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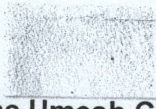
Form No. 4  
{See rule 11(1)}  
ORDER SHEET  
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI  
(Sl. No. 30)

O.A. No. 08 of 2019 with M.A. No. 05 of 2019

**Ex. Sep. Tiatemsu** Applicant  
By Legal Practitioner for the Applicant : Shri B.B. Gogoi, Advocate  
Shri R.K. Talukdar, Advocate

**Versus**

**Union of India & Others** Respondents  
By Legal Practitioner for Respondents : Shri P.K. Garodia, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>06.04.2023</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></b></p> <p>Heard Ms. Dikshita Deka, Advocate holding brief of Shri B.B. Gogoi and Shri R.K. Talukdar, Ld. Counsel for the applicant and Shri P.K. Garodia, Ld. Counsel for the respondents.</p> <p>Original Application is <b>dismissed</b>.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"><div style="text-align: center;"> (Air Marshal Balakrishnan Suresh) Member (A)</div><div style="text-align: center;"> (Justice Umesh Chandra Srivastava) Member (J)</div></div> <p>AKD/MC/-</p>



**ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI**

**Original Application No. 8 of 2019**

**Thursday, this the 6<sup>th</sup> day of April, 2023**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Air Marshal Balakrishnan Suresh, Member (A)**

Ex Sep No. 4427991P Tiatemsu  
 S/o Pangjungmanen  
 Vill – Molungyimsen, PO & PS – Tuli,  
 Dist – Mokokchang, Pin – 798618

**.... Applicant**

Ld. Counsel for the : **Ms. Dikshita Deka**, Advocate  
 Applicant Holding brief of **Shri B.B. Gogoi &**  
**Shri R.K. Talukdar**, Advocate

**Versus**

1. The Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi – 110011.
2. The Colonel Records, The Assam Regiment, Shillong, Meghalaya.
3. The Commanding Officer, 17<sup>th</sup> Assam Regiment, Lucknow, Pin (Army) - 910417, C/o 56 APO.
4. The Brigadier, Assam Regiment Centre (ARC), Happy Valley, Shillong-7, Meghalaya, Pin (Army)-900332, C/o 99 APO.
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, Pin – 211014.

**... Respondents**

Ld. Counsel for the Respondents : **Shri P.K. Garodia**,  
 Central Govt Counsel

**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-



- “(i) To set aside and quash the order of discharge dated 12/11/2015 issued by the 17<sup>th</sup> Assam Regiment and thereafter to re-instate him in service with immediate effect.
- (ii) Or alternatively grant the invalid pension to the applicant along with other consequential benefits.
- (iii) To grant any other relief of relieves as to this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case of the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Assam Regiment) on 21.03.2005. The applicant due to his ill health, proceeded to his home town on 12.11.2015 for taking treatment at his home town. While applicant was taking treatment at his home town, he received a letter dated 12.11.2015 from the Records addressed to his wife which revealed that applicant has been discharged from service at his own request. In this regard, submission of the applicant is that he never applied/submitted any kind of application seeking discharge on compassionate ground. The competent authority sanctioned discharge of the applicant on compassionate grounds vide Records letter dated 10.11.2015 showing reason 'Discharged at his own request' considering request of the applicant on his application dated 20.09.2015 for his discharge on compassionate ground and applicant was discharged from service on 12.11.2015 under Army Rule 13 after rendering 10 years, 7 months and 22 days of service in SHAPE-1 medical category. The applicant being aggrieved with forceful discharge from the service,



has filed this Original Application to either pay him service pension or invalid pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army (Assam Regiment) on 21.03.2005. During his service the applicant has performed his duty with full dedication, devotion and utmost sincerity but after about 10 years and 7 months of service, he was purportedly discharged from the service on compassionate ground. The applicant while serving in his unit, he became suddenly ill in an abnormal situation and was unable to perform his allotted duties but he was not provided any proper medical treatment by the authorities. The applicant applied for leave on medical ground which was granted by the authorities. After taking medical treatment at his home town in the month of Jan. 2015, the applicant rejoined duty and performed his assigned duties though he was not completely fit. In spite of his illness, the applicant was not given proper medical treatment by the respondent authorities and since his health was deteriorating day by day, applicant again decided to go back to his home for taking proper treatment and therefore, verbally told his senior officer for granting voluntary retirement on medical ground with invalid pension.

4. Learned counsel for the applicant further submitted that applicant was verbally told by his senior officers that he has been granted medical leave and accordingly, applicant proceeded to home town on 12.11.2015 for taking proper treatment at his home. While applicant was taking treatment at his home town, he received a letter



dated 12.11.2015 addressed to his wife and on perusal of that letter, applicant came to know that he has been discharged from service at his own request. In this regard, it is submitted by the applicant that he never applied/submitted any kind of application seeking discharge on compassionate ground but after receipt of discharge order dated 12.11.2015, applicant realised that his senior officials took his signatures at the time of his sickness in his unit and they fraudulently misused the same making application for discharge on compassionate ground. Such actions on the part of the respondent authorities are highly illegal, malafide and hence, discharge order issued against the desire of the applicant is liable to be quashed.

5. Learned counsel for the applicant further submitted that on receipt of illegal discharge order, the applicant became patient of Severe Depressions with Psychotic Symptoms and recovered after getting proper treatment for a long time. Thereafter, applicant submitted an application dated 05.10.2018 to the respondents to either reinstate him in service treating his discharge illegal or to grant invalid pension and other benefits having discharged on medical grounds but the respondent authorities never paid heed towards grievance of the applicant. Thereafter, applicant submitted another application dated 29.11.2018 to the Commanding Officer of 17<sup>th</sup> Assam Regiment but so far no reply received from the respondent authorities.

6. Learned counsel for the applicant further submitted that as per Section 64 of the Pension Regulations for the Army, Part II (2008),



the applicant is entitled to invalid pension after constituting an Invalid Medical Board. He further pleaded that since the applicant has been discharged from the service illegally in an arbitrary and malafide manner, therefore, denying of invalid pension causing serious prejudice, leading to affect his livelihood, is violation of Article 21 of the Constitution of India. Hence, applicant should either be reinstated into service to complete his pensionable service or to grant him invalid pension treating his discharge on medical ground through IMB.

7. On the other hand, Ld. Counsel for the respondents submitted that applicant has suppressed the series of events which unfolded after submission of his request for discharge vide letter dated 20.09.2015, culminating into issuance of the discharge order dated 12.11.2015  
12.11.2018. The applicant has made an attempt to create a picture that he was ill and his mental condition deteriorated and in this condition, applicant requested his senior officers for voluntary retirement, whereas, decision of the applicant to be 'discharged at his own request' was a well thought decision taken by the applicant himself and, despite being counselled about the pros and cons of his decision to pray for discharge. The submission of the applicant that his signatures were taken on some blank papers by his senior officials which were misused is absurd, outlandish and lacks the slightest of credence as the applicant has failed to show any proof in support of his pleadings which would rebut the presumption under Section 142 of the Army Act, 1950.



8. Learned counsel for the respondents further submitted that applicant was admitted in 92 Base Hospital on 12.12.2009 for treatment of 'Acute Appendicitis (Optd)' and discharged on 21.12.2009 and he was granted sick leave from 22.12.2009 to 18.01.2010. Thereafter, applicant was admitted in 165 Military hospital on <sup>18.01.2010</sup> ~~18.01.2009~~ and was downgraded to low medical category P3 (T-24) w.e.f. 20.01.2010. The applicant was re-admitted to Command Hospital, Lucknow on 06.07.2010 for re-categorisation and he was upgraded to LMC P2 (T-24). The applicant again admitted to Command Hospital, Lucknow on 21.12.2010 for re-categorisation medical board and he was upgraded to SHAPE-1 on 22.12.2010. Thereafter, applicant was posted to 17 ASSAM from 06.01.2012. The applicant was awarded 7 days RI and 14 days pay fine under Sections 48 and 63 of Army Act, 1950 while posted at HQ 64 Mountain Brigade. Thereafter, applicant continued his service with 17 ASSAM till his voluntarily discharge from service at his own request.

9. Learned counsel for the respondents further submitted that on 20.09.2015, applicant made a request for his voluntarily retirement from service due to domestic necessity on the grounds (i) that his parents are aged old and dependent on him, (ii) his land is uncultivated due to non availability of a male member and (c) there is an inescapable need of a male member to take care of the family. Thereafter, applicant signed a certificate dated 24.09.2015 certifying that he will not withdraw his application for voluntary retirement under any circumstances. The application of the applicant was sent further



for necessary action vide letter dated 30.09.2015. The Assam Records vide letter dated 17.10.2015 advised to the unit of the applicant that applicant be properly counselled about the pros and cons of his request for discharge as he has rendered 10 years, 7 months and 22 days of service and have not completed his minimum pensionable service to earn service pension. Then, Commanding Officer 17 Assam issued counselling letter dated 02.11.2015 to the applicant advising him to complete his minimum pensionable service and interviewed/briefed the applicant and the interview was video-graphed in which applicant is seen stating the reasons for leaving the service which tallies with the reasons stated in his voluntarily discharge application. Thereafter, applicant submitted another undertaking certificate dated 02.11.2015 in which he stated that he is fully aware about not receiving any pensionary benefits and requested for early processing of his application for discharge mentioning therein that he will not blame anyone for his discharge and shall not take any legal recourse. Accordingly, 17 Assam forwarded necessary documents to the Records for consideration and issuance of discharge order. The competent authority sanctioned discharge of the applicant on compassionate grounds vide Records letter dated 10.11.2015 showing reason 'Discharged at his own request'. Accordingly, applicant was discharged from service on 12.11.2015 under Rule 13 of the Army Rules, 1954 after rendering 10 years, 7 months and 22 days of service. The medical examination of the applicant was carried out in September, 2015 and applicant was



found physically and mentally fit in SHAPE-1 medical category vide medical board proceedings dated 21.09.2015.

10. Learned counsel for the respondents further submitted that applicant was paid benefits of Credit Balance – Rs. 1,25,121/-, AFPP Fund – Rs. 76,642/-, Gratuity – Rs. 5,19,996/- and AGIF Maturity – Rs. 1,76,191/- at the time of discharge from service. Thus, from the above mentioned facts, it is proved that applicant was discharged from service on compassionate grounds as per his request made through an application and giving undertaking to leave Army. Since, the applicant was discharged from service in fit medical condition, SHAPE-1, after rendering 10 years, 7 months and 22 days of service, he is neither entitled for service pension having not completed 15 years of pensionable service nor invalid pension being discharged in fit medical category (SHAPE-1). He pleaded for dismissal of Original Application.

11. We have heard learned counsel for the respondents and perused the material placed on record.

12. Perusal of records/documents reveals that applicant submitted an application on 20.09.2015 for voluntarily discharge from service due to his domestic/family problems. The applicant also signed a certificate dated 24.09.2015 stating that he will not withdraw his application for voluntary retirement under any circumstances. The Assam Records vide letter dated 17.10.2015 advised to the unit of the applicant and Commanding Officer of the unit counselled about the



pros and cons of his request for discharge as applicant has rendered 10 years, 7 months and 22 days of service and he will not be granted any pensionary benefits having not completed his minimum 15 years of pensionable service. The counselling/interview of the applicant by the Commanding Officer of the unit was video-graphed.

13. The personal application/undertaking of the applicant for his voluntary discharge from service on compassionate ground and videography of interview/counselling by the Commanding Officer of the unit established that applicant has himself applied for his discharge from service by submitting personal application and he has not been forcefully discharged from service by forged signature made on the blank papers taken from him during his unsound mental condition, as alleged by the applicant.

14. The medical examination of the applicant was carried out in September, 2015 and applicant was found physically and mentally fit in SHAPE-1 as per medical board proceedings dated 21.09.2015 which establishes that applicant was discharged from service in fit medical condition, SHAPE-1. Therefore, applicant's prayer that he was not in fit medical condition at the time of discharge from service, he be granted invalid pension through an Invaliding Medical Board, is not substantial and is therefore, rejected.

15. Since the applicant has rendered only 10 years, 7 months and 22 days of service in the Army before his discharge from service, he is not entitled for service pension having not rendered 15 years of



qualifying pensionable service in terms of Para 132 of Pension Regulations for the Army 1961 (Part-1), wherein 15 years of qualifying service is mandatory for grant of service pension.

16. In view of the above, we do not find any illegality, arbitrariness or any forged action/documentation on the part of the respondents, due to any personal enmity in discharging the applicant from service. The Original Application is devoid of merit, deserves to be dismissed and is accordingly **dismissed**.

17. No order as to costs.

18. Pending Misc. Application(s), if any, shall stand disposed off.



(Air Marshal Balakrishnan Suresh)  
Member (A)

Dated: 5<sup>th</sup> April, 2023  
SB



(Justice Umesh Chandra Srivastava)  
Member (J)