

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 506 of 2023**Friday, this the 19<sup>th</sup> day of January, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt Gen Anil Puri, Member (A)”**

930787-L Sgt Saurabh Shukla Flt Gun, S/o Shri Dev Prakash Shukla,  
Posted at 158 HU, Air Force Station Gorakhpur Residing at TY-IV,  
H. No. 35, 9 Civil Lines Road, Dr. Hari Prasad Sahi Marg, Gorakhpur  
(UP) - 273001

..... Applicant

Ld. Counsel for the Applicant: **Shri Mahendra Kumar Singh,  
Advocate**

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi - 06.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi - 110011.
3. Air Officer Commanding, Air Force Record Office, Subroto Park, New Delhi - 110010.
4. Commanding Officer, 158 HU, AF, Air Force Gorakhpur, PIN – 937158, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents: **Shri Jai Narayan Mishra,  
Advocate**

**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 for the following reliefs:-

*“(a) To quash and set aside the impugned AFRO Signal No. 2023/AFRO/RRD/114 dated 05 Apr 2023 (Annexure A-1 of OA) wherein applicant was communicated that his application for discharge from service on supersession ground has been not approved by competent authority.*

*(b) To summon and quash and set aside the impugned Air HQ / 40802/3/PA-1 dated 29 Mar 2023 (Annexure A-1 of OA) wherein applicant application for discharge from service on supersession ground has been not approved by competent authority.*

*(c) To issue / pass an order or directions of appropriate nature to the respondents to issue order of discharge with immediate effect from service on supersession ground in respect of applicant.*

*(d) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 26.09.2007 in Weapon Fitter Trade for an initial period of 20 years. His initial term of engagement is up to 30.09.2027. He was promoted to the rank of Corporal in the trade of Weapon Fitter. Applicant passed the examination of Flight Gunner thus he was re-mustered in the trade of Flight Gunner. He was promoted to the rank of Sergeant (Sgt) on 23.03.2015. Applicant became eligible for promotion to the next rank i.e., Junior Warrant Officer on 21.03.2021 as he completed six years of coloured service in the last rank of Sgt. Accordingly Air Force Record Office listed his

name in promotion pick up list 2021-2022 and 2022-2023. During this period two promotion panels were declared by Air Force Record Office i.e, Promotion Panel 2021-2022 (01.07.2021 to 30.06.2022) and Promotion Panel 2022-2023 (01.07.2022 to 30.06.2023) but applicants name did not figure in these two Promotion Panels, however, his junior 932645-K Sgt Anoop Sharma, of same trade was empanelled in the Promotion Panel 2022-2023. Thus, he was promoted to the rank of Junior Warrant Officer and he became senior to the Applicant. Applicant not being in position of accepting to work under a junior of same trade, who had been working under him in past, submitted a Personal Application dated 07 Nov 2022 for immediate discharge from service on supersession ground as per policy. His application was sent to Competent Authority duly recommended by his Commanding Officer and Station Commander for discharge on supersession ground but the same was not approved by Competent Authority due to reason as '**Devoid of Merit**'. On the other hand, two Air warriors of Flight Gun Trade namely Sgt Prijesh KV and Sgt AA Shetty, who were also aggrieved by this act of supersession, sent their applications on 08 Nov 2022 to Competent Authority were discharged from service. Thus aggrieved by not granting discharge on supersession ground, the applicant has filed this Original Application.

3. Ld Counsel for the applicant submitted that application of the applicant dated 07.11.2022 was processed by orderly room after complete verification. It was sent to Competent Authority duly recommended by his Commanding Officer and Station Commander,

so there was no ambiguity as per policy. Why the competent authority has rejected his prayer for discharge on supersession ground is not understood. He submitted that two more airmen of Flt Gun Trade who were aggrieved by this act of supersession by same junior airmen had applied for immediate discharge on 08.11.2022. Their applications were recommended by their Commanding Officer and got approved by Competent Authority and accordingly their discharge orders dated 13.02.2023 and 17.02.2023 were issued and they have been discharged from service whereas the applicant applied on 07.11.2022 i.e, one day before the date of said applicants, his application has been turned down without assigning any reason. The respondents have just written '**Not Approved**' by competent authority due to reason as '**Devoid of Merit**' He submitted that by not allowing the applicant's discharge from service, Respondents have violated the right of applicant as enshrined under Article 14 of the Constitution of India, which protects the right of applicant for equality before law and cannot be withdrawn in any circumstances. He submitted that applicant be discharged from service immediately.

4. **On the other hand** Ld. Counsel for the Respondents submitted that as per policy issued on 25.08.2020, the applicant was considered for promotion to the rank of Junior Warrant Officer in the promotion panel 2021-2022 and 2022-2023 in Grade II on completion of 6 years in the rank of Sgt. However, he did not make merit within his trade, rank and grade. Aggrieved by this, he submitted that an application dated 07 Nov 2022 seeking premature discharge from service on suppression grounds which was received from HQ CAC IAF vide

CAC/1652/267/P3 dated 24.01.2023. The application was duly considered as per the provisions laid down in AFO 16/2008, AFO 17/2013 and was processed for disposal by the Competent Authority. However, the same was not approved by Competent Authority being devoid of merit as per Para 5 of AFO 04/2023 which clearly stipulates that *“Airmen can seek discharge from service on being superseded by their Junior(s) for promotion to the next select higher rank provided they meet the laid down minimum eligibility criteria as per the extent policy for consideration of promotion to the next higher select rank. An Air Warrior may apply for discharge on this ground after his junior is actually promoted to the next higher rank within the same rank, grade and trade. However cases will be decided on case to case basis, subject to service exigencies”*. Accordingly the competent authority considered the application dated 07.11.2022 submitted by the applicant for discharge on suppression grounds and not approved the same being devoid of merit. The decision of the same was communicated to all concerned. Applicant submitted an application to Commanding Officer for taking up the matter with competent authority for providing him the Air HQ letter dated 29.03.2023 vide which his application was rejected. His application was sent to competent authority but the same was returned stating that no provision exist for providing copy of Air HQ letter vide which his application has not been approved.

5. He further submitted that an airman is enrolled in the Indian Air Force (IAF) for an initial term of regular engagement for 20 years. Discharge of airmen pre-maturely from the IAF, prior to completion of

their regular engagement, affects the manning level in respective trades of the IAF and thus has an adverse impact on operational preparedness of the Air Force. Further considering the fact that IAF is a technology oriented force dealing with sophisticated and specialised equipment, requirement of well trained and experienced manpower to handle such equipment needs no emphasis. In order to achieve the stated organizational aim, AFO 17/2013 & AFO 16/2018 were formulated and have been superseded by AFO 04/2023 on the subject to regulate premature discharge of air warriors from IAF. Further Para 5 of AFO 04/2023 clearly stipulates that Airmen can seek discharge from service on being superseded but the cases will be decided on case to case basis, subject to service exigencies. Accordingly the competent authority has not approved the prayer of the applicant being devoid of merit. Thus, the original application lacks merit and substance hence, be dismissed in the interest of justice.

6. We have heard learned counsel for the parties and perused the records.

7. Para 5 of AFO 16/2008, AFO 17/2013 (Corrigendum No 04/2013) and Para 5 of AFO 04/2023 which are applicable in this case are reproduced below :-

**AFO 16/2008**

*“5. **Supersession Grounds** – Airmen of the rank of Sgts and above may exercise an option of seeking discharge from service on being superseded by their junior for promotion to the next higher rank provided they meet the laid down minimum eligibility criteria for consideration of promotion to the next higher rank. An air warrior may apply for discharge on this ground*

*after his junior is actually promoted to the next higher rank within the grade”*

**AFO 17/2013 (Corrigendum No 04/2013).**

*Discharge on Supersession Grounds in respect of airmen enumerated in Para 5 of AFO 16/2008 is cancelled in toto. The same to be replaced as appended below :-*

5. **Supersession Grounds.** *Airmen of the rank of Sgts and above may exercise an option of seeking discharge from service on being superseded by their junior for promotion to the next higher rank provided they meet the laid down minimum eligibility criteria for consideration of promotion to the next higher rank. An air warrior may apply for discharge on this ground after his junior is actually promoted to the next higher rank within the same rank, grade and trade’.*

**Para 5 of AFO 04/2023**

5. **Supersession Grounds.** *Airmen can seek discharge from service on being superseded by their Junior(s) for promotion to the next select higher rank provided they meet the laid down minimum eligibility criteria as per the extent policy for consideration of promotion to the next higher select rank. An Air Warrior may apply for discharge on this ground after his junior is actually promoted to the next higher rank within the same rank, grade and trade. However cases will be decided on case to case basis, subject to service exigencies”*

8. Para 30 of Hon’ble Apex Court Order dated 22 Sep 2022 in Civil Appeal No(s). 1699-1723 of 2015 Bharat Sanchar Nigam Ltd. And others etc. Vs. M/S Tata Communications Ltd Etc is reproduced below :-

*“30. The power to make retrospective legislation enables the Legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but the same time administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject we are of the view that applicability of the circular dated*

*12<sup>th</sup> Jun, 2012 to be effective retrospectively from 1<sup>st</sup> April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgement.*

9. We have given our thoughtful consideration to the facts and rival contentions. The applicant was promoted to the rank of Sergeant (Sgt) on 23.03.2015. He was considered for promotion to the rank of Junior Warrant Officer in the Promotion Panels 2021-2022 and 2022-2023 but he did not come in the merit. However, his junior 932645-K Sgt Anoop Sharma of same trade was empanelled in the Promotion Panel 2022-2023 and was promoted to the rank of Junior Warrant Officer. Thus, the junior became senior to the Applicant. Since the applicant was not willing to serve under his junior, submitted an application dated 07 Nov 2022 for immediate discharge from service on supersession ground as per policy. His application was sent to Competent Authority duly recommended by his Commanding Officer and Station Commander for discharge on supersession ground but the same was not approved by the Competent Authority due to reason as '**Devoid of Merit**'. To utter shock, two Air warriors of Flight Gun Trade namely Sgt Prijesh KV and Sgt AA Shetty, who were also aggrieved by this act of supersession, sent their applications on 08 Nov 2022 i.e., one day after the application of the applicant to Competent Authority for discharge on ground of supersession were discharged from service. Thus, Competent Authority has acted carelessly and failed in its duty while deciding the Applicant's application as it cannot be decided in discriminatory manner wherein prior application has not been

approved and subsequent applications have been approved. The Respondents have not intimated to the applicant on what merit he lacks and what is the main grounds of denial of discharge. It is a settled law that an application shall not be decided in a cryptic and mechanical order which has been done in the instant case. The Respondents have violated the right of the Applicant as enshrined under Article 14 of the Constitution of India, which protects the right of Applicant for equality before law and cannot be withdrawn in any circumstances.

10. The contention of the Respondents that application of the applicant was considered under Para 5 of AFO 04/2023 and not approved being devoid of merit because of service exigencies is not tenable in the eyes of law as application of the applicant was submitted on 07.11.2022 and at that time AFO 16/2008 & AFO 17/2013 were in vogue and under these AFOs, the applicant was very much entitled for discharge from service. Two air warriors who submitted the applications for discharge on supersession grounds on 08.11.2022 i.e., after the application of the applicant i.e., 07.11.2022, their applications were considered under AFO 16/2008 & AFO 17/2013 and they were discharged from service.

11. As regards applicability of AFO 04/2023 retrospective is concerned, the same cannot be made applicable with retrospective effect as only law could be made retrospective if it was expressly provided by the Legislature in the Statute.

12. In view of the above, the **Original Application No. 506/2023** deserves to be allowed, hence **allowed**. The impugned orders rejecting the applicant's claim for discharge from service on supersession ground are set aside. The applicant is held entitled for discharge from service on supersession ground as per the policy in vogue on 07.11.2022. The respondents are directed to discharge the applicant within a period of two months from the date of receipt of certified copy of this order.

13. No order as to costs.

**(Lt Gen Anil Puri )  
Member (A)**

**(Justice Anil Kumar)  
Member (J)**

Dated : 19 January,2024

DDS