


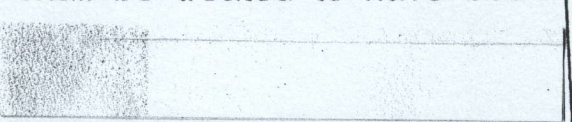
Form No. 4  
{See rule 11(1)}  
ORDER SHEET  
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI  
(Sl. No. 45)

O.A. No. 39 of 2019 with M.A. No. 31 of 2019

Ex. Hav. Vumkhanthang Applicant  
By Legal Practitioner for the Applicant : Shri K.C. Gautam, Advocate  
Shri M. Halder, Advocate  
Shri B.K. Biswa, Advocate  
Shri Jimmy Sangma, Advocate  
Shri D. Mekrisuh, Advocate

Versus

Union of India & Others Respondents  
By Legal Practitioner for Respondents : Ms. Dipanjali Bora, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b>05.04.2023</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>On the case being taken up for hearing no one is present on behalf of the applicant. Heard Ms. Dipanjali Bora Ld. Counsel for the respondents.</p> <p><b><u>M.A. No. 31 of 2019</u></b> This application has been for condoning delay in filing of Original Application for the grant of service pension by condoning of approx 02 years shortfall in qualifying service. For the reasons stated in affidavit filed in support of delay condonation application, delay in filing the Original Application is <b>condoned</b>. Delay condonation application stands disposed off.</p> <p><b><u>O.A. No. 39 of 2019</u></b> Heard Ms. Dipanjali Bora Ld. Counsel for the respondents. Original Application is <b>dismissed on merit</b>. For orders, see our order passed on separate sheets. Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-between;"><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/MCI/-</p>

The present 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:-



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

**Original Application No. 39 of 2019**

**Wednesday, this the 5<sup>th</sup> day of April, 2023**

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

Havaladar, Vumkhanthang  
 S/o Late Thumzain  
 Permanent R/o Village – Matamualtam,  
 PO & PS – Churachandpur, Manipur  
 Presently residing at Madanriting (Happy Valley) Shillong,  
 East Khasi Hills District, Meghalaya

**.... Applicant**

Ld. Counsel for the Applicant : **Shri K.C. Gautam**, Advocate  
**Shri M. Halder**, Advocate  
**Shri B.K. Biswa**, Advocate  
**Shri Jimmy Sangma**, Advocate  
**Shri D. Mekrisuh**, Advocate  
**(None Present)**

**Versus**

1. Union of India, through Secretary, Ministry of Defence, South Block, Defence Head Quarters, New Delhi – 110011.
2. The Chief of the Army Staff, Army HQ, South Block, Defence Headquarters, New Delhi – 110001.
3. The Director, Faculty of Studies, College of Combat, Mhow (MP).
4. The Commanding Officer 2 Assam Regiment, Assam Regimental Centre, Happy Valley, Shillong.

**... Respondents**

Ld. Counsel for the Respondents : **Ms. Dipanjali Bora**,  
 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:-



- "1. That in the facts and circumstances of the case the impugned order of discharge dated 14.01.1992 is bad in law and therefore liable to be set aside and quashed.
2. That as the impugned order is without legal foundation appropriate orders directing the Respondents that the applicant is entitled to full back wages and other benefits as would be applicable to him if the order impugned would not have been issued.
3. That since the order impugned in the instant Original Application is issued most illegally thereby depriving the applicant full length tenure in service discharging him from service on completion of 13 (thirteen) years of service which falls short of qualifying service of 15 (fifteen) years appropriate directions to the respondents round off the applicants qualifying service making him eligible for pension and other benefits."
4. For appropriate directions to round off the shortfall in qualifying service of the applicant making him eligible for pensionary benefits considering the arbitrariness in the exercise of powers by the respondents and the outstanding service record of the applicant.
5. Order any other reliefs to which the applicant is entitled to in the interest of justice, equity and fair play in the facts and circumstances of the case."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 23.02.1980 and was discharged from service on 31.01.1992 after rendering 11 years and 11 months of service being undesirable soldier under Army Rule 13 (3) III (v) and Army Headquarters letter dated 28.12.1988. During the entire service, the applicant was awarded five red ink entries punishments. Since the applicant had failed to show improvement in discipline and sense of



devotion towards duty despite frequent counselling and punishment keeping in view the above facts, it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, applicant was issued a Show Cause Notice dated 18.12.1991 by the Director of Faculty, College of Combat, Mhow. The notice was replied by the applicant on 02.01.1992. Reply of Show Cause Notice was not found sufficient, discharge order was sanctioned/accorded by the Director of Faculty, College of Combat, Mhow and accordingly, applicant was discharged from service locally on 31.01.1992. Thereafter, applicant submitted a petition dated 17.09.1992 praying to condone red ink entries in his service record which was rejected by the Chief of the Army Staff vide order dated 01.09.1993. The applicant also filed Writ Petition before the Hon'ble Guwahati High Court and the Hon'ble Delhi High Court which were dismissed as withdrawn and no relief was granted to the applicant. The applicant being not satisfied with the procedure of discharge, has filed this Original Application to pay him back wages of 15 years of service and grant service pension after condoning the shortfall in pensionable service.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Indian Army on 23.02.1980 in 2<sup>nd</sup> Assam Regiment. The applicant successfully completed/passed required examinations/courses of the Army. The applicant was promoted to the rank of Havildar in the year 1988. The applicant while serving in College of Combat, Mhow, was issued a Show Cause Notice dated 18.12.1991



to show cause as to why he should not be discharged from the Army having been awarded five red ink entries. The applicant replied to Show Cause Notice vide his reply dated 02.01.1992 but the same was not considered by the respondents and discharge order dated 14.01.1992 was issued by the respondent No. 3 under the provisions of Army Rule 13 (3) III (v) and Army Headquarters letter dated 20.12.1988 as his retention was not desirable being services no longer required. Thus, he was removed from the Indian Army in the most arbitrary and illegal fashion without giving an opportunity of hearing after 13 years of service. Being aggrieved the applicant filed Writ Petition Civil Rule 815 of 1992, before the Hon'ble Guwahati High Court which was dismissed as withdrawn. Thereafter, applicant filed Civil Writ Petition No. 426 of 1993 before the Hon'ble Delhi High Court which was dismissed with liberty to the applicant to challenge the order of dismissal of representation dismissed by the respondents on 01.09.1993 vide order dated 29.10.1993. Thereafter, applicant requested to his lawyers at Delhi to file fresh Writ Petition in terms of order dated 29.10.1993 but the same could not be done and his case could not proceed further. Thereafter, applicant came to know about constitution of AFT (RB) Guwahati and filed the case to get justice from the Tribunal.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Virendra Kumar Dubey v. Chief of Army Staff & Ors.** (2016) 2 SCC 627, and pleaded that authorities have blatantly violated Army



Headquarters policy letter dated 28.12.1988 and therefore, impugned order of discharge dated 14.01.1992 be set aside and applicant be paid full back wages of his rank and thereafter, shortfall in qualifying service making him eligible for 15 years of pensionable service be condoned and applicant be paid service pension accordingly.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 23.02.1980 and was discharged from service on 31.01.1992 after rendering 11 years and 11 months of service being undesirable soldier under Army Rule 13 (3) III (v) and Army HQ letter dated 28.12.1988 before completion of terms and engagement of service. During the entire service, the applicant was awarded five red ink entries punishments as per following details:-

Ser No.	Place and date of Offence	Army Act Section	Date of Award	Punishment awarded
(a)	Peace, 31.08.1982	54(b)	04.01.1983	Severe Reprimand
(b)	Field, 15.03.1989	40(c)	03.04.1989	Severe Reprimand
(c)	Field, 23.04.1991	39(b)	24.06.1991	Severe Reprimand
(d)	Field, 25.06.1991	39(c)	26.06.1991	Severe Reprimand
(e)	Field, 06.11.1991	40(c) & 41	07.11.1991	Severe Reprimand

6. Ld. Counsel for the respondents further submitted that as per IHQ of MoD (Army) letter No. A/13210/159/AG/PS-2(c) dated 28.12.1988, *'an individual who has proved himself undesirable and whose retention in the service is considered inadvisable including case of four or more Red Ink Entries will be recommended for discharge/dismissal'*. Since the applicant had failed to show improvement in discipline and sense of devotion towards duty despite frequent counselling and punishment keeping in view the above facts,



it was brought out that the applicant was not upto the acceptable limit of discipline of soldier in Indian Army where the discipline is the backbone. Therefore, applicant was issued a Show Cause Notice dated 18.12.1991 by the Director Faculty of Studies, College of Combat, Mhow. The notice was replied by the applicant on 02.01.1992. The reply was duly considered and being not found sufficient, the Director Faculty of Studies, College of Combat, Mhow sanctioned discharge order of the applicant vide order dated 14.01.1992 and accordingly, applicant was locally discharged from service on 31.01.1992. The applicant had become a bad example in the unit due to his irresponsible attitude towards his duties and discipline and thereby failed to render an unblemished service which resulted his discharge from service as undesirable soldier. Therefore, applicant's prayer to condone red ink entries in his service record was rejected by the Chief of the Army Staff vide order dated 01.09.1993 passed on the petition of the applicant dated 17.09.1992.

7. Ld. Counsel for the respondents also relied on the judgment of the Hon'ble Apex Court in Civil Appeal No. 1857 of 2018, **Sep Satgur Singh vs. Union of India & Ors**, decided on 02.09.2019. Para 7 of the judgement being relevant is quoted below :-

"7) We do not find any merit in the present appeal. Para 5(a) of the Circular dated December 28, 1988 deals with an enquiry which is not a court of inquiry into the allegations against any army personnel. Such enquiry is not like departmental enquiry but semblance of the fair decision-making process keeping in view the reply filed. The court of inquiry stands specifically excluded. What kind of enquiry is required to be conducted would depend upon facts of each case. The enquiry is not a regular enquiry as para 5(a) of the Army Instructions suggest that it is a preliminary enquiry. The



test of preliminary enquiry will be satisfied if an explanation of a personnel is submitted and upon consideration, an order is passed thereon. In the present case, the appellant has not offered any explanation in the reply filed except giving vague family circumstance. Thus, he has been given adequate opportunity to put his defence. Therefore, the parameters laid down in para 5(a) of the Army Instructions dated December 28, 1988 stand satisfied."

8. Learned counsel for the respondents further submitted that applicant being discharged from service after 11 years and 11 months of service as an undesirable soldier and service no longer required, he is not entitled to service pension for having not completed 15 years of pensionable service as per Pension Regulations for the Army, 1961. She pleaded for dismissal of the Original Application.
9. We have heard learned counsel for the respondents and perused the material placed on record.
10. It is pertinent to mention that judgment relied upon by the applicant in Para 4 referred to above is not relevant in the present case being based on different facts and circumstances of the case.
11. The applicant in his reply dated 02.01.1992 to Show Cause Notice, has accepted that he has been awarded five red ink entries punishments and prayed not to discharge him from service by giving a chance to serve without any further mistake so that he can look after to his family. This reply of applicant, being a general/routine reply was not treated sufficient and satisfactory cause to retain him in service and therefore, discharge order issued by the respondents as per rules/policy on the subject, cannot be set aside in the manner that due procedure was not followed.



12. It is also made clear that in view of Para 7 of the judgment of the Hon'ble Apex Court in **Sep Satgur Singh** (*supra*), no regular inquiry was required as Para 5 (a) of Army Headquarters letter dated 28.12.1988 does not deal with Court of Inquiry. Therefore, discharge order of the applicant was issued as per rules and policy letter dated 28.12.1988.

13. The applicant was awarded punishments of five red ink entries for the offences committed during his entire service and resulted as 'habitual offender'. Since the applicant had not rendered 15 years of qualifying service, he was rightly not granted service pension as he is not entitled for the same in terms of Para 132 of Pension Regulations for the Army 1961 (Part-1) wherein 15 years of qualifying service is required for grant of service pension.

14. Further, as per Para 125 of Pension Regulations for the Army, 1961 (Part-1) (Para 44 of Pension Regulations for the Army, 2008 (Part-1), condonation of deficiency of service for eligibility of service pension upto six months can be condoned by the competent authority and as per IHQ of MoD (Army) letter dated 14.08.2001, deficiency in service for eligibility to service pension upto one year can be condoned by IHQ of MoD (Army), however, the applicant has served for a period of 11 years and 11 months of service, there being a shortfall of more than 3 years, the same is not condonable as per rules/policy letter.




15. In substance, we find that applicant was negligent towards his duties being a habitual offender and indisciplined soldier. During his service, the applicant was awarded five punishments for his irresponsible attitude and indisciplined nature towards his duty. Even after giving repeated warnings/counselling, the applicant did not show any improvement in his personal/military discipline and conduct. There being no other option, being an undesirable soldier, the applicant was discharged from service after due procedure as per Army Rule 13 (3) III (v) and Army Headquarters policy letter dated 28.12.1988 on the subject. Hence, the applicant is not entitled the reliefs prayed in Original Application.

16. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It 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)