

**Court No. 1**  
**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 28 of 2021**

Thursday, this the 2<sup>nd</sup> day of September, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 5241393-P Ex Rfn/Clk Lalit Kishor John  
S/o Late Shri R. John  
C/o Shri Avinash John,  
Mission Compound, Chopra,  
Dist – Pauri Garhwal, Uttarakhand

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Virat Anand Singh**, Advocate

Versus

1. Union of India and others through Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. OIC Records, 39 Gorkha Regimental Centre, Varanasi Cantt.

... **Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,  
Central Govt Counsel

**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “(i) To quash and set aside the order of dismissal dte 20 Nov 1989 as too harsh.

- (ii) To mitigate the punishment by discharge and direct the respondents to consider afresh applicants right to service pension.
- (iii) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- (iv) Allow this application with cost of Rs. 50,000/-.”

2. Brief facts of the case are that applicant was enrolled in the Army on 01.09.1973 and was dismissed from service by Summary Court Marshal on 20.11.1989. The applicant was informed by Records 39 GRRC vide its letter dated 17.09.1992 that he is not entitled for service pension. In the year 1994, applicant filed a Writ Petition No. S/S 41366 of 1994 before the Hon'ble Allahabad High Court which was transferred to the Hon'ble Uttarakhand High Court and later on it was withdrawn on 19.08.2009 by the applicant with liberty to file afresh. The applicant applied for copy of dismissal order under RTI Act 2005 which was sent to applicant by 39 GRRC on 26.11.2011. This O.A. has been filed for grant of service pension after a gap of more than 29 years from the date of dismissal from service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 01.09.1973. He was Absent Without Leave (AWL) from 09.04.1988 to 04.10.1989 due to domestic reasons beyond his control. The applicant was held in Dogra Regiment, Faizabad from 04.10.1989 to 12.10.1989 and thereafter, he was kept in confinement in military custody in 39 GRRC, Varanasi from

12.10.1989 to 09.11.1989 and was dismissed from service by Summary Court Marshal on 20.11.1989. The applicant was informed by Records 39 GRRC vide its letter dated 17.09.1992 that he is not entitled for service pension. In the year 1994, applicant filed a Writ Petition No. S/S 41366 of 1994 before the Hon'ble Allahabad High Court which was transferred to Uttarakhand High Court and later on it was withdrawn on 19.08.2009 by the applicant with liberty to file afresh. The applicant applied for copy of dismissal order under RTI Act 2005 which was sent to applicant by 39 GRRC on 26.11.2011. Thereafter, applicant contacted Advocate Shri Ajay K. Tewari to file his case who handed over his case to Advocate, Mr P.N. Chaturvedi but case could not be filed before this Tribunal. Learned counsel for the applicant pleaded that applicant has put pensionable service and punishment awarded to him is too harsh, therefore his punishment of dismissal could be converted into discharge and accordingly, applicant be granted service pension.

4. On the other hand, learned counsel for the respondents submitted that applicant was tried by Summary Court Martial (SCM) at Varanasi Cantt for an offence under Army Act, Section 39(a), Absence Without Leave (AWL) with effect from 09.04.1988 to 11.10.1989 and sentenced to be dismissed from service which was promulgated on 20.11.1989 by Adm Bn Cdr, 39 GTC, Varanasi Cantt. Besides this, service documents of the applicant have already been destroyed on 02.02.2017 after completion of mandatory retention period being a "Non Pensioner" in terms of para 595 of Regulations

for the Army. However, as per Long Roll maintained in Records 39 Gorkha Rifles, applicant was dismissed from service by SCM. Further submission of learned counsel for the respondents is that since service documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, applicant is not eligible for service pension of all previous service as per para 41 (a) of Pension Regulations for the Army, Part-1 (2008). He pleaded the O.A. to be dismissed being devoid of merit.

5. Heard learned counsel for the parties and perused the record.

6. We find that service documents relating to ex army person have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. Further, Long Roll (IAFK-1172) attached to counter affidavit which has also been provided to applicant, reveals that applicant was enrolled in the Army on 01.09.1973 and was dismissed from service by Summary Court Marshal on 20.11.1989 for an offence Absence Without Leave (AWL) for the period from 09.04.1988 to 11.10.1989 under Army Act, Section 39(a).

7. The request of the applicant to treat his Original Application as Mercy Petition which has been vehemently opposed by the respondents and keeping in view that applicant has been dismissed from service by a Summary Court Martial, it cannot be treated as Mercy Petition.

