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**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

O.A. No.98 of 2010

IN THE MATTER OF:

Gnr. Rupesh Kumar

.....Petitioner

VERSUS

Union of India & Ors.

.....Respondents

Dated: 05.10.2012

Present: Mr. D.S. Kauntae, counsel for the petitioner.
Dr. S.P. Sharma proxy for Dr. Ashwani Bhardwaj, counsel
for the respondents.

By this petition, the petitioner seeks to challenge the discharge order dated 19.09.2008 ordered under Army Rule 13(III)(v) for petitioner having earned six red ink entries. The present OA has been filed on 09.02.2010. At the outset, the respondents raised a preliminary objection to the effect that challenging the said discharge, the petitioner had filed a writ petition being CWP No.7412/2009 before the Hon'ble High Court of Delhi which was withdrawn on 13.03.2009, which withdrawal operates as bar against the petitioner in maintaining the present OA.

To this, learned counsel for the petitioner submitted that he has already taken a pleading in para 7 of the OA to the effect that the said writ petition was filed seeking respondents to supply vital documents, but subsequently the same was withdrawn pursuant to the oral assurance given by the learned counsel appearing for the respondents.

It would suffice to say that the petitioner has not chosen to file the copy of the said writ petition as to what relief was claimed therein. We have had Annexure A-8, copy of the order of Hon'ble High Court dismissing the writ petition as withdrawn wherein the order is only to the effect "Dismissed as withdrawn". However, instead of standing to the ceremonies, we find Annexure A-15 being the statutory petition said to have been submitted by the petitioner through counsel on 02.07.2009 and learned counsel very fairly admitted that the said statutory petition is virtually copy of the writ petition. Then, looking to this statutory petition (Annexure A-15) shows that the prayer made therein was to set aside the entire discharge process and orders dated 09.08.2008 and 19.09.2008, so also quashing of show cause notice dated 03.07.2008 and then claim reinstatement and so on. Thus, we can safely conclude that the aforesaid writ petition No.7412/2009 was filed to challenge the discharge and claim reinstatement.

Since it is not in dispute that the said writ petition has been withdrawn and there is nothing to show that it was withdrawn reserving any liberty to file fresh petition on the same cause of action, in our view, the present OA is clearly barred by time.

Consequently, the preliminary objection raised by the respondents is upheld and the petition is dismissed as not maintainable.

M.L. NAIDU
(Administrative Member)

N.P. GUPTA
(Judicial Member)

Dated: 05.10.2012

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