

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 270 OF 2002

Surg CDR Subodh C. Khare  
173 A NOFRAI DABOLIM  
VASCO DA GAMA,  
INHS, JEEVANTI

... Petitioner.

versus

1. Union of India  
through the Secretary,  
Ministry of Defence,  
New Delhi.
2. Ministry of Defence,  
Government of India,  
through its Under Secretary,  
New Delhi.
3. Flag Officer Commanding  
Goa Naval Area,  
Vasco Da Gama, Goa. ... Respondents.

Mr. A. N. S. Nadkarni, Advocate General with Miss Shweta Sabnis, Advocate for the Petitioner.

Mr. V. P. Thali, Senior Central Government Standing Counsel for the Respondents.

CORAM: P. V. KAKADE &  
P. V. HARDAS, JJ.

DATED: 29TH OCTOBER, 2002.

**ORAL JUDGMENT** (PER P. V. HARDAS, J.)

In the present Petition, the Petitioner has challenged the impugned Order dated 12th June, 2002,

refusing to consider his request for premature release from service.

2. The facts in brief necessary for the decision of this Petition are set out hereunder:-

The Petitioner is a Doctor by profession, having graduated from the Armed Forces Medical College and was commissioned in the Indian Navy on 25th December, 1987. From 20th December, 1991 to 10th December, 1993, the Petitioner successfully completed an advanced course in Radio Diagnosis from Armed Forces Medical College, Pune. The Petitioner was married on 7th October, 1992. The wife of the Petitioner is also a Doctor. In November, 1994, the Petitioner and his wife were blessed with a daughter. In 1996, the wife of the Petitioner underwent an abortion and on 16th February, 1997, the wife of the Petitioner delivered prematurely. The newly born son was diagnosed as Atopic/Seborrhoic dermatitis. The travails of the Petitioner did not end here as in March, 1997, the Petitioner was diagnosed of Tuberculosis and was hospitalised for a period of three months. From 21st June, 1997 till August, 1997, the Petitioner was at Vishakapatnam. It is stated in the Petition that in 1987, the Petitioner's father had undergone Coronary

Angiography in Pune. He had undergone a similar Coronary Angiography in 1997 also. The Petitioner's father thereafter started suffering from recurring abdomen pain and had undergone several tests including endoscopy etc.. In the backdrop of all these facts, the Petitioner in May, 2000, submitted his resignation on extremely compassionate grounds. On 4th July, 2002, the Petitioner was interviewed by Flag Officer Commanding, Goa Area and the Flag Officer Commanding, Goa Area by his letter dated 10th July, 2000, approved the Petitioner's request for resigning from the services and held that the grounds cited by the Petitioner were correct and genuine. However, on 14th August, 2000, the Headquarters Western Naval Command, Mumbai rejected the Petitioner's application and, therefore, on 25th September, 2000, the Petitioner submitted an application for premature release from service on extremely compassionate grounds.

3. In the application dated 25th September, 2000, the Petitioner in ground 2 has pointed out that during the pregnancy of his wife she was diagnosed as case of placenta previa. Since the Petitioner was not granted annual leave, this led to souring of the relations between the Petitioner and his wife. His wife had delivered the child on 16th February, 1997

prematurely. Since, the son was suffering from skin infection, he was required frequent consultation with Pedetrician/Dermatologist. In ground 5, it is stated that two months of intense mental tension and physical exertion manifested on his personal health and the Petitioner was diagnosed to have Pleura Pulmonary Tuberculosis. He was then transferred to Vishakapatnam where despite of having eleven months seniority he was denied Naval base being posted on deputation on Coast Guardship. The Petitioner's wife refused to join him at Vishakapatnam and the Petitioner had to take a house on lease in civil locality in Vishakapatnam. The Petitioner's wife ultimately joined him in 1998 after a lot of persuasion and convincing. In ground 10, the Petitioner has highlighted his plight. His marriage is tethering and he is going for a break down. The stress has begun to tell on the Petitioner's health. In ground 11, it is stated that the Petitioner's father is an old case of heart disease who has already undergone two Coronary Angiographies in 1987 and 1997. The mother of the Petitioner is suffering from Ischaemic Heart Disease. In the backdrop of all these facts, the Petitioner had submitted his application for premature release which is Exh.'G' to the Petition.

4. Part II of the said application for premature release contains a certificate from the Commanding Officer that the grounds urged for premature release have been verified as genuine and correct.

5. By letter dated 27th October, 2000, the Headquarters Goa Naval Area turned down the Petitioner's application. The Petitioner by his letter dated 15th March, 2002, requested for an interview with the Flag Officer Commanding-in-Chief Western Naval Command, Mumbai and Director General Medical Services(Navy). His request was turned down by the letter dated 16th April, 2001. Left with no other alternative, the Petitioner filed a statutory complaint on 18th May, 2001. By letter dated 6th May, 2002, the Petitioner was informed that his representation had been referred to the Ministry of Defence and a decision would be intimated to him. On 24th June, 2002, the Petitioner was intimated that his representation had been rejected. The Order impugned in the present Petition dated 12th June, 2002, states the reason for rejection as: (1) The grounds advanced are not considered adequate for seeking premature release from the service and (2) There is also shortage of speciality of Radiology in Armed Force Medical Services.

6. The Respondents in their Affidavit state that there is a shortage of Radiologist in Navy and also that the grounds were routine in nature did not merit release. The Petitioner in his Affidavit has pointed out that certain other personnel have been granted premature release and the Petitioner who was similarly circumstanced has not been granted any response. The Affidavit on behalf of the Respondents states that one Lt. Col. P. Joshi was given premature release on the ground of illness of parents and property dispute and in respect of the others, it is stated that the reasons were altogether different. On a query from the Court, the learned Counsel for the Respondents has admitted that there was no shortage of Radiologist when the application of the Petitioner for premature release was made.

7. The relevant Rule 5 reads as under:-

"5. Compassionate grounds. Applications are to contain details and attending circumstances and must be supported by documentary proof. Domestic problems relating to inheritance of property, need to look after ailing parents, family business, serious illness of wife requiring officer's presence at home, possibility of break up of conjugal life if the officer continues in service etc. will be treated

as compassionate grounds depending on the circumstances of each case. The facts represented by the officer are to be verified by his Commanding Officer/Administrative Authorities to ensure that the grounds are incontrovertible. In all compassionate cases documentary evidences are to be produced and are to be verified by the superior authorities before the cases are recommended to Naval Headquarters".

8. A perusal of the above Rule would show that amongst the various grounds, the ground for need to look after ailing parents and possibility of break up of conjugal life are treated as compassionate grounds. We may again repeat that in response to an earlier application dated 10th July, 2000, the Commanding Officer had certified that the grounds of premature release had been genuine and correct. It is true that the authorities need not assign any reason while rejecting the application for premature release. But in the present case, it is seen that in the impugned Order, it is stated that the grounds urged by the Petitioner are not considered adequate. This reasoning according to us, is not justified on perusal of the grounds urged by the Petitioner. The need to look after aged and ailing parents and the possibility of break down of marriage are recognised as compassionate grounds for seeking premature release. The adequacy or

inadequacy of the ground is wholly immaterial. A request can be turned down on the ground that the reasons are not genuine and are found to be false on examination but if, the grounds are so found as genuine grounds for seeking premature release, the application stating those grounds cannot be turned down as inadequate. Also as stated by us earlier, one Lt.Col.P. Joshi was allowed to prematurely retire on grounds of ailment and property dispute. This is stated by the Respondents in their Affidavit at para 38. If these grounds are adequate in respect of one Officer, how can they be treated as inadequate in respect of another Officer? In fact, Rule 5, quoted above mandates that the grounds are to be verified by the Commanding Officer to ensure that the grounds are incontrovertible. In the case of the Petitioner, this has been done so. The other ground for turning down the request of the Petitioner is that there is shortage of Radiologist. This was not a ground available when initially the request of the Petitioner was turned down. This is a subsequent development. The rejection of the Petitioner's application for premature release has to be tested on the bonafides of the reasons which were available when the Petitioner made his application. This cannot be used as a lever for turning down the request of the Petitioner. In fact,

in the Affidavit which has been filed on behalf of the Respondents dated 28th October, 2002, it is stated in para 2 that "when there is no scarcity/service requirement, Armed forces let persons prematurely retire/resign. I say that presently there is scarcity of Radiologists in the armed forces and when the shortage of skilled and professionally trained manpower in his speciality will be over, the Petitioner's case for premature release/retirement will be considered at appropriate stages". In para 3 of the Affidavit, it is stated "I say that the Respondents will allow the Petitioner sympathetic consideration if he makes a fresh application for premature release.....". Thus, from the Affidavits, which have been filed, it is clear that the grounds for seeking premature release are certainly not alien to the relevant rules. In the Affidavit referred to above, it is clear that the request of the Petitioner is being turned down only on the ground of scarcity of Radiologist. Just to make the Order impervious to judicial review, it is stated that the grounds are not found adequate.

9. In our considered opinion, this is a fit case where the reasons supporting the rejection are not justified at all.

10. We are conscious of the fact that a Court exercising powers under Article 226 of the Constitution of India does not sit in a Court of appeal scrutinising and evaluating the reasons given by the authorities. We are also conscious of the fact that we cannot substitute our opinion to that of the opinion of the authorities. However, if the reasons given by the authorities are not germane and are totally perverse, judicial review is permissible.

11. For the reasons which we have stated above, in our considered opinion, the reasons given are completely perverse and do not justify the rejection of the Petitioner's application for premature release.

12. In the result, therefore, the Writ Petition is allowed. The Order impugned in the present Petition is quashed and set aside. Rule is made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

P. V. KAKADE, J.

P. V. HARDAS, J.

RD.