

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

**MISC. APPLICATION (E) NO. 58 OF 2024
IN
ORIGINAL APPLICATION NO. 172 OF 2023**

MS-NYA Captain (Dr.) Raj Parekh,]
AMC, Army] .. Applicant

Versus

1. Union of India (Through Secretary,]
Ministry of Defence),]
New Delhi – 110011.]
2. The DGAFMS]
Office of the Director General]
Armed Forces Medical Services]
Ministry of Defence “M” Block]
New Delhi – 110001.]
3. The Adjutant General’s Branch]
DGMS (Army)/DGMS-1A.]
“L” Block IHQ MoD (Army),]
New Delhi – 110001.]
4. The General Officer Commanding]
(Medical Branch)]
Headquarters Southern Command]
Pune, C/o 56 APO.]
5. The Commandant Military Hospital]
Ahmedabad Cantonment Shahibaug]
Ahmedabad – 380004.]
6. The State of Gujarat]
(through Secretary Home)]
Home Department 1st Block,]
5th Floor Sachivalay, Gadhinaragar]
Gujarat – 382010.]
7. The Deputy Commissioner Zone-4]
Shahibag Police Station, First Floor]
Ahmedabad City, Gujarat – 380004.] .. Respondents

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 Mr. A. Ojha, Advocate for the Applicant.

Mr. A.J. Mishra for the Respondents.

**CORAM : SHAIENDRA SHUKLA, MEMBER (J)
AND VICE ADMIRAL ABHAY
RAGHUNATH KARVE, MEMBER (A)**

DATE : 07.03.2024.

ORAL ORDER *(Per Shailendra Shukla, Member (J))*

1. Rejoinder has been filed by the learned counsel for the applicant. He has also filed M.A. (E) No. 58/2024 seeking a direction to the respondents to comply with the directions of this Tribunal passed in order dated 23.08.2023 in Misc. Application No.265 of 2023 which was an application for bail. Para 4 of the aforesaid order is the impugned procedure which has been stated to be not been complied with submitting that the respondents have violated the same. The relevant portion is reproduced as under :-

“Captain Raj Parekh shall be released on bail subject to furnishing surety of Rs. 25000/- before this Tribunal and the personal bond of the like amount to be filed before this Tribunal immediately after his release. Surrender of passport shall be pre requisite for the applicant for his release from the military custody. After being so released, the applicant shall resume his duties in Military Hospital till his resignation letter is approved

by the competent authority. Any absence from duty shall make applicant liable for cancellation of his bail.”

2. It is submitted by the learned counsel for the applicant that the respondents were required to approve the resignation letter filed by the applicant, but instead of doing so, the respondents have convened General Court Martial and thus, the directions of this Tribunal have been violated. The learned counsel for the respondents, in response made oral submissions to the effect that this Tribunal had directed the respondents to approve the resignation letter filed by the applicant and, therefore, there is no breach of any directions of this Tribunal.

3. We have heard both the learned counsel and perused the records. The applicant having joined Army Medical Corps as Short Service Commission Officer on 22.10.2020 expressed his unwillingness to continue and sent a letter on 06.11.2020 seeking pre-mature retirement/resignation. However, he was taken in military custody and shown as deserter, which compelled him to file O.A. under Section 14 of the Armed Forces Tribunal Act 2007 seeking to set aside the charge-sheet and also seeking direction to mandatorily approve his resignation letter. He had made interim prayer also seeking direction that no coercive action be taken against him by the respondents. The applicant being in custody, the O.A. was filed on his

behalf by his father. Bail application was also filed which was allowed on 23.08.2023, para 04 of which has already been reproduced above.

4. The present M.A. has been filed under Section 29 of Armed Forces Tribunal Act 2007 read with Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2009. Section 29 is reproduced as under :-

“Execution of order of Tribunal .- Subject to the other provisions of this Act and the rules made thereunder, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly.”

Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008 is also reproduced as under :-

“Powers of the Tribunal with regard to certain orders and directions.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

Thus, the M.A. has been filed with assumption that the Tribunal had passed an order to approve the resignation letter of the applicant. We are afraid that this presumption is totally misplaced. This Tribunal has not passed any such direction that the resignation letter must mandatorily be approved by the competent authority. Had there been such intention, then the O.A.

would have been disposed of with the passing of the bail order. Merely an observation that prevailing facts do not show that the applicant had deserted, it cannot be implied that the applicant's application for resignation had been directed to be approved. Hence, there being no order to be executed, Section 29 of the Armed Forces Tribunal Act shall also not be applicable. Consequently, the application M.A.(E) 58/2024 stands disposed of as rejected.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Shailendra Shukla)
Member (J)

Date – 07.03.2024.

Sh/-