

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.2 (Ser No. 21)

O.A.(A) No. 1400 of 2023 with M.A. No. 2027 of 2023

Ex Sep Birendra Singh

Appellant

By Legal Practitioner for the Appellant : Shri SN Singh Gaherwar, Shri Ajit Singh Gaherwar and Shri Satya Narayan Mishra, Advocates

Versus

Union of India & Ors

Respondents

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

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2025</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>1. On the case being taken up for hearing, Shri SN Singh Gaherwar, Ld. Counsel for the appellant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.</p> <p>2. Objection has been filed on behalf of the respondents regarding maintainability of this O.A. (A) on the principle of res judicata.</p> <p>3. Learned counsel for the respondents submitted that earlier O.A. No. 225 of 2010 was filed by the appellant to set aside findings and sentence of Summary Court Martial which was decided by this Tribunal vide order dated 28.02.2013 (Annexure No 8 to O.A.) and O.A. was dismissed. The appellant challenged order of this Tribunal before the Hon'ble Supreme Court in Appeal No. 383 of 2014 which was allowed vide order dated 28.04.2017 (Annexure No. 11) modifying order passed by this Tribunal to the extent of converting dismissal into discharge. In the said order, pension and other retiral benefits were also made applicable from the date of imposition of the punishment.</p> <p>4. Learned counsel for the respondents further submitted that now this O.A. (A) has been filed on behalf of the appellant for the same relief for setting aside findings and sentence of Summary Court Martial sentencing the appellant for punishment of reduction in rank. It is submitted on behalf of the respondents that this O.A. (A) is barred by limitation as well as principle of res judicata. It is further submitted by learned counsel for the respondents that there being inordinate delay of more than 15 years, this O.A. (A) deserves to be dismissed on delay itself.</p> <p>5. Reply has been filed on behalf of the appellant in which it is submitted that this O.A. (A) has been filed to set aside the findings and sentence of Summary Court Martial sentencing the appellant in reduction to rank and</p>

rejection order passed by the Chief of the Army Staff. It is further submitted on behalf of the appellant that in earlier O.A. prayer for quashing reduction in rank could not be challenged due to wrong legal advice. In the said reply, the appellant has categorically explained the continuation of litigation on various forums and thereafter, continued representation to various authorities.

6. There is delay of 11 years, 10 months and 21 days in filing Original Application. Appellant has moved delay condonation application which is M.A. No. 2027 of 2023.

7. Learned counsel for the appellant submits that delay is not deliberate but for the reasons mentioned in affidavit filed in support of delay condonation application. It is further submitted that due to continuous legislation and representation to various authorities he could not file the O.A. in time.

8. Learned counsel for the respondents submits that delay has not been properly explained.

9. Heard learned counsel for the parties on delay condonation application and perused the record.

10. Considering submission of learned counsel for the appellant and the facts and circumstances of the case, we find that cause of delay being sufficient, delay is condoned. Delay condonation application is disposed off.

11. In this O.A. (A) 1400 of 2023 following reliefs have been sought by the appellant:-

(a) To set aside findings and sentence of Summary Court Martial sentencing the punishment of reduction in rank.

(b) to set aside rejection order.

12. In Summary Court Martial following sentence was passed on 01.07.2009 against the appellant :-

(i) to be reduced to the rank, and

(ii) to be dismissed from service.

13. Against the sentence passed by Summary Court Martial, representation was preferred by the appellant which has been disposed off by Chief of the Army Staff by order dated 10.05.2010 and it was found that there was no illegality in sentence and finding passed by the Summary Court Martial.

14. Against sentence passed by Summary Court Martial, order passed by Chief of the Army staff rejecting the representation of the appellant, O.A. No. 225 of 2010 was filed by the appellant. The main relief sought by the appellant in earlier O.A. No. 225/10 was to set aside the finding and sentence passed by Summary Court Martial and impugned rejection order passed by the Chief of the Army Staff. Thus, the relief sought by the appellant in earlier O.A. includes both reduction in rank and also dismissal from service of the appellant.

15. In this O.A. (A) the main relief sought by the appellant is to set aside the finding and sentence of Summary Court Martial, sentencing the punishment of

reduction to rank from Havildar to Sepoy and further impugned rejection order.

16. The relief sought by the appellant in this O.A. (A) has already been discussed in earlier O.A. No. 225 of 2010 which includes reduction in rank and dismissal from service of the appellant. Against order passed in O.A. No 225 of 2010 appeal was preferred before the Hon'ble Apex Court which was disposed off vide order dated 28.04.2017 modifying the order of this Tribunal to the extent of conversion of dismissal into discharge for grant of pensionary benefits keeping in view of length of service rendered by the appellant.

17. In view of the above, we are of the view that the relief against reduction in rank of the appellant has already been rejected in earlier O.A. No 225/10, which was dismissed on merit. Appeal had already been filed against order passed by this Tribunal which was decided by the Hon'ble Apex Court and the order passed has attained finality, therefore, this O.A. (A) is barred by the principle of res judicata.

18. Accordingly, the present O.A. (A) being not maintainable, is **rejected**.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

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