

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 103 of 2013
with O.A. No. 26 of 2010**Tuesday, this the 27th day of October 2015**Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)**Ex No.15672936H , Signalmn Kundan Kumar,
S/O Shri Nand Kumar, Vill. Tanra, P.O. Mohiuddin Nagar,
(R.S.) Distt.- Samastipur, State- Bihar.

.....Applicant

Ld. Counsel for : **R. Chandra, Advocate**
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office, New Delhi
3. The Office-in-Charge, Signal Records, Jabalpur (M.P.)
4. The Commanding Officer, 12 Signal Group,
C/O 56 APO

.....Respondent

Ld. Counsel for the : **Shri Ishraq Farooqui, Central**
Respondents **Govt Counsel assisted by**
Lt Col Subodh Verma,
OIC Legal Cell.

ORDER (ORAL)

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

2. The applicant a soldier of Indian Army being aggrieved with the impugned order of discharge has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act 2007. Ld. Counsel for the applicant submits that the authorities have forcibly taken the voluntarily discharge application from the applicant on 17.10.2007. Copy of application is attached as Annexure - 3 to C.A. After receipt of the application, the authorities proceeded ahead and discharged the applicant by the order dated 31.10.2008 on the ground of his own request. Copy of discharge order is annexed as Annexure A-1 to O.A.

3. Perusal of the order shows that on receipt of application, the applicant was discharged from service. There is no pleading on record to prove as to why the authorities will force the applicant to submit volunteer discharge application. No motive has been mentioned in the present O.A. that is why the applicant has kept mum for the two years. The applicant filed O.A. No 261 of 2010 before this Tribunal in which prayer for reinstatement in service and grant of disability pension was made. The applicant was directed to represent his case to the respondents against rejection order of disability pension. Appellate Committee allowed 20% disability pension to the applicant for life with effect from 01.11.2008. The O.A. was dismissed as infructuous vide order dated 28.07.2011.

Thereafter the applicant preferred the present O.A. on 31.07.2012 and that too in belated stage. Order dated 28.07.2011 passed by the Tribunal in earlier O.A. is reproduced as under:

“28.07.2011

Hon'ble Mr Justice A.N. Verma, Member (J)

Hon'ble Lt Gen R.K. Chhabra, Member (A)

Learned Central Government Counsel informed us on 12.07.2011 that the appeal filed by the applicant had been allowed by the Appellate Committee and disability pension at 20 percent for life was allowed with effect from 01.11.2008. On the said date Shri R. Chandra, Learned Counsel for the applicant sought time to ascertain the said fact. Shri Chandra does not dispute the fact that the disability pension has been allowed to the applicant with effect from 01.11.2008 at 20 percent for life.

Pesural of the relief column reveals that the applicant had prayed for a direction to the respondents to grant benefit of disability pension to applicant with effect from 01.11.2008.

In view of the fact that the relief claimed in the petition already stands satisfied and the applicant has been allowed disability pension at 20 percent for life with effect from 01.11.2008 therefore nothing further remains to be decided in the petition.

In view of the aforesaid the relief claim in the Original Application is rendered infructuous.

Original Application accordingly is dismissed as infructuous.

Sd/- x x x x

Sd/- x x x x

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(Lt Gen R.K. Chabra)
A.N. Verma)
Member (A)
(J)

(Justice
Member

Perusal of the aforesaid order shows that the disability pension to the applicant has been provided from 01.11.2008 and the O.A. filed by the applicant became infructuous.

Since, the applicant has been granted disability pension, the controversy has been resolved in the earlier O.A., hence the present O.A. seems to be not maintainable. Otherwise also the applicant has not submitted any representation or prayed higher authorities with regard to forcibly signing voluntary discharge letter dated 17.10.2007 (supra) by the respondents. It is natural human behavior that whenever a person is forced to do anything, he approach higher authorities or lodge FIR or write letter for relief. In absence of any representation against the authority, it appears that it is a cooked up case that respondents have forcibly obtained the signature of the applicant on application for voluntary discharge.

In view of the above, the Original Application is not justified. A cost of Rs 1000/- is imposed on Ld. Counsel for the applicant for falls allegation and wrong filing of case. The cost shall be deposited in the Registry.

With the aforesaid direction, O.A is disposed of finally.

No order as to costs.

(Air Marshal Anil Chopra)

Member (A)

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(Justice D.P. Singh)

Member (J)