred. They relied on several judgments in the counter-affidavit. It was further stated that the normal tenure of posting of Army Officers at any place particularly peace station is two to three years and the petitioner had already completed three years in the present place.

3. This Court by on 23.08.2016 while issuing notice before admission granted interim order of *status quo*, which has been in operation till today.

4. Learned Counsel for the petitioner submits that the Armed Forces Tribunal is not holding the Court and the petitioner is prevented from approaching the Armed Forces Tribunal. On the other hand, the learned Assistant Solicitor General appearing for the respondents submits that the primary jurisdiction of Hyderabad lies with the AFT, Chennai and a Circuit Bench temporally presides over the Armed Forces matters in AFT, Hyderabad. If the petitioner has any grievance, he can as well approach the Armed Forces Tribunal, Principal Bench at New Delhi.

5. However, in view of lack of jurisdiction to entertain the matters relating to premature retirement as per the provisions of the Army Act, 1950 and in view of the availability of the AFT Principal Bench at New Delhi, this Court is not inclined to consider the issue relating to premature retirement. With regard to the issue of transfer, it is clear from the record that the petitioner had completed three years of service in the present place and is amenable for transfer. In the absence of any *mala fides*, the transfer order passed in a routine administrative course cannot be interfered with.

6. The Writ Petition is accordingly dismissed. However, it is open to the petitioner to approach the Armed Forces Tribunal against the order of rejecting the request for consideration of the case for premature retirement. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

09-09-2016
Gsn