

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

33. O.A. No. 108 of 2015



Sep/Driver Awale Deelip Sugreev  
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>07.06.2022</u>  <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u>  <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Mr. D. S. Kauntae, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Hearing concluded.</p> <p>Judgment reserved.</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="background-color: yellow; padding: 5px; text-align: center;">             (Vice Admiral <del>Abhay</del> Raghunath Karve)            Member (A)         </div> <div style="background-color: yellow; padding: 5px; text-align: center;">             (Justice Umesh Chandra Srivastava)            Member (J)         </div> </div> <p>SB/AMK</p>

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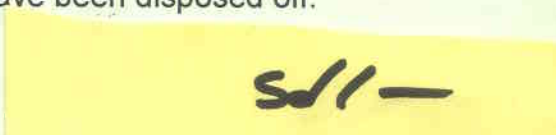
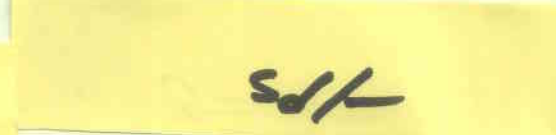
Awle Deelip Sugreev  
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RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI****Original Application No. 108 of 2015**Thursday, this the 9<sup>th</sup> day of June, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Sep/Driver (Special) Awle Deelip Sugreev, No. 15795145M  
S/o Sh. Surgeev Laxman Awle  
R/o AT/P – Shirur, Anantpal, Taluqua – Shirpur Anantpal,  
Distt – Latur (Maharashtra) PIN – 413544  
Unit – 401 Lt AD Regt (Comp)  
C/o 56 APO.... **Applicant**Ld. Counsel for the Applicant : **Shri D.S. Kauntae**, Advocate.

Versus

1. Union of India, through its Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi – 110011.
2. OIC Records, Air Defence Regiment, Nasik Road Camp (Maharashtra).
3. Col., Commanding Officer, 401 Lt AD Regt (Comp), C/o 56 APO.
4. Brigadier Commander, 761 (I) A.D. Brigade, C/o 56 APO.
5. Major Battery Commander, 'Q' Battery, 401 Lt AD Regt (Comp), C/o 56 APO, through C/o Commanding Officer, 401 Lt AD Regt (Comp), C/o 56 APO.

... **Respondents**Ld. Counsel for the Respondents : **Shri A.J. Mishra**,  
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:-



- (a) Quash/set aside the impugned order or discharge issued by OIC AD Records, Nasik Road Camp, vide there file No. 409/Prem/CUO/Sp.15/10/CA-1 dt 30.01.2015 (not served to the applicant at by the respondents at all), as mentioned in the movement order dt. 02.09.2015.
- (b) Also quash/set aside the DO Part II Order dt 04.09.2015 being DO part-II Sl. No.0/1161/2015, passed by the respondent No. 6 against the petitioner striking the name of the applicant from the roll of the regiment permanently on the authority of OIC AD Records order dt. 30.01.2015 mentioned hereinabove.
- (c) Also quash/set aside the adverse consequential impact of the discharge certificate endorsement on page 6 9PART-IV), Column No. 7 thereof showing applicant's discharge from Army service w.e.f. 01.10.2015 (F/N).
- (d) After quashing/setting aside all the aforesaid orders, further direct the respondents to reinstate the applicant back in service with retrospective effects and by deeming the applicant as continuing in service with all consequential benefits including monetary allowance, salary and other allied arrears emanating therefrom under the rules for all practical purposes retrospectively.
- (e) Award costs in favour of the applicant and against the respondents.
- (f) Pass such further order or orders as this Hon'ble Court may deem fit and proper 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 01.04.2009. The applicant expressed his desire to leave the Army and to join State civil services. In the year 2013, applicant approached the Battery Commander of the unit about his

plan to quit Army. Battery Commander and Commanding Officer advised the applicant to think and to take some more time about his decision to leave Army. The applicant applied for premature discharge voluntarily vide his hand written application dated 24.07.2014 (Attached as Appendix C to counter affidavit) which was recommended and was further forwarded to Regimental headquarters vide letter dated 25.07.2014. The advance pension documents of the applicant were forwarded to AAD Records vide 4012 Lt AD Battery (Comp) letter dated 14.10.2014. AAD Records vide their letter dated 30.10.2015 ordered the discharge of the applicant from service on 01.10.2015. The applicant was issued movement order dated 02.09.2015 to move for discharge drill. Thereafter, applicant tried to revoke his application for not discharge from service, but nothing was done by the respondents rather applicant was discharged from service and struck off strength from Army on 01.10.2015 (FN). The applicant has now filed the present Original Application praying that he was discharged from service against his wishes and therefore, he be reinstated into service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the AAD Regiment on 01.04.2009. The applicant applied for permanent transfer to Army Aviation Corps being fully eligible but his superior authorities including Commanding Officer started harassing the applicant on the fake pretext of insubordination on one reason or the other and started targeting to the applicant. The applicant also applied for remustering in the clerical category but was

declined. Respondent No. 5 started harassing the applicant by giving physical punishments and obtained the signatures of the applicant under threat and coercion. They threatened to take up the issue of his approaching higher authorities for remustering/change of cadre post, which were later proved to be false. The applicant was asked to submit his papers duly signed and completed in all respects on the basis of which respondent No. 3 passed impugned order on 30.01.2015 which only came to the knowledge to the applicant on 02.09.2015 when the applicant was served with a Movement Order to proceed on discharge and report to Depot Company. In pursuant to movement order, the applicant reported to the Depot Company of AAD Regimental centre and applicant informed his parents about his discharge. The applicant has never applied for premature discharge from service and never made any such request to any of the authority for premature discharge from service at his own request as alleged by the respondents. The parents of the applicant also proceeded to Regimental centre and made a written request on 16.09.2015 but no action was taken by the respondents. Thereafter, applicant gave a detailed revocation notice cum representation dated 19.09.2015 requesting the authorities not to give effect to discharge process as the applicant has never written any application seeking premature discharge as alleged in the movement order as well as Part II Order but no action was taken by the authorities to the request of the applicant. The applicant handed over a separate written request on 21.09.2015 to Dak Rider of the Depot Company who received the

applicant by not sending the said revocation notice which was addressed to respondent No. 4. Seeing the conspiracy hatched by the Commanding Officer of Depot Company, applicant himself managed to despatch the same to Hon'ble Defence Minister, Lt Gen Rajiv Bhatia, ADG, Delhi, Sainik Kalyan Board, Shirur, Hon'ble Chief Justice of Mumbai High Court, Shri Devnedra Fadanvis, Hon'ble Chief Minister of Maharashtra, General Dalbir Singh, COAS, New Delhi and Brigadier A. Narayanan, AADC.

4. Learned counsel for the applicant further submitted that applicant has been illegally discharged from service as he has never given any consent or signed any such application at his own will. Therefore, his discharge is illegal and arbitrary. He placed reliance on the judgments of AFT (PB), New Delhi in T.A. No. 413 of 2010, arising out of W.P. (C) No. 5793/2007 of Delhi High Court in "**Lance Naik Sanjeev Kumar Versus Union of India & Ors**", O.A. No. 249/2010, **Swr Dashrath Singh vs. Union of India & Ors**, decided on 16.04.2013 and **Sepoy Vijay Pal Singh vs. Union of India & Ors**, T.A. No. 270 of 2010 decided on 07.05.2010 and pleaded that applicant's case is squarely covered with these judgments and therefore, applicant be also reinstated into service with all consequential benefits.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant expressed his desire to leave the Army and to join State civil services in the year 2012 which he discussed with his colleagues


and later he started discussing with his seniors and Battery Havildar Major. His seniors tried to motivate him to concentrate on his trade work/unit routine work and do well for himself while in the Army. In the year 2013, applicant approached the Battery Commander of the unit about his plan to quit Army. Battery Commander advised the applicant to think it over and to take some more time about his decision to leave Army. Despite repeated advices and persuasions, the applicant informed about his desire to the Commanding Officer to quit the Army. The Commanding Officer also advised him to rethink. Thereafter, applicant started showing signs of indiscipline, intolerance and withdrawal symptoms to draw attention of his seniors. The applicant applied for premature discharge voluntarily vide his hand written application dated 24.07.2014 (Attached as Appendix C to counter affidavit) which was recommended by the Battery Commander. The premature discharge application of the applicant was further forwarded to Regimental headquarters vide letter dated 25.07.2014. The Commanding Officer, himself counselled the applicant atleast on five to six occasions but this did not have any effect on the applicant. The Unit Petition Committee thereafter recommended his case for premature discharge from service. The advance pension documents of the applicant were forwarded to AAD Records vide 4012 Lt AD Battery (Comp) letter dated 14.10.2014. AAD Records vide their letter dated 30.01.2015 ordered the discharge of the applicant from service on 01.10.2015. The applicant was issued movement order dated 02.09.2015 to move for discharge drill.



6. Learned counsel for the respondents further submitted that no application for revocation of his application for discharge was received from the applicant by the unit. The application for premature discharge from service was processed and forwarded to AAD Records. The applicant was given movement order as per the provisions of the service rules based on his own request for premature discharge and a Part II Order to this effect was also published. The applicant was struck off strength from 401 Lt AD Regt (Comp) on 04.09.2015 vide Movement Order dated 02.09.2015 and applicant never objected/raised his concern to revoke/reconsider his application for not to be discharged. Hence, applicant was discharged from service as per his application for premature discharge from service and discharge order issued by the AAD Records which is the competent authority to order discharge and accordingly, applicant was discharged from service and struck off strength from Army on 01.10.2015 (FN). The contention of the applicant that he was discharged from service against his wishes is incorrect and baseless. He pleaded for dismissal of O.A.

7. We have heard learned counsel for the parties and perused the material placed on record.

8. Before advertng to rival submissions of learned counsel of both sides, it is pertinent to mention that judgments relied upon by the applicant in Para 4 referred to above are not relevant in the present case being based on different facts and circumstances. In all the



cases, applicants have submitted application for cancellation of their discharge order well before their final discharge came into effect which was also accepted/agreed to by the respondents but in the present case no such cancellation/withdrawal application for premature release was given by the applicant to the respondents prior to his date of discharge as averted by the respondents in their counter affidavit and therefore, applicant cannot be given the benefit of aforesaid judgments.

9. We find that applicant applied for premature discharge voluntarily vide his hand written application dated 24.07.2014 which was processed and forwarded to AAD Records through proper channel and his discharge from service was approved by OIC AAD Records being a competent authority. The advance pension documents of the applicant were forwarded to AAD Records vide 4012 Lt AD Battery (Comp) letter dated 14.10.2014. AAD Records vide their letter dated 30.01.2015 ordered the discharge of the applicant from service with due date w.e.f. 01.10.2015 (FN). The applicant was struck off strength by his unit, i.e. 401 Lt AD Regt (Comp) on 04.09.2015 vide Movement Order dated 02.09.2015. Accordingly, applicant was discharged from service and struck off strength from Army on 01.10.2015 (FN) as per rules.

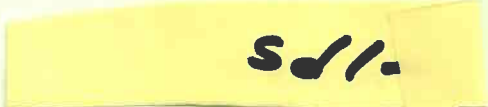
10. We also find that applicant had never objected/raised his concern to revoke/reconsider his premature application for discharge from service. This aspect of revocation has not been proved by the


applicant and the same has been contradicted by the respondents also during the final hearing of the case. Hence, the applicant is not entitled to the relief prayed in Original Application to quash his discharge order and to allow him to join duty with all consequential benefits.

11. In view of the above, we do not find any irregularity or illegality in discharging the applicant from service and hence, there is no violation of any rules and regulations . The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed of.

  
(Vice Admiral Abhay Raghunath Karve)  
Member (A)

  
(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 9<sup>th</sup> June, 2022  
SB