

\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 5248/2018 & C.M. APPL.23368/2018

MAJOR ABHISHEK DWIVEDI

..... Petitioner

Through: Mr. Sunil K. Mittal, Advocate with
Ms. Kadambini Sharma and
Mr. Anshul Mittal, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Chiranjeev Kumar and
Mr. Mukesh Sachdeva, Advocates for
R-1 to 3.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

14.11.2018

%

Dr. S. Muralidhar, J.:

1. The challenge in this writ petition is to the decision dated 24th April 2018 of the Integrated HQ of MoD (Army), Adjutant General's Branch, Directorate of Medical Services (Army), informing the Petitioner that his application dated 20th February 2018 for resignation from service had been considered by the Competent Authority and was "not accepted due to pending service liability".

2. The Petitioner was commissioned in the Indian Army on 26th February 2009 as a Substantive Captain and has subsequently served in the rank of Major. The Petitioner appeared in the NEET PG examination for

the Advance/PG Courses for AFMS Officers for 2013-16 session held in January 2013. He subsequently attended the counselling sessions which were held on the 5th, 6th, 7th, and 8th June 2013. He was selected for the Subject of Radio diagnosis at the institution AH (R&R) as is evident in the letter dated 14th June 2013. The Petitioner was asked to sign and accept an undertaking which detailed the service/financial liability in the event the Petitioner seeks premature resignation from the service, which at the time was a period of 10 years from the date of completion of the advanced degree course that the Petitioner completed in June 2016. This was to be granted on the condition of the Petitioner depositing a sum of Rs.15 lakhs (approximately) (minus the years of physical service after completion of the course) to the Respondent.

3. According to the Petitioner, his wife has initiated divorce proceedings under Section 13 (1) (ia) of the Hindu Marriage Act 1955 in the Family Court at New Delhi. It is stated that Petitioner has been unable to balance his professional and personal life and duties due to stress. He therefore submitted the aforementioned application on 20th February 2018 seeking premature release. This application was forwarded by the Commandant BHDC, New Delhi to the Headquarters of Ministry of Defence (Army) on 15th March 2018.

4. The impugned decision was communicated by a letter dated 24th April 2018 wherein it is noted in a single line that the Petitioner's request for acceptance of his resignation was rejected "due to pending service liability".

5. This Court first issued notice in this petition on 16th May 2018 and notice was accepted on that day itself by the Respondents. Meanwhile, on 29th May 2018, the Respondent issued an order transferring the Petitioner to the Military Hospital at Jhansi. This Court on 29th May 2018 directed the Respondent to not give effect to said transfer order. The Court also noted therein that the proceedings in the Family Court are listed for 18th July 2018. The Court is presently informed that the Family Court proceedings are still pending and the next date of listing there is 17th January 2019.

6. Mr. Sunil K. Mittal, learned counsel appearing for the Petitioner, further informs the Court that the Petitioner's wife, who is also a doctor, has resigned from her services at RML Hospital, New Delhi and has returned to her parents' home in Agra.

7. On 5th September 2018, this Court noted the issues involved in the petition and required the Respondents to file the reply within four weeks. The Court vacated the interim order and required the Petitioner to report for duty at Jhansi without prejudice to his rights and contentions. Mr. Mittal informs the Court that the Petitioner has since been serving at the Military Hospital, Jhansi.

8. Today, when the matter was called out, learned counsel for the Respondents informed the Court that he not yet received comments from his clients on the petition. He was also not in a position to inform the Court when a counter affidavit would be filed.

9. On his part, the Petitioner has placed before the Court an additional affidavit in which *inter alia* he has set out in detail how he has been discriminated against with at least three of his colleagues, who had all undergone both under-graduate and post-graduate courses at the Armed Forces Institute, being granted premature release. These four cases have been set out as follows:

S.NO.	NAME OF THE OFFICER	SERVICE NO.	COURSES AVAILED FROM THE ARMED FORCES INSTITUTE	STATUS OF THE APPLICATION
1.	Maj. Tarun Sood	MR-08357L	MBBS, MS (ENT)	Granted Release
2.	Maj. Shilpi Singh	MR-08373H	MBBS, MD (Pathology)	Granted Release
3.	Maj. Ankit Kumar	MR-08552H	MBBS, MS (Gen. Surgery)	Granted Release
4.	Maj. Neelam Singh	MR-08643M	MBBS, MD (Dermatology)	Accepted

10. Mr. Mittal also placed before this Court, the decision of this Court in ***Major Rahul Shukla v. Union of India 59 (1995) DLT 573 (DB)*** where, in a similar instance, this Court set aside the order passed by the Respondents rejecting the Petitioner's request for being relieved from service and asked them to again consider afresh his application on sympathetic and compassionate grounds and pass an appropriate order within two months.

11. The Court finds that the decision in ***Major Rahul Shukla (supra)***, contains a detailed discussion of the prevailing regulations in the Army on the subject of accepting an application for premature retirement/resignation. This Court has noted that the ground that the services of the Petitioner would

be required “to meet exigencies” cannot be a valid ground for rejecting such an application. It is also observed that “it may be a ground for keeping the application in abeyance”. In that case too, the Petitioner had made a request on account of grounds of domestic issues and the Court formed the view his request required reconsideration. Even in that case, the Petitioner had drawn the attention of the Court to other instances where requests for premature release had been accepted and the Court, after examining those instances, observed that “the Petitioner did stand on a better footing than the cases of the doctors on whom the Respondents had spent substantial amounts in bringing them up as doctors for utility in the army”.

12. Learned counsel for the Respondents sought to suggest that there was a policy in the Army that request for premature release would not be considered earlier than completion of 20 years of service. However, the Court has perused the ‘Policy on Release/Resignation/Premature Retirement in respect of AFMS Officers’ issued by the Ministry of Defence and finds that there is no such requirement of a minimum of 20 years of service in Army before an application for premature release can be considered. On the contrary, in para 3 thereof, it is stated that the term ‘premature retirement’ would apply only to permanent commission officers who have rendered 10 years or more of service, and who wish to retire before the date of superannuation. Even so, in the four instances cited by the Petitioner the dates of their respective commissioning in the Army were in the years 2006 and 2007 and they have been permitted to resign even before completing 10 years of service. It is further pointed out that one of them, viz. Major Ankit Kumar, was allowed premature release within one year of his completion of

the post-graduate course from Armed Forces Institute.

13. This Court is of the view that it was necessary for the Respondents to give reasons for the rejection of the Petitioner's request and a single line order merely stating that the request was being rejected on account on "pending service liabilities" does not satisfy the requirement of the law.

14. Consequently, this Court sets aside the impugned decision of the Respondents communicated to the Petitioner by the letter dated 24th April 2018 and directs the Petitioner's application to be placed before the Competent Authority for a fresh consideration in accordance with law. In particular, the Competent Authority will consider the Petitioner's grounds as set out in this petition as well as the additional affidavit and give a fresh decision with reasons. The Competent Authority will not be uninfluenced by any earlier decision. The fresh decision shall be communicated to the Petitioner on or before 31st December 2018. If still aggrieved by such decision, it will be open to the Petitioner to seek appropriate remedies in accordance law.

15. The petition and application are disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 14, 2018

Pallavi