

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

11.

OA 2189/2025 WITH MA 3017/2025

Ex Gnr Rudrappa Giddanavar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Bikram Sah, Advocate  
For Respondents : Mr. Sudhir Kumar, Advocate

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
24.07.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred as AFT Act, 2007), the applicant has filed this application and the reliefs claimed in Para 8 read as under:

*“(a) Call for the record based on which the respondents have issued the discharge order under item III (V) of the table Annexure to Army Rule 13(3) as an undesirable soldier marking as Non Ex-serviceman.*

*(b) To set aside the Discharge Order passed by the respondent against the applicant.*

*(c) To direct the respondents that the applicant should be treated in service till the time he completes the qualifying service for grant of pension and accordingly service pension may please be granted to the applicant.*

*(d) To pay the due arrears to applicant with interest @ 12% per annum till its payment to the applicant.*

*(e) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant."*

2. There being unexplained inordinate delay of more than 11408 days, MA 3017/2025 has been filed seeking condonation of delay under Section 22 of the AFT Act, 2007.

3. Facts in nutshell indicate that the applicant was enrolled in the Indian Army on 09.02.1985 as a Gunner in the Artillery for terms of engagement of 20/30 years. However, finding his work to be unsatisfactory and on account of five Red Ink Entries for Over Staying of Leave (OSL) and other acts of commission and omission, he was discharged from service on 05.04.1994 under item III (V) of the Army Rule 13(3) on the ground that he is an Undesirable Soldier. The applicant had rendered 09 years 01 month and 25 days of service when he was discharged in the year 1994. After his discharge, in the year 1994, it is seen that the applicant kept quiet till 15.01.2017 when he submitted a request for grant of service pension and claimed that his discharge was illegal. After 15.01.2017, he is said to have sent another request on 16.12.2017 and it is his contention that when nothing was done for another 07 years, on 03.10.2024, he submitted a representation-cum-

appeal to the Competent Authority claiming service pension and challenged his discharge and claimed reinstatement in service. The said representation-cum-appeal of the applicant was rejected by the respondents vide Annexure A-1 on 28.01.2025 and the grounds indicated in Para 2 read as under:

*“It is to inform that you were discharged from service on 05 Apr 1994 under item III (V) of the table Annexure to Army Rule 13 (3) as an undesirable soldier. As per Para 47 of Pension Regulations for the Army 2008 (Revised) (Part-I), unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years and you had served only 09 years, 01 month and 25 days, hence you are not eligible for any kind of pension in terms existing rules.”*

4. As far as the claim for discharge is concerned, the respondents submitted that after such a long period of time, he is not entitled to any reinstatement. Respondents have raised a preliminary objection and contended that after such a long period of time, i.e., 11408 days, when all the records have been destroyed, indulgence into the matter of discharge of the applicant is not tenable and as far as the pension is concerned, as he has not earned his pension by completing the qualifying period of 15 years of service, he is not entitled for pension.

5. Having heard learned counsel for the parties, we find that in the application under Section 22 of the AFT Act, 2007,

the applicant after narrating the facts of his service and discharge in Para 1 and 2 does not give any explanation for the inordinate delay of 11408 days. The explanation submitted by the applicant is that when he came into contact with certain Ex-Servicemen Welfare Association in the year 2024, he submitted the representation on 03.10.2024 which has been rejected on 28.01.2025. Thereafter, from Para 3 onwards except for relying upon certain judgements; the applicant does not indicate any reason for the delay. Reliance is also placed on the judgement of the Hon'ble Supreme Court in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648] to say that pension is a continuous right and the claim for pension cannot be rejected on the ground of delay.

6. Having considered the submissions made, we find that the applicant has been discharged under Army Rule 13(3) based on his service record and at the time of discharge, he had only served for 09 years 01 months 25 days. He was imposed with various punishments while in service as is informed to him in the information sought for by him under the Right to Information Act on 10.01.2025 vide Annexure A-2. The question which arises before this Tribunal is that can a discharge which was affected on 05.04.1994 be called

in question now after such a long period of time particularly when the respondents have indicated that the service records of the applicant are not available? In our considered view, the provisions of Section 22 of the AFT Act, 2007 is analogous to the Section 5 of the Limitation Act, 1963, and under the provision of Section 22 of the AFT Act, 2007, an application filed under Section 14 for ventilating a grievance pertaining to service dispute has to be filed within a period of six months from the date the final order has been made and the period of limitation under Section 22(1)(c) is three years prior to the date of conferring of jurisdiction on this Tribunal. Under Section 22(2) of the AFT Act, 2007, delay can be condoned if the Tribunal is satisfied that sufficient cause is made out for not making the application within a time stipulated in Section 22 of the AFT Act, 2007. Admittedly, the cause of action for the applicant accrued in the year 1994 and in our considered view, the limitation for filing this application as contemplated under Section 22 of the AFT Act, 2007, is already over and in the application for condonation of delay, the applicant has also not given any sufficient cause or reason for the delay.

7. That apart, as far as challenge to the order of discharge is concerned, the discharge was affected as a punishment

on account of the acts of misconduct conducted by the applicant. A man in uniform who has remained absent unauthorisedly and who has been punished right from the year 1989 to 1994 on more than five occasions for overstaying of leave or unauthorised absence and has been sentenced to rigorous imprisonment for various dates as are indicated in Annexure A-2 dated 10.01.2025. The applicant has nowhere indicated as to what steps he had taken after his discharge on 05.04.1994 for ventilating his grievance. The first request for challenging the discharge and grant of pension, according to the applicant, was made vide Annexure A-4 on 15.01.2017 and thereafter on 16.12.2017. However, there is nothing on record as to how and in what manner these representations were submitted and the respondents denied the receipt of these representations. There is no acknowledgment receipt with the applicant with regard to these representations. However, the first representation which is acknowledged by the respondents and which has been sent by the applicant is Annexure A-5 dated 03.10.2024 and in response to the same, in the impugned order dated 28.01.2025, the respondents have pointed out that under Para 47 of the Pension Regulations for the Army 2008 (Revised) (Part-I), the qualifying service

for earning a service pension is 15 years and as the applicant had only rendered 09 years 01 month and 25 days of service, he is not eligible for pension.

8. In our considered view, apart from the fact that the application is filed after an inordinate delay of more than so many years and there is no reasonable and satisfactory explanation for the inordinate delay, even the legal right of the applicant to receive pension is not made out in as much as he does not fulfill the criteria of qualifying service of 15 years and has not earned the pension as the service rendered is only 09 years 01 month and 25 days. That apart, even if for the claim for pension, the law laid down by the Hon'ble Supreme Court in the case of *Tarsem Singh* (supra) is applied, the *Tarsem Singh* (supra) will apply only if the legal right to receive the pension by the applicant is established. The applicant's right for pension itself is not established as he has not worked for the qualifying period of 15 years and, therefore, on the ground that the applicant has continuous right to earn pension, the law laid down in the case of *Tarsem Singh* (supra) will also not apply.

9. Accordingly, in the facts and circumstances of the case, apart from the fact that there is an unexplained inordinate delay of so many years even the right of the applicant to

claim pension is not made out, we reject this application as the relief claimed for by the applicant on both counts, i.e., for challenging the discharge order and claim for pension are not made out both on merit and on the ground of unexplained inordinate delay.

10. Accordingly, finding no case for any indulgence into the matter, the OA stands dismissed both on the ground of merit and delay.

11. MA 3017/2025 and OA 2189/2025 stand disposed of.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

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