

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

106.

OA 1791/2022 WITH MA 2139/2025

Sgt/Elect Fit (R) Ashish Sharma	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. SS Pandey, Advocate
For Respondents	:	Mr. Satya Ranjan Swain, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R
21.05.2025

MA 2139/2025

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 1791/2022

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the present application. The reliefs claimed in Para 8 are as under:

(a) Call for all the relevant records based on which respondents have passed the impugned orders dated 29.07.2022, 04.08.2022 and 24.01.2022 based on which the applicant was

ordered to be discharged from service and thereafter quash and set aside all such orders.

(b) Direct the respondents to relieve the applicant from all such adverse consequences arising out of the CoI and all follow up action associated with the same.

4. The applicant has challenged the discharge order dated 29.07.2022 on several grounds. A perusal of the discharge order indicates that the applicant was discharged under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, on grounds of unsuitability for retention in service. The allegations relate to alleged unnatural behavior and scandalous conduct. The CoI implicated both the applicant and one Warrant Officer, Dharampal Kaushik.

5. A perusal of the facts on record, including the Show Cause Notice dated 24.01.2022, reveals that while Warrant Officer, Dharampal Kaushik appears to be the main perpetrator of the incident, the applicant, though a party to the misconduct, was not the principal actor. Nonetheless, his involvement was considered sufficient to warrant disciplinary action.

6. Based on the proceedings and evidence adduced during the Court of Inquiry, the Competent Authority held that the applicant was unsuitable for retention in service and accordingly discharged him. While the applicant has challenged the legality of this discharge, during the pendency

of the matter, he has alternatively submitted that he would be satisfied if, despite the discharge, he is granted pensionary benefits after condonation of the shortfall in service.

7. On 22.01.2025, during arguments on the merits, learned counsel for the applicant submitted that there has been discrimination in the treatment meted out to the applicant, particularly when compared to Warrant Officer Dharampal Kaushik. Although both were discharged based on the same CoI findings, Kaushik was granted pensionary benefits, whereas the applicant was denied the same on account of a shortfall of less than one year in qualifying service.

8. Relevant excerpts from the Show Cause Notice issued to the applicant on 24.01.2022 are as follows:

XXX
XXX

XXX
XXX

XXX
XXX

3. And Whereas, the C of I examined a total of 24 witnesses. After due investigation and providing you all opportunities under the AF Law, The C of I held you to blame on the following counts:-

(a) While posted at 181 Flt of 3 Wg Air Forces Station Palam, during the period from 13 Aug 2018 to May 2021 displayed indecent and scandalous behavior and indulged in unnatural sexual activities with other airmen wherein he established sexual relationship with WO DP Kaushik by making order and anal sex.

(b) During the period from 13 Aug 2018 to May 21, while posted at 181 Flt of 3 Wg Air Force Station Palam used personal ICT device (smart hon, make – MI Note 5 Pro bearing IMIE No.861181044153183 and

861181044153191 with Jio mobile number 7010565570) with internet connection on Jio sim-card without obtaining valid and requisite permission in violation of order number 87/2020 of Station Standing Order dated 31 Jul 2020 issued under the signature of AOC 3 Wg, the orders issued under Chapter 23 of IAP 3903 on the subject Personal ICT Devices Management and the policy circulated by Air HQ/S 21700/39/IEW (IW)/BM IV dated 18 May 15.

(c) While posted at 181 Flt of 3 Wg Air Force Station Palam, during the period from 13 Aug 2018 to May 2021 violated the policies of IT security as stipulated in Chapter 23 Para 2 (a) (ii) of IAP3903 of 2018 wherein service related documents including service perals like GSK Vol 1& II and Org Leave of 'Restricted' classification were found in his smart phone. Photos of Witness No. 2 and other air warriors in uniform and videos of service aircraft were also found stored in his Smartphone.

(d) While posted at 181Flt of 3 Wg Air Force Station Palam, during the period from 13 Aug 2018 to May 2021 displayed disgraceful conduct with indecent behavior and indulged in activities of obscene nature like sharing of pornographic material through whats app chat with other air warriors.

(e) During the same period, while posted at Air Force Station Palam he was found to be an active member of may whatsapp groups with other service personnel which is a violation of Cyber Security Advisory on usage of Social Medial in IAF as published wide Entry No. 12 of SRO SI. No 87/2020 dated 31 Jul 20.

9. The applicant has filed an affidavit on 12.02.2025, explaining the undue influence exerted by Warrant Officer, Dharmpal Kaushik and asserting that Warrant Officer Dharmpal Kaushik was the primary offender. He pleads that he has been discriminated against by being denied pensionary benefits, unlike Warrant Officer Dharmpal Kaushik, despite both being found equally blameworthy.

10. Additional affidavit, in response to the affidavit filed by the applicant on 12.02.2025, is filed by the respondents on 05.05.2025 and in Para 3, 4 and 5 of the aforesaid affidavit the following averments are made by the respondents.

3. That it is humbly submitted that 939009-S Ex Sgt Ashish Sharma Elect Fit (R) (hereinafter referred to as the Applicant) was discharged from service under the provisions of Air Force Rules 1969, Chapter-III, Rule 15, Clause 2(g) (ii) - "His services no longer required" unsuitable for retention in the Indian Air Force vide Air HQ/40803/2/PA-I dated 02 Aug 22.

4. That as per, Para 121 of Pension Regulations for the Air Force 1961, the minimum qualifying regular service for earning a service pension is 15 years. The Applicant was enrolled in the IAF on 02 Jan 2008 and discharged from IAF on 30 Aug 22 (Total service 14 yrs, 07 months and 29 days). However, WO Dharampal Kaushik has completed 36~vrs. 09 months and 03 days of service in IAF. Therefore, WO Dharampal Kaushik was entitled for pensionary benefits and the Applicant was not entitled.

5. That the Court of Inquiry found WO Dharampal Kaushik blameworthy for establishing homosexual relationship with the Applicant along with other two Air Warriors. The Court recommended administrative action against four air warriors for their misconduct and accordingly all air warriors were discharged from service. It is also intimated that, considering the grave nature of the offence committed by the Applicant, condonation was not granted to him.

11. However, on scrutiny of the case and materials placed on record, it is evident that both the applicant and Warrant Officer, Dharampal Kaushik were similarly situated with

respect to the findings of misconduct. Despite this, Warrant Officer, Dharmpal Kaushik was granted pensionary and post-retirement benefits, whereas the applicant was denied the same merely due to a shortfall of 4 months and 2 days in qualifying service. Judicial notice can be taken of the fact that condonation of shortfall of less than one year in qualifying service is permissible under the applicable policy framework.

12. In particular, a Full Bench of this Tribunal, in *Smt. Shama Kaur vs. Union of India & Ors.* [OA No. 1238/2016 decided on 14.10.2020], and in other similar cases, has held that shortfalls of less than one year in qualifying service can be condoned, and pensionary benefits granted accordingly.

13. In the present case, we find that the denial of pensionary benefits to the applicant despite a shortfall of only 4 months and 2 days, while granting the same to Warrant Officer, Dharmapal Kaushik who was equally (if not more) culpable, is arbitrary, discriminatory, and legally unsustainable.

14. Accordingly, while we are not inclined to interfere with the discharge order dated 29.07.2022, we are of the considered view that condonation of shortfall in qualifying service of 4 months and 2 days is warranted. Therefore, we direct as under:

- a) The shortfall of 4 months and 2 days in qualifying service is hereby condoned.
 - b) The applicant shall be deemed to have completed 15 years of qualifying service for the purposes of grant of service pension.
 - c) The respondents are directed to grant pensionary and all admissible post-retirement benefits to the applicant as per rules and policy, treating him as having completed 15 years of qualifying service.
 - d) The arrears of pension and other consequential benefits shall be paid within a period of three months from the date of receipt of this order.
 - e) In case of delay beyond three months, the amount shall carry interest @ 6% per annum from the date it became due till the date of actual payment.
15. Accordingly, the OA is allowed in part and stands disposed of.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**