

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 79 of 2019

Thursday, this the 25<sup>th</sup> day of November, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**JC-731364-A Ex Subedar Clerk (IM) Virendra Kumar Yadav  
of 19 FAD, C/o 56 APO  
S/o Late Raj Bali Yadav  
R/o Village & Post – Dalan Chhapra,  
District – Ballia (UP) – 277204

.... Applicant

Ld. Counsel for the Applicant : **Shri KKS Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, AOC Records, PIN-900453, C/o 56 APO.
4. Commandant, 19 FAD, PIN-909719, C/o 56 APO.
5. IC-56300-N Col Lalit Kumar Sharma, SC, Commandant, 19 FAD, Resident of Mr. H O Sharma, House No. 43, Vinayak Vihar, Rajrai Road, PO – Shamshabad Road, City and District Agra (UP) – 283125.

... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Govt Standing Counsel**ORDER (Oral)**

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 applicants have sought following reliefs:-

“(a) Issue/pass an order or direction to the respondents to quash/set-aside the illegal premature discharge w.e.f. 30.11.2018 depriving the applicant to complete coloured service of 28 years in the rank of Subedar.

(b) Issue/pass an order or direction to the respondents to reinstate the applicant from the date of discharge i.e. 30.11.2018 and to provide him all the consequential benefits to which he is entitled as a matter of right.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

2. The facts of the case in brief are that the applicant was enrolled in the Army on 10.04.1991 and was discharged from service w.e.f. 30.11.2018 (AN) on compassionate grounds at his own request before fulfilling the conditions of enrolment under Rule 13 (3) (I) (i) (b) of Army Rules, 1954 vide AOC Records discharge order dated 18.06.2018. The applicant was promoted to the rank of Naik, Havildar, Naib Subedar and Subedar. The applicant was due for screening for grant of two years extension of service in the rank of Subedar after his promotion to the rank of Subedar i.e. 01.04.2017. Accordingly, physical fitness and Willingness/Unwillingness certificates in respect of the applicant for extension of service were asked from unit vide AOC Records letter dated 21.03.2017 but the same were not received from the applicant till finalisation of screening board on 10.05.2017. Therefore, as per IHQ of MoD (Army) letter dated 20.09.2010, applicant was considered willing and granted extension of service for two years. After finalisation of screening board proceedings for extension of two years service, an unwillingness certificate duly signed by the applicant was received from unit but the same was not accepted by the Records being received after

finalisation of screening board. Subsequently, applicant submitted an application for discharge on extreme compassionate grounds to Records and applicant was discharged from service on 30.11.2018. The applicant during discharge drill at AOC Centre submitted an application dated 10.10.2018 to Chief of the Army Staff with copies to others stating he has been forced to proceed on discharge before completion of terms of engagement. On this, applicant was advised by OC Depot Company, AOC Centre to apply for cancellation of premature discharge if he desired so but the applicant expressed his unwillingness for further service vide his personal hand written application dated 30.11.2018 and proceeded on discharge on 30.11.2018 (AN). Being aggrieved, the applicant has filed the present Original Application to set aside the discharge order and to reinstate him in service to serve upto 28 years of service in the rank of Subedar.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Subedar w.e.f. 01.04.2017 and was asked to forward willingness/unwillingness certificate for further extension of two years of service w.e.f. 10.04.2019 to 09.04.2021. The applicant forwarded his Unwillingness certificate on 21.05.2017 but Unwillingness certificate was returned due to non receipt upto due date by Record Office and his extension of service was granted/published. The applicant was due for retirement w.e.f. 30.04.2019 so he gave his unwillingness for extension of two years service having domestic problems. The applicant submitted a representation dated 15.03.2018 to consider his unwillingness for extension of service but the same was not considered and applicant was

forced to submit premature discharge application and accordingly, he was discharged from service on 30.11.2018 though applicant was willing to serve in his present rank till 28 years of service which affected his entire service benefits. He further submitted that applicant has been arbitrarily and illegally discharge from service prematurely leading to irreparable loss and injury. He pleaded for setting aside discharge order and to reinstate the applicant in service to complete 28 years of service in the rank of Subedar.

4. On the other hand, learned counsel for the respondents submitted that applicant was enrolled in the Army on 10.04.1991 and was discharged from service w.e.f. 30.11.2018 (AN) on compassionate grounds at his own request before fulfilling the conditions of enrolment under Rule 13 (3) (I) (i) (b) of Army Rules, 1954 vide AOC Records discharge order dated 18.06.2018. The applicant was promoted to the rank of Naik, Havildar, Naib Subedar and Subedar. The applicant was due for screening for grant of two years extension of service in the rank of Subedar after his promotion to the rank of Subedar i.e. 01.04.2017. Accordingly, physical fitness and Willingness/Unwillingness certificates in respect of the applicant for extension of service were asked from unit vide AOC Records letter dated 21.03.2017 so as to reach Records by 10.04.2017 but the same were not received from the applicant and by his unit till finalisation of screening board on 10.05.2017. As per Para 2 (a) of IHQ of MoD (Army) letter dated 20.09.2010, ***“if willingness/unwillingness certificate is not received in the prescribed time, option will be considered as ‘deemed to be willing’”***

and accordingly, applicant was considered willing and granted extension of service for two years w.e.f. 10.04.2019 to 09.04.2021 vide Records Part II Order dated 19.05.2017. After finalisation of screening board proceedings for extension of two years service, an unwillingness certificate duly signed by the applicant was received from unit vide letter dated 24.05.2017 and the same was returned to the unit by AOC Records vide letter dated 08.06.2017 explaining that *“Physical fitness/unwillingness certificate for grant of extension of two years service in respect of JC-731364 Sub Clk (IM) Virendra Kumar Yadav of your unit was asked vide this office letter dated 21.03.2017. The same was required to reach this office by 10.04.2017 but not received till finalization of screening board. Hence, option deemed to be willing as per policy in vogue on the subject and accordingly screening board has granted extension of service by two years w.e.f. 10.04.2019 to 09.04.2021 vide this office Part II Order No. 1/0547/0083/2017 dated 19.05.2017. Hence, unwillingness certificate in respect of above JCO received vide your letter under reference is returned herewith unactioned. However, if the JCO still desires to proceed on discharge, he may apply for premature discharge through proper channel”*.

5. Learned counsel for the respondents further submitted that applicant submitted an application for discharge on extreme compassionate grounds to Records vide letter dated 17.05.2018 and applicant was discharged from service on 30.11.2018 . During discharge drill he submitted an application dated 10.10.2018 to Chief of the Army Staff with copies to others stating he has been forced to proceed on

discharge before completion of terms of engagement. On this, applicant was advised by OC Depot Company, AOC Centre to apply for cancellation of premature discharge if he desired so but the applicant expressed his unwillingness for further service vide his personal hand written application dated 30.11.2018 and proceeded on discharge on 30.11.2018 (AN). He also submitted that procedure of screening for extension of service was done as per IHQ of MoD (Army) letter dated 11.12.2017 and willingness certificate was considered as per IHQ of MoD (Army) letter dated 20.09.2010, hence, applicant was discharged from service as per rules and laid down policies. He pleaded for dismissal of O.A.

6. We have given our anxious consideration to submissions of both the parties as also perused guide lines and rules and regulations on the subject.

7. We find that as per IHQ of MoD (Army) letter dated 20.09.2010, applicant was considered 'Willing' as his willingness/unwillingness certificate was not received by the Records in the prescribed time, option 'deemed to be willing' was considered and accordingly, applicant was granted two years of extension in service by screening board w.e.f. 10.04.2019 to 09.04.2021 as per IHQ of MoD (Army) letter dated 11.12.2017. thereafter, the applicant submitted his personal hand written application dated 30.11.2018 for premature discharge from service and therefore, premature discharge was sanctioned and applicant was discharged from service on 30.11.2018 (AN) as per rules and laid down

policies. Hence, the applicant is not entitled the relief prayed in Original Application to quash his discharge order and to reinstate him in service.

8. In the result, we do not find any illegality or illogicality in discharging the applicant from service. The O.A. lacks merit, deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

10. Pending Misc. Applications, if any, stand disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 25<sup>th</sup> November, 2021  
SB