

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 68 of 2021**

Wednesday, this the 15<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)**

No. 4488775X, Ex SEP (Chef) Aneesh M S/o Smt. Ratna Kumari,  
 15 Sikh Light Infantry Fatehgarh (U.P), R/o Village –Pidavoor, PO.  
 Avaneeswaram R.S., P.O. The-Pathanampuram, Dist-Kollam  
 (Kerala) Pin - 691508

..... Applicant

Ld. Counsel for the Applicant: **Shri Shailesh Kumar Pathak and  
 Shri R.K Mishra, Advocate**

Versus

1. union of India through Secretary Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff New Delhi.
3. Commanding Officer, Unit 15, Sikh Light Infantry, Station C/o 56 A.P.O.
4. The Commandant Sikh Light Infantry Regimental Centre Fatehgarh ( UP)

..... Respondents

Ld. Counsel for the Respondents : **Shri Arvind Kumar Pandey,  
 Central Govt Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

*(i) The Hon’ble Tribunal may be pleased to call for the records and to set aside the pre-mature discharge order No. 1207/M/13/RA Dt. 01.02.2020 w.e.f. 30.09.2020 and the discharge book issued on 21.12.2020 by the respondents and further applicant submits that applicant may reinstate/reenrolled in the service with immediate effect and pay all the consequential benefits as per law.*

2. Briefly stated facts are that applicant was enrolled in Indian Army on 25.09.2009 as Chef and was posted to 15 Sikh Light Regiment. On 02.07.2019, applicant submitted an application for premature discharge from service which was allowed vide order dated 01.02.2020 and the applicant was discharged from service wef 30.09.2020(AN). On 27.08.2020 applicant moved an application to his Commanding Officer for cancellation of pre-mature discharge order to enable him to continue his pensionable service. Applicant was discharged from service on 30.09.2020 (AN) under Army Rule 13 (3) item III (iv) before completion of terms of engagement. Being aggrieved with the decision of the respondents, the applicant has filed

the present Original Application to quash the discharge order and to reinstate the applicant in service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the army as Chef on 25.09.2009. He is unmarried and only son of his parents. His father expired 20 years ago and mother Ratna Kumari is a widow lady and there is no earning member in his family. The applicant had applied for premature discharge from service on 02.07.2019 due to illness of his mother. He was informed that his discharge has been sanctioned vide order dated 01.02.2020 and he shall be discharged from service w.e.f. 01.10.2020. The applicant just after coming to knowledge of discharge order, moved an application dated 27.08.2020 addressed to his Commanding Officer with the prayer to cancel his discharge order. Mother of the applicant also submitted an application for cancelling discharge order of her son which was forwarded by Lt Col Mohana Kumar M, SSO II of Station Headquarters, Trivendram to Sikh Light Regimental Centre on 18.09.2020. Applicant was assured that his discharge order will be cancelled but he was issued movement order dated 30.09.2020 for discharge from service. Learned counsel for the applicant pleaded that applicant be reinstated in service after quashing discharge order with all consequential benefits.

4. Per contra, learned counsel for the respondents submitted that the himself submitted application dated 02.07.2019 for premature discharge from service on his own request on extreme

compassionate ground due to illness of his mother. The applicant was advised to withdraw his application of premature discharge and complete 15 years pensionable service but he refused. He submitted No objection certificate dated 28.10.2019 mentioning therein that he is willing to be discharged before completion of 15 years of service without any pensionary benefits. In addition, he submitted one more application stating that he was not pressurised to apply for discharge from service on compassionate grounds. His application for premature discharge was forwarded to Record Office and the applicant was discharged from service on 01.10.2020 under the Army Rule 13 (3) item III (iv) before completion of terms of engagement on his own request. The applicant has been paid all dues applicable to him as per rule. During service, the applicant maintained a poor disciplinary profile and earned one red ink and two black ink entries for which he was awarded rigorous imprisonment and pay fine. He was advised from time to time by his superiors to maintain discipline. Since the applicant had rendered only 09 years, 11 months and 20 days of qualifying service, he was not entitled for service pension as 15 years minimum qualifying service is required to earn service pension. Since the applicant was discharged from service at his own request, hence reinstatement into service is not feasible and the same is against the rule position. Learned counsel for the respondents submitted that this Original application lacks merit and

substance, hence is not tenable in eye of law and deserves to be dismissed outrightly for the sake of justice.

5. Having heard the submissions of learned counsel both sides and having gone through documents available on record, we find that following points need deep consideration to decide the controversy:-

(a) Contention of respondents that applicant submitted premature discharge application dated 02.07.2019. He also submitted an application dated 28.10.2019 to the effect that he has 'No objection' for being discharged without pension. In addition, applicant submitted one more application on the same day stating that he has willingly given premature discharge application without any pressure. This contention of the respondents is not convincing alibi as after giving application for premature discharge on own request, there is no logic to give 'no objection' application as well as application to the effect that applicant is not pressurised by the authorities for giving premature discharge application.

(b) It is surprising to note that application for cancelling discharge order given by the mother of the applicant was forwarded to concerned authority but nothing have been said in counter affidavit. It creates a doubt that applicant himself has given 'no objection application' as well as application to the effect that applicant is not pressurised for giving premature discharge application.

(c) Further in counter affidavit, nothing has been said regarding application of applicant dated 27.08.2020 regarding cancellation of discharge order.

6. The perusal of above mentioned facts show that due procedure and process was not followed to discharge the applicant even if such

a discharge was indeed at his own request. At least application of the applicant as well as application given by mother of the applicant for cancelling discharge order should have been considered and replied suitably. It gives rise to a doubt about mala fide intentions on part of the respondents. Therefore, we find that applicant has been discharged from service illegally, which is against the rules & regulations of the service and therefore, applicant requires to be reinstated in service.

7. In the army there should not be lack of trust between soldiers and the officers. The officers of the army must deal with subordinates or soldiers in a just and fair manner to strengthen their trust into them so that during time of war, the officers may be their hero to fight with enemies.

8. The plea of the respondents regarding re-instatement saying that there is no provision to re-instate in service is not tenable. The impugned orders rejecting the applicant prayer for re-instatement in service are liable to be quashed, hence quashed.

9. Consequently, Original Application is partly **allowed**. The respondents are directed to re-instate the applicant back in service in the same capacity in which he was discharged and intimate the date of joining. The applicant will deposit the amount paid to him and respondents shall take action as per rule. However, we refrain from awarding back wages or other benefits for the period applicant was

out of service on the principle of no work no pay. The respondents are further directed to comply with the order within two months from the date of production of a certified copy of this order.

10. No order as to costs.

11. The Registry is directed to provide a copy of this order to learned counsel for the parties for its onwards transmission and necessary compliance.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 15 September, 2021

Ukt/-