

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 677 of 2017**Tuesday, this the 7<sup>th</sup> day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Dev Sharan Mishra, Army No. 13659447, Son of Late R.P. Mishra, R/o Deemapur, Mau, Yadvanshpur, District Faizabad, U.P.

..... Applicant

Ld. Counsel for the Applicant : **Shri S.K. Singh**, Advocate.

Versus

1. Chief of the Army Staff, Integrated Head Quarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. Integrated H.Q. of MoD (Army), Adjutant General’s Branch, Addl. Dte. Gen. MP/8 (I of R) West Block, R.K. Puram, New Delhi.
3. Commanding Officer, 13 Battalion Brigade’s of Guards Abhilekh Karyalaya Records, Kamptee Records of Dogara Regiment C/o 65 APO.
4. P.C.D.A. (P), Draupadi Ghat, Allahabad, U.P.

.....**Respondents**Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate  
Central Govt. Counsel**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- i. The Hon'ble Court may kindly be pleased to quash the order dated 24 September 2012 and order dated 12 April 1988 given by the authorities concerned against the applicant. Copy of the order dated 24 September 2012 and 12 April 1988 are jointly annexed as Annexure No. 1 and 2 with the petition.
- ii. The Hon'ble Court may kindly be pleased to issue direction to the opposite party to provide service pension to the applicant since discharge from service with 18% rate of interest to the applicant by the opposite party in the interest of justice.
- iii. Any such other order or direction which this Hon'ble Tribunal may deem fit and proper on the basis of circumstances of the case may be pleased to be passed in favour of the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Brigade of The Guards of Indian Army on 05.10.1963 and was discharged from service on 08.06.1977 in Medical Category 'AYE' under Rule 13 (3) Item III (v) of the Army Rules, 1954 after completion of 13 years and 236 days of service without assigning any reason. The applicant through his Counsel preferred notice dated 05.11.2016 and reminder dated 08.04.2017 for grant of service pension but of no avail. It is in this

perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that without assigning any reason the applicant was discharged from service in Medical Category 'AYE' after rendering 13 years and 236 days of service. He further pleaded that during the service the applicant was awarded several medals. The Discharge Certificate was issued on 21.12.1978 through the applicant was discharged on 08.06.1977. The Ld. Counsel for the applicant, on account of aforesaid, pleaded that relief prayed for to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the applicant was a non-pensioner, his service documents were destroyed by burning during the year 2011 under the provision of Para 595 of Regulations for the Army (Revised Edition), 1987 after completion of its stipulated retention period of 25 years. The applicant has not completed 15 years of qualifying service, hence he is not entitled for service pension. His further submission is that as per ARPAN generated Sheet Roll the applicant was discharged from service under Rule 13 (3) Item III (v) of the Army Rules, 1954 which covers miscellaneous ground such as undesirable/inefficiency etc.

He further submitted that as per Certificate of Service (Serial No. 5209), annexed at Annexure No. 3 with the Original Application, in para 4 it is stated that "*In consequence of being unsuitable for further retention in med category*". Ld. Counsel for the respondents pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of Certificate of Service, it has been observed that the applicant was enrolled in Indian Army on 05.10.1963 and was discharged on 08.06.1977 "*being unsuitable for further retention in medical category*". The applicant himself has filed Certificate of Discharge at annexure No. 3 with Original Application. In view of above, we are of the opinion that it is incorrect that applicant was not provided reason for discharge. Further, the applicant's service documents were destroyed by burning during the year 2011 under the provisions of Para 595 of Regulations for the Army (Revised Edition), 1987 after completion of its stipulated retention period of 25 years. In absence of service documents the case of the applicant cannot be decided in his favour. We could have

decided the case, had there been related service documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite service documents.

7. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 44 years from the date of discharge from service. The Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

8. No order as to costs.

9. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 07 September, 2021

AKD/-