

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Ser No 8)

O.A. No. 252 of 2023 with M.A. No. 265 of 2023

Ex Swr Dharmendra Singh Applicant
By Legal Practitioner for the Applicant : Shri VP Pandey, Shri Rakesh Kumar Singh
and Maj SM Mustafa (Retd), Advocates

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Dr. Shailendra Sharma Atal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>05.02.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p><u>M.A. No. 265 of 2023</u></p> <ol style="list-style-type: none">1. This O.A. has been filed to set aside order dated 11.11.2022 (Annexure-1) and to direct the respondents to allow him to join the service.2. As reported by the office, there is delay of 01 year, 01 month and 13 days in filing the O.A. Applicant has filed application for condoning the delay.3. Besides objection on delay condonation application, the learned counsel for the respondents has raised objection on maintainability of this O.A. and has filed written objection.4. Reply has been filed by learned counsel for the applicant on objection of the respondents.5. Learned counsel for the respondents submits that delay in filing O.A. has not been explained properly. It is further submitted that applicant has been dismissed on 30.06.2022 (annexure-1) but dismissal order and letter dated 24.09.2022 by means of which dismissal was communicated has not been challenged. It is also submitted by learned counsel for the respondents that alternative remedies have not been availed before approaching this Tribunal.6. Learned counsel for the applicant has opposed the submission of learned counsel for the respondents and submitted that dismissal order and letter has not been served to the applicant and he has not directly approached to this Tribunal. His further submission is that delay in filing O.A. is not deliberate but due to reasons shown in affidavit annexed to the delay condonation application.7. We have considered submissions of learned counsel for the parties and perused the record.8. For delay of 01 year, 01 month and 13 days in filing O.A., reason shown

in delay condonation application that he was approaching the respondents and delay is not deliberate, is sufficient to condone the delay. Delay is condoned and delay condonation application stand disposed of. As regards objection raised for not availing alternative remedy, the applicant was declared deserter on 29.07.2019 and before expiry of 03 years he had approached the authorities but cognizance has not been taken (annexure A-5 letter dated 20.06.2022 and annexure A-6 letter dated 23.06.2022). Respondents have also raised objection that dismissal order dated 30.06.2022 and communication letter dated 24.09.2022 which are mentioned in impugned letter (annexure-1) have not been challenged. It is submitted by the applicant that dismissal order and communication letter as regard to dismissal has not been served on him and he is not in possession of the same. In impugned letter dated 11.11.2022 (annexure A-1) it is clearly mentioned that orders against applicant have been passed in his absentia. Effect of this objection can also be considered at the time of hearing on merit.

9. On the basis of above discussion, objection raised by the respondents at this stage are set aside.

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10. The learned counsel for the applicant has raised legal points which needs consideration.

11. Admit

12. Learned counsel for the respondents prays for and is allowed four weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks next.

13. List on **07.05.2024**.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

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Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1 (Ser No 15)

O.A. No. 1032 of 2023

Hav Pawar Manoj Ravindra

Applicant

By Legal Practitioner for the Applicant :Wg Cdr Ajit Kakkar (Retd) and Shri Manoj Kumar Awasthi, Advocates

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents :Dr. Shailendra Sharma Atal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>05.02.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <ol style="list-style-type: none">On the case being taken up for hearing, Shri Manoj Kumar Awasthi, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present.This O.A. has been filed for the following reliefs:-<ol style="list-style-type: none">To pass the directions to consider and grant discharge from service to the applicant.To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.Written objection filed on behalf of the respondents is on record.Preliminary objection against maintainability of this O.A. has been raised on behalf of the respondents at the stage of admission and despite granting several opportunities, reply to objection has not been filed by the applicant.Heard learned counsel for the parties on objection raised by the respondents on maintainability of this O.A. and perused the record.Learned counsel for the respondents submits applicant had earlier filed O.A. No 345 of 2021 before AFT, Principal Bench, New Delhi for the same reliefs, as mentioned in this O.A., which was dismissed on merit vide order dated 04.07.2022. He further submits that applicant has filed the instant O.A. on same ground with same prayer which is not maintainable being barred by res-judicata.In rebuttal, learned counsel for the applicant submits that after

rejection of application for premature discharge vide order dated 11.04.2023, fresh cause of action arose, hence this O.A. has been filed.

8. It is not disputed that earlier the applicant had approached to AFT, Principal Bench, New Delhi for the relief of grant of premature discharge from service but his application was rejected. In this regard it is submitted by learned counsel for the applicant that he approached AFT, Principal Bench vide O.A. No. 345 of 2021 which was dismissed vide order dated 04.07.2022. Then applicant again approached the respondents vide his application dated 27.02.2023 for premature retirement which was again rejected by the respondents vide order dated 11.04.2023.

9. Copy of order dated 04.07.2022 passed by the AFT, Principal Bench, New Delhi has been filed. The grounds taken in that O.A. were the same which have been taken by the applicant in this O.A. except the rejection of the application by the respondents dated 27.02.2023 which was filed by the respondents again.

10. The order dated 04.07.2022 has been passed on merit of the case and each and every point has been heard, considered and finally decided by the AFT, Principal Bench, New Delhi. The issues raised in this Original Application are directly and substantially the same which were raised by the applicant in earlier Original Application No 345 of 2021.

11. In view of the above, we find that the issues raised in this application are directly and substantially the same which were raised by the applicant in earlier O.A. No. 345 of 2021 which was dismissed on merit by order dated 04.07.2022. This O.A. is barred by principle of res-judicata and is not maintainable.

12. Accordingly, this O.A. No. 1032 of 2023 is dismissed being not maintainable.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

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