

**Court No. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 158 of 2015**Wednesday, this the 3<sup>rd</sup> day of Aug 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**No. 9513553L, Ex-Hav (AEC) Indresh Vishwakarma s/o  
Punnawasi Vishwakarma resident of village & Post-Basahiya  
Ganga Sagar, District-Ambedkar Nagar.

...Applicant

Ld. Counsel for the: **Shri P.N. Chaturvedi, Advocate**  
applicant

Versus

1. Union of India, through Secretary Ministry of Defence  
New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarter of the  
Ministry of Defence (Army), South Block, New Delhi-  
110011.
3. Officer-in-Charge, AEC Records, Pachmarhi.
4. Commanding Officer 207 Medium Regiment, C/o 56  
APO.

.....Respondents

Ld. Counsel for the : **Mrs Anju Singh,**  
Respondents **Central Govt Counsel, assisted by**  
**Col Kamal Singh, OIC Legal Cell.**

**ORDER (ORAL)**

1. The present O.A. has been preferred by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved against the impugned order of discharge from service on compassionate grounds.

2. We have heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Mrs. Anju Singh, Ld. Counsel for the respondents assisted by OIC Legal Cell at length and perused the record.

3. Admittedly, the applicant was enrolled in the Army on 01.03.2004 and was promoted to the rank of Hav with effect from 22.01.2005. On 24.11.2010 the applicant moved application indicating therein his unwillingness to serve the Army. A copy of the application dated 24.11.2010 has been annexed along with the O.A. as **Annexure-1**.

4. A perusal of the application submitted by the applicant in the required format shows that according to medical opinion he was found to be unfit to perform basic military duties. In consequence thereof he submitted his unwillingness to serve the Army. Application submitted by the applicant in required format was forwarded by the Commanding Officer duly recommended. It appears that on account of delay caused in processing and disposal of the application, the wife of the applicant Smt Sita Devi wrote a letter dated 04.02.2011 to

President Army Wives Welfare Association (AWWA) with the prayer that her husband's voluntary discharge application be decided as early as possible. OIC Record vide letter dated 18.02.2011 informed applicant's wife that the moment application is received it shall be decided in accordance with rules.

5. After considering the application for voluntary discharge from service, things were processed and the applicant has made endorsement in the required format on 12.02.2011 that he is intending to leave the Army. While making the endorsement he stated, to quote:

*"Material changes after enrolment, which has adversely affected the family affairs:-*

*None to look after landed property and ancestral home since we separated.*

*Reason of discharge on compassionate grounds:-*

*(a) I am placed in LMC Permt (PIVD L4-5) wef 20 Oct 2010 and suffering from acute pain and physical disability.*

*(b) I am unable to perform even normal physical activities and normal routine of service due to PIVD L4-5 illness.*

*I certified that the above information is correct to the best of my knowledge. I realize that on being so discharged, I will be entitled to service pension/gratuity as per provision given in pension regulations. I further understand that I will neither be later on allowed to change my mind in favour of serving on, nor eligible for reinstatement after discharge.*

*I am also aware that I shall not remain eligible for honorary commission/ranks.*

*I also understand that I will not be entitled for disability pension as I am proceeding on discharge on my own request before completing my terms of engagement.*

Station : C/O 56 APO

sd/- x x x x x x x

(Signature of the individual)

Dated: 12 Feb 2011

No 9513553L Hav/AEC Indresh  
Vishwakarma)

.....  
Recommendation of the OC/CO/OC Troops/Immediate superior officer.

*Recommended*

Station :C/O 56 APO

sd/- x x x x x

(Col NC Bansal)

Dated : 12 Feb 2011

CO, 881 Msl Regt

.....  
Recommendation of the Education Officer-Sub Area.

*Recommended*

Secunderabad

sd/- x x x x x x x

(Lt Col

Dated : 23 Feb 2011

SO1 (Education)

HQ Andhra Sub Area”

6. Things were processed and the applicant further gave an undertaking on 12.02.2011 that he understands the consequences of his application to the effect that he may not get immediate discharge from Army; it may take six months and so on. Copy of the undertaking is placed on record as **Appendix 'B' of Annexure A-1**. Subject to aforesaid proceeding the applicant was informed vide letter dated 01.08.2011 that his application has been accepted and he is discharged from service in pursuance of provisions contained in Army Rule 13 (3) I (iv) for JCOs and Army Rule 13 (3) iii (iv) for NCOs. The discharge from service was held to be on extreme compassionate ground as is evident from letter dated 08.07.2011 annexed with the O.A. which was to be given effect from 31.10.2011.

7. Submission of the Ld. Counsel for the applicant is that the applicant submitted another representation in a format on 03.08.2011 showing his willingness to continue in service under the permanent medical category. A perusal of the willingness certificate filed as **Annexure A-1-VII** shows that it contains endorsements that the applicant is a physically unfit to perform basic military duties and no sheltered appointment is available in AEC Trg College and Centre in the rank of Hav, hence he shall be discharged from service. It appears that the applicant's letter dated 03.08.2011 was processed and treating it as

application in required format for sheltered appointment which was denied by making due endorsement by the Commanding Officer on the ground that no vacancy for sheltered appointment is available.

8. Ld. Counsel for the applicant further invited attention to letter dated 30.10.2014 (**Annexure A1-VIII to the O.A**) which points out that the applicant had forwarded letter dated 03.08.2011 (supra) showing his willingness and further prayed that he be reinstated in service in response to letter dated 31.08.2014. Reply was sent on 20.11.2014 indicating therein that the applicant has been discharged on 31.10.2011 (AN) in pursuance to sanction granted on 08.07.2011 hence cognizance of willingness certificate/letter could not be taken into account by the office. The letter further indicates that there is no provision to reinstate the applicant into Army service since he has been discharged.

9. It is vehemently argued by Ld. Counsel for the applicant that once the applicant submitted willingness certificate, then order of voluntary discharge could not have been given effect. Question cropped up whether applicant's willingness application was for sheltered appointment or it was for application for withdrawal of the letter for compassionate retirement. We have gone through the letter. By no stretch of imagination it may be treated to be letter containing request for

withdrawal of his earlier letter for compassionate discharge from service. No prayer has been made that the applicant withdraws his earlier unwillingness and wants to continue in service. Merely saying that the applicant wants to continue in service does not mean that he has withdrawn his earlier letter, more so, when willingness letter submitted by the applicant was processed by the Commanding Officer stating that no sheltered appointment could be given in the absence of vacancy. It appears that applicant's willingness letter was processed with his letter for sheltered appointment and in his subsequent representation the applicant has nowhere stated that the willingness letter of the applicant was wrongly processed treating it as application for sheltered appointment.

10. In case Ld. Counsel for the applicant intends to argue that letter dated 03.08.2011 was for withdrawal of earlier letter of unwillingness and not for sheltered appointment then at later stage by representing his cause, the applicant should have come forward with a pleading that the letter was wrongly processed by the Commanding Officer concerned. Attention of the Tribunal has not been invited to any pleading or material on record whereby the applicant shall deemed to have objected to the decision taken by the Commanding Officer treating his willingness letter as letter for sheltered appointment. Even in the letter dated 31.10.2014, the applicant has not specifically

stated that the Commanding Officer have misinterpreted the letter and had taken an incorrect decision. In case the decision of the Commanding Officer was not correct, immediately the applicant should have approached the higher forum, but it seems to have not been done.

11. While preferring the present O.A. attention of the Tribunal has not been invited to any action taken by the applicant assailing the decision of the Commanding Officer rejecting the applicant's case for sheltered appointment while deciding the willingness letter dated 03.08.2011.

12. In such situation and in the absence of any pleading on record we are of the view that the applicant has not withdrawn his letter for compassionate discharge from service. Rather he tried to mix two things; one with regard to withdrawal of unwillingness and, second, with regard to sheltered appointment. Two issues cannot be clubbed together unless the material and pleadings on record deal with them separately which seems to be not established from the pleadings on record.

13. There is no dispute with regard to proposition of law argued by Ld. Counsel for the applicant that before giving effect to the order of resignation or withdrawal from service it may be withdrawn by an employee but then there should be specific pleadings on record. The steps taken by the applicant with



regard to withdrawal of discharge from service must be proved by cogent and trustworthy documentary evidence on record which is conspicuously lacking in the present case.

14. In view of our observations made herein above the O.A. lacks merit and deserved to be rejected. It is accordingly **rejected.**

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

anb

**(Justice D.P. Singh)**  
**Member (J)**