

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1774/2017 With MA 3133/2024 & MA 642/2025

Ex Nb Sub Udhav Shankar Maurya Applicant
Versus	
Union of India & Ors.	... Respondents
For Applicant	: Applicant –In-person
For Respondents	: Mr. Karan Singh Bhati, Sr CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

OA 1774/2017

Invoking the jurisdiction of this Tribunal the applicant has filed the OA with following prayers:

BRIEF FACTS

2. This OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, is a classic example of blatant misuse of judicial system by a chronic litigant, who driven by his own misguided and misconceived grievance has dragged this Tribunal, the High Court and the Supreme Court through multiple meritless application.
3. The facts of this case in brief, as evident from the material on record are that the applicant being in low medical category was earlier discharged under the provisions of policy letters dated 12 April 2007 and 27 June 2007 issued by the Integrated Headquarters of the

Ministry of Defence (Army), which laid down the scheme for "Management of Permanent Low Medical Category Personnel Below Officer Rank (PBOR) in the Army". However, the policy letters were quashed by a common order dated 20 November 2008, of the Hon'ble Delhi High Court in the case of Sub Puttanlal & other connected cases, with direction to the respondents to reinstate in service all LMC personnel who were discharged en bloc from service by the Army Head Quarter as under :

"i. Individual option will be sent by the respondents to such persons within two months making an offer to them to rejoin, if they desire as per aforesaid direction passed, The option letter will indicate that such option has to be exercised within a period of 30 days. In case retiral and pensionary benefits have been paid to them, such persons must rejoin alongwith the amount liable to be re-funded by them to the respondents which shall also be indicated in the option letter.

ii. The respondents will also give a public notice/advertisement apart from issuing the individual option notice in a suitable manner preferably in national newspaper.

iii. It is made clear that such persons will also be governed by all the directions made in respect of the petitioner herein as so far applicable.

iv. The general direction are applicable only to such personnel who have been discharged or proposed to be discharged under the policy letter dated 12 April 2007 or those who may have been discharged earlier but have already approached the competent court by filing petition.

v. It is pointed that there may be certain PBOR which may also include some petitioners, whose normal date of superannuation has already arrived or would arrive before the aforesaid option is issued. In such cases the personnel would be entitled to only the benefits of the pay and allowances for the differential period after adjusting the additional benefits arising from the premature discharge. Needless to say that those who decided not to rejoin after their premature discharge would neither be entitled to any pay and allowances nor would be required to repay the amount, if any paid to them after their premature discharge."

4. Pursuant to the order of the Hon'ble High Court, the applicant was issued an option letter dated 10 December 2008, to report to 1 Military Training Regiment, 1 Signal Training Centre, on or before 31 December 2008. However, the applicant did not report as directed, nor did the record office receive any intimation from him within the stipulated period. Instead, the applicant filed a Writ Petition No. 2718/2008 before the High Court of Madhya Pradesh at Jabalpur, seeking permission to rejoin service after the expiry of the due date which was allowed and vide order dated 18.08.2009, directing reinstatement of the applicant within 90 days. It is pertinent to note here, that vide Order dated 18.08.2009, only the time to rejoin the service was extended. The other directions/conditions for reinstatement issued by the Hon'ble High Court of Delhi vide Order dated 20.11.2008 were not disturbed or modified.

5. Pursuant to Hon'ble MP High Court order dt. 18.08.2009, a telegram from Record office was originated to the applicant, informing him to join within 30 days from the receipt of option letter, after depositing all terminal benefits paid to him by the Government of India on discharge. The applicant denied receiving the option letter. The material on record indicates/reveals that the terminal benefits were not deposited by the applicant which was a pre-requisite as per the court order for being reinstated because of which the applicant could not be reinstated.

6. The applicant claiming that he had been wrongly denied reinstatement despite repeated attempts and efforts for re-joining the service, approached this Tribunal by filing an OA 296/2013, to direct the respondent to reinstate him in service, however the said OA was dismissed vide order dated 29.10.2014, on ground that the applicant did not re-join the service even after he was given multiple opportunities to re-join, pursuant to the judgment dated 18.08.2009 in Writ Petition No. 2718/2008. We find it apposite to reproduce. The judgment dated 29.10.2014 passed by this Tribunal in OA No.296/2013 as under:

OA 296/2013

With MA 274/2014

Nb Sub (Retd) Udhav Shankar Maurya

Versus

UOI & Ors

Respondents

For petitioner: Mr. Sukhjinder Singh, Advocate

For respondents: Mr. Ankur Chhibber, Advocate

.... Petitioner

....

Dated: 29.10.2014

JUDGMENT

1. The Applicant has come up before this Tribunal, aggrieved by his claim of non-reinstatement in service by the Army, consequent to Hon'ble High Court of M.P. (Jabalpur) order for reinstatement, not being implemented.

Brief facts of the case:

2. Factual matrix of this case has a laboured and contested history, which needs to be delineated in brief, and inferences drawn appropriately, subsequently. The applicant was recruited in the Army in the Corps of Signals on 29.04.1985, and was promoted to the rank of Havildar on 01.11.1994. On 14.06.2004, the applicant was placed in Low Medical Category (LMC) S1H1A2P1E1, as a consequence of fracture in his Fibula, which was attributable to Military Service. On 11.10.2006, the applicant having recovered, executed and completed his Battle Proficiency Endurance Test (BPET) and Physical Proficiency Test (PPT) in an excellent grading. On 01.03.2007, the applicant was promoted to the rank of Naib Subedar. On 27.06.2007, the MoD (Army) AG Branch issued a letter with respect to the Permanent Low Medical Category Personnel Below Officer Rank (PBOR), providing that those, who had rendered services in excess of 20 years and 15 years respectively, were required to be discharged from service, and consequent to this, the Signals Records issued a letter dated 12.09.2007, intimating the applicant that he was to be discharged from service on 30.11.2007 in the rank of Havildar.

3. A show cause notice was issued to the applicant by 11 WEU on 13.10.2007, seeking response by 18.10.2007, to show cause as to why the

applicant should not be discharged. In the response by the applicant, he stated that he had already been promoted to the rank of Nb Subedar on 01.03.2007. As a consequence of this, the discharge order of the applicant was cancelled on 25.10.2007. Subsequently, the Signals Records issued another letter dated 29.10.2007, whereunder, the applicant was due to be discharged from service on 29.02.2008. Consequent to this, a sanction was given by the officiating DDMS, 101 Area, Shillong for early review of medical category of the applicant who was accordingly transferred to Command Hospital (Eastern Command), Kolkata. Here the Command Hospital (Eastern Command), recommended that the applicant be upgraded to SHAPE-1, and returned him to Military Hospital, Shillong, for conduct of the re-categorization medical board. The Military Hospital, Shillong did not execute an early Review Medical Board, opining that the same could not be held within one year of medical categorization. A show cause notice was issued on 29.11.2007, and the applicant responded to this on 30.11.2007, mentioning that his physical performance was highly appreciated; he had cleared all his tests in excellent, and consequently requested to be continued in service. In pursuance of the discharge procedure, the applicant reported on 05.02.2008, to his centre, and requested for cancellation of the discharge order since he was medically fit. This was not done by the respondents, and the applicant was discharged from service on 29.02.2008, being a LMC.

4. Consequent to this, the applicant filed a writ petition No. 2718 of 2008 in the Hon'ble High Court of Judicature M.P. at Jabalpur. This writ petition was allowed by the Hon'ble High Court of M.P. with direction to the respondents "to extend the benefit to petitioner by reinstating him in service within 90 days from the date of the order (i.e. 18.08.2009)". The order passed by the Hon'ble High Court of M.P. is reproduced below:-

"W.P. No. 2718/2008

18/8/2009

Shri K.C. Ghildiyal, learned counsel for the petitioner.

Shri Brian Da Silva, learned Senior Counsel with Ms.

Kanak Gaharwar, learned counsel for respondents.

For the reasons stated in the order passed today

separately in 1105/2008 (S)- Pitambar Jha Vs. Union of India and others, this petition is allowed and the respondents are directed to extend the benefit to petitioner by reinstating him in service within 90 days from today. However, in the circumstances, no cost."

5. *The applicant forwarded this order on 13.10.2009 to the Signals Records with permission to join the service, and also requested for the details of the money to be deposited by him, through an MRO.*

6. *Prior to this court order, the Hon'ble Delhi High Court had passed an order dated 20.11.2008 in the case of Sub Puttan Lal and other connected cases, to reinstate in service all LMC personnel who had been ordered to be discharged from service (en bloc); by the Army Head Quarters. The applicant claims that he came to know of this order on 24.07.2009. This knowledge did not benefit the petitioner even though, the personnel covered by that judgment had already rejoined the service. In pursuance of the Hon'ble MP High Court order, on 17.06.2010, a telegram from Record Officer, OIC Records was originated to the applicant, asking him to join within 30 days from the date of receipt of an option letter, referred in the telegram, after depositing all terminal benefits paid to him by the Government of India on discharge. The above telegram, as per account of the applicant, was delivered on 03.07.2010. Since the telegram mentioned an earlier dispatch, of an option letter dated 04.06.2010, which the applicant had not received, the applicant intimated the Record Officer, Signals Records about the non-receipt of this option letter, and requested for a copy, to do the needful, on 03.07.2010. Hereinafter the facts, as presented by the applicant, and those as verified by the respondents, vary in their interpretation and in the manner of receipt and dispatch, consequently these aspects are being pursued under the arguments by the respective counsels. The status, as it exists till date, is that the applicant has not been reinstated in service, and he claimed that he has been denied this claim, despite repeated attempts and efforts for rejoining the service.*

7. Before considering the arguments of the applicant, it would be appropriate to focus the case related to the specific reliefs sought by the applicant which are listed below:-

"(a) That, this Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 14.12.2010 & 05.11.2011 passed by the Respondent No. 4 by which benefits of re-instating into service of applicant has been rejected, ignoring the facts and circumstances of the case is very illegal and arbitrary manners as contained in Annexure-A/1 & Annexure-A/2 to this Original Application.

(b) That, a writ order or direction in the nature of mandamus thereby directing the respondents to permit the applicant to continue in the service and allow him to complete the normal tenure of service along with his batch mate as provided in para- 163 of the regulations for the Army, 1961 and further provide the two years of extendable service.

(c) That a writ order or direction in the nature of mandamus thereby directing the respondents to explore some possibility for rehabilitation of the applicant at proper place in his same pay scale.

(d) That this Hon'ble Tribunal may kindly be pleased to direct the respondents to pay the benefit of reinstate into service in favour of applicant as per the applicant's batch mates to the rank of Subedar/Subedar Major.

(e) That this Hon'ble Tribunal may kindly be pleased to direct the respondents to pay the benefit of pay and allowances from the due date to actual date of payment and also provide the interest of aforesaid delayed amount of pay and allowance with 12% p.a. since the due to actual date of payment.

(f) That this Hon'ble Tribunal may kindly be pleased to award the cost of this Original Application Rs. 15,000/- (Fifteen thousand) and allow the same.

(g) That this Hon'ble Tribunal may be pleased to pass any order or direction which this Hon'ble Tribunal may deem just and proper to be passed in favour of the applicant."

This is being done at the outset since there are numerous claims and counter-claims on behalf of the applicant and the respondents, based on a profusion of communication and several appeals made by the applicant, in various fora, all of which need to be viewed in perspective. It is befitting to state, at the outset, that the Tribunal must engage with the developments post the issue of directions by the Hon'ble High Court of M.P. (Jabalpur Bench), in respect of the applicant, directing the respondents to reinstate him into service. Several of the reliefs outlined above are only possible post his reinstatement.

Arguments by the petitioner:

8. *At the outset, while bringing out the exemplary record of the applicant; followed by the fact that consequent to his injuries, he had put in all efforts to upgrade himself and execute his physical tests in the best possible manner, the counsel stated that the first injustice done to the applicant was that he has been discharged from the Army as a LMC while in fact, he was physically fit, and also the Command Hospital, Kolkata had well in time, recommended that the applicant was fit to be upgraded to Shape-1. By bureaucratically interpreting the Rules, the Military Hospital, Shillong did not upgrade the individual despite there being a sanction for early review of the medical category. As a consequence of this, the applicant had to pursue his discharge formality under duress, and consequently went through the cycle of show cause notices and responses to them, culminating into his release from service on 29.02.2008. Left with no avenue, the applicant was forced to approach the Hon'ble High Court of M.P. wherein he got a judgment, which is already quoted in para-4 above.*

9. *In pursuance of the direction of Hon'ble High Court of M.P., the first information of his reinstatement, vide telegram dated 17.06.2010, reached the applicant on 03.07.2010, consequently, the applicant claimed that the preceding option letter dated 04.06.2010 had not been received by him, and he intimated the respondents that this option letter was*

essential, and also that the period specified in the telegram of 30 days had already passed. It would be pertinent to reproduce the contents of the said telegram as dispatched to the applicant, which is as follows:-

"Discharge of permanent Low Medical Category (Physical Casualty) PBOR of Indian Army AAA refer to our option letter No.5104/NER/SP/Reinst Dated 04 Jun 2010 AAA You have to rejoin the service within thirty days on receipt of your option letter after depositing all terminal benefits paid by Government on your discharge from service through Military Receivable Order (MRO) AAA You have to bring receipt of the same along with all other documents in original issued by various Agencies at the time of retirement AAA If you fail to rejoin with all documents as mentioned in the option letter within thirty days of receipt of option letter it will be assumed that you have accepted your discharge."

10. The telegram refers to the above letter of 04.06.2010, which the applicant claims, he had not received prior to the telegram, and the above letter, addressed specifically to the applicant, lays down the conditions of rejoining service, significant in which is a condition for depositing of his terminal benefits (which he had already collected); which have been worked out in great detail. In the letter, there are also several other Administrative Instructions, related to rejoining, medical, documents, etc. Para-3 of this letter is reproduced below:-

"3. You are requested to report to 1 MTR, 1 STC with the deposition receipt of all terminal benefits and bank drafts as required vide para 2 above within 30 days of receipt of this letter. Failure to report of deposit the requisite amount by due date will be assumed as having accepted your discharge."

11. The applicant claimed that consequent to his informing the Record Officer about non-receipt of the option letter, he also personally approached the Record Office in Jabalpur on 15.07.2010 for which a gate pass was also issued (ostensibly he stated, for collecting a copy of the above letter dated 04.06.2010). He claimed that the respondent no. 4 Officer Incharge, Signals Records denied to give him any copy of the above letter. He also claimed that he was threatened by the respondent no. 4 saying- "You people just

approaches the court. Now we will see, who will reinstate you, either court or otherwise."

The applicant claimed that on 10.08.2010, the Signals Records forwarded a photocopy of the option letter which has been referred to above. This was received on 24.08.2010, and the date mentioned on the above covering letter, as claimed, was not readable so that the applicant may remain in confusion about the date of the letter as well as the period of rejoining within 30 days.

12. To the above option letter, which was received by the applicant on 24.08.2010, the applicant responded to the respondent no. 4, and stated that since the letter has been received late, and as per this, all actions were to be completed within 30 days, and since the period of 30 days specified therein, had already passed; in the month of July 2010, therefore, he requested that a fresh letter be issued for rejoining into service. The respondent no. 4 responded on 14.12.2010, and stated that "Your case for considering extended date for reinstatement into Army Service has been examined in consultation with integrated HQ of MoD (Army). Your case has also been investigated with your local post office, i.e. Najafgarh Post, New Delhi. As per Sub Post Master MSG II, Najafgarh Post Office letter No. 410/NG dated 06 Dec 2010, Signals Records letter No. 5104/SP/NER/Reinst/Can dt 30 Nov 2010 forwarded to you under RI No 7031 dt 07 Jun 2010 was handed over to you on 10 Jun 2010. According to ibid letter, you were supposed to report this office for reinstatement within 30 days", and lastly the counsel claimed that the respondents intimated that "you are not eligible for reinstatement into service."

13. The applicant contested this fact stated by the respondent no. 4, and stressed that the said letter dated 04.06.2010 was never handed over to him, and further that the letter sent to him had an incomplete address. He also stated that the letter no. JC377184H/SP/NER/Reinst dated 10.08.2010 was delivered to the applicant too late, and he had requested for a copy of the same. Subsequently, there being contest over the signatures on the delivery slip, the applicant filed an RTI application in this connection to verify his signatures from an expert.

14. On other connected issues, also the petitioner stated that he requested for a list of JCOs, who were junior to him, but had already been promoted to the rank of Subedar in 2010. Subsequently, he wrote to the Union of India through the Secretary, Defence under intimation to COAS, and requested for investigation of his case, and to take necessary action for his reinstatement into service. The applicant also stated that consequent to his communication (related to receipt of the option letter first time), the enquiries were made by the Senior Superintendent of Post Offices, New Delhi, West Division, ND-28, and the following action was undertaken:- "inquiries made into the case revealed that RL-7031 dated 07 Jun 2010 was not delivered to the addressee i.e. Sh. Udhav Singh Maurya and the same was delivered to the wrong person by the Postman. However, disciplinary action was initiated against the Postman at fault".

15. Thereafter, the applicant personally approached the Signal Directorate, and also filed an RTI application, seeking the name of persons or personnel promoted from Naib Subedar to Subedar (specifically those being junior to him). Subsequently, the applicant wrote several RTI applications on the issue of promotion and reinstatement into service. The counsel for the applicant went on to quote several cases of the similar nature of non-receipt of the documents, and the issues related to the reinstatement of the others.

16. The counsel for the petitioner claimed that in response to the RTI applications, the RTI Cell, vide its communication dated 28.11.2011, replied with reference to one of the applications of the applicant dated 30.05.2011- "It is submitted that after the analysis of the case in respect of ex Nb Sub Udhav Shanker Maurya regarding his reinstatement in service in JAG Department and AG/MP-3 (JCOs/OR), Signals Records has forwarded a suitable reply incorporating all issues to the above named petitioner vide letter No P/JC-377184H/LC-133(c)(c)/80 dated 05.11.2011 as per the advice of JAG Department and MP-3(JCOs/OR). As per the ibid letter, the above named petitioner has been informed that there is no provision to reinstate him into service." The counsel claimed that the delay in response to the RTI applications, and the over all negative and oblique attitude of the respondents conveys that they had no intention to ever reinstate the applicant, and have adopted several ways to deny the claim of the applicant for his reinstatement into service.

The applicant continued to send various RTI applications to High Offices, however, he has received no reply.

17. In conclusion, while quoting several cases and elucidating malafide and disingenuity on the part of the respondents, the counsel claimed that in view of the directions of the Hon'ble M.P. High Court, the arbitrary and capricious action of the respondents needs to be set aside, and the reliefs outlined above need to be granted. The counsel claimed that the direction of the Hon'ble M.P. High Court to extend the benefit of reinstatement within 90 days was to commence w.e.f. 18.08.2009, but the respondents have not reinstated the applicant till date.

Arguments by the Respondents:

18. The counsel for the respondents stated that there was no contest related to the basic facts of service of the applicant. The applicant, who was discharged from Army Service w.e.f. 01.03.2008 under Army Rule 13(3) III (c) read with sub rule 2A having been declared Medical Category lower than 'AYE', was discharged from service under the provision of letter no. B/10201/06-08/Vol-I/MP-3 dated 12.04.2007, and subsequent letter dated 27.06.2007. The applicant had rendered 22 years and 329 days of service in the Army. The above mentioned letters have been quashed by the Hon'ble High Court of Delhi, vide order dated 20.11.2008, with directions to the respondent authorities that the personnel, who stand discharged as a consequence of the original policy letter, were entitled to be reinstated with all consequential benefits including continuity of service, pay and allowances and seniority as per the rules. The Court also had specified that individual option will be sent by the respondents within two months of the order, making an offer to rejoin and the above letter would indicate that such option has to be exercised within a period of 30 days, as also in case retiral and pensionary benefits have been paid to them, such persons must rejoin with the amount liable to be refunded by them to the respondents. which must be indicated in the option letter. In pursuance to this order dated 20.11.2008, the applicant was issued an option letter dated 10.12.2008 to report to 1 Military Training Regiment, 1 STC on or before

31.12.2008 but neither the individual reported nor was any intimation received from him. The date of rejoining of the applicant was upto 31.12.2008.

19. The applicant subsequently filed a petition in Hon'ble High Court of M.P. praying for rejoining duty after expiry of due date given by the Hon'ble Delhi High Court (i.e. 31.12.2008), and the Hon'ble High Court of M.P. gave a verdict in favour of the applicant, and the respondents were directed to reinstate the individual within 90 days from the date of the court order. It is in implementation of this order that the said option letter, referred to in paras- 9 & 10 above, and a telegram was forwarded to the individual on 04.06.2010 and 17.06.2010 respectively. The applicant intimated, vide letter dated 03.07.2010, that the option letter was not received by him, therefore, a copy of the option letter was forwarded vide office letter dated 10.08.2010. In response to this, the applicant asked for a fresh option letter with extended date of rejoining for reinstatement, stating that he has received the option letter on 24.08.2010, and the time for rejoining into service from the date of receipt of the letter (i.e. 30 days) had already passed. It is, however, stated by the counsel that para-3 of the option letter clearly stated that the applicant had to rejoin after depositing all terminal benefits within 30 days from the date of receipt of the option letter, so there was no further ambiguity in this regard. Despite that, the applicant asked for a fresh option letter. On receipt of this reply, the respondents carried out a check of delivery of correspondence to the applicant. It was confirmed from the office of the SSP, Head Post Office, New Delhi that the letter (Registered letter no. 7031 dated 07.06.2010) was delivered to the addressee on 10.06.2010, and this has been confirmed in writing by the Post Office.

20. It is contended that the applicant has been given adequate opportunity by the respondents to rejoin service, by sending of a telegram and the option letter twice. The applicant confirmed that he has received the telegram on 17.06.2010 and the option letter on 10.08.2010 (even if earlier delivery is to be discounted), despite clear instruction that the applicant was to rejoin within 30 days from the date of receipt of the option letter, the applicant has failed to report for duty. Accordingly, to put the issue in its correct perspective, a speaking order was issued to the applicant vide letter dated 05.11.2011. The same is reproduced below:-

"The Records Signals

PIN-908770

c/o 56 APO

05 Nov 2011

P/JC-377184H/LC/T-2/PC-133(c)(c)/80

JC-377184H Ex Nb Sub

Udhav Shankar Maurya

RZ-414, A Block, Phase-1

Near Holi Mission School

Jai Vihar, Najafgarh

New Delhi-110043

SPEAKING ORDER

Implementation of Court Order dated 18 Aug 2009 passed by

Hon'ble High Court of MP at Jabalpur in WP No. 2718/2008 (S)

Filed by JC-377184H Ex Nb Sub Udhav Shankar Maurya

Vs UOI and Others

1. Ref Court Order dated 18 Aug 2009 passed by the Hon'ble High Court of MP at Jabalpur in WP No. 2718/2008 (S).
2. It is intimated that Govt sanction for your reinstatement in service was accorded by IHQ of MoD (Army) AG/PS-2(c) vide their letter bearing No B/44469/1208/Sigs 4(b)/X/AG/PS-2(c) dated 09 Apr 2010 as per judgment dated 18 Aug 2009. The same was forwarded to you vide DG Sigs letter No B/44469/1208/Sigs 4(B-4) dated 19 Apr 2010. Accordingly, this office issued an option letter No. 5104/NER/SP(REINST) dated 04 Jun 2010 duly notifying the amount to be returned by you at the time of rejoining. The same was followed by a telegram dated 17 Jun 2010 advising you to report to 1 Military Training Regiment, 1 Signal Training Centre within 30 days of receipt of option letter.
3. However, you had intimated this office vide your letter dated 03 Jul 2010 that you received telegram dated 17 Jun 2010 but denied receipt of option letter.

Having received the telegram which clearly indicates IHQ of MoD (Army) intention to reinstate you, you have not indicated any initiative to make your presence to obtain the option letter from this office besides writing to this office that you have not received the option letter.

4. *A copy of option letter dated 04 Jun 2010 was again forwarded to you vide this office letter No. JC-377184H/SP/NER/Reinst dated 10 Aug 2010 which you received. But you failed to rejoin once again. Para 3 of option letter that you received clearly states that you have to rejoin after deposition of all terminal benefits within 30 days from receipt of option letter. So there was no further ambiguity and you were expected to take action as per these instructions.*

5. *In response to this office letter dated 10 Aug 2010, you again asked for a fresh option letter vide your letter No. JC-377184H/Pers/Aug/01 dated 25 Aug 2010 stating that the time of 30 days has already expired.*

6. *This office has given ample opportunities to you by sending option letter twice besides a telegram received by you but you delayed your rejoining. The facts that you did not receive option letter has also been verified by Senior Superintendent of Post Office, New Delhi, West Division, Naraina, New Delhi and confirmed that all correspondences have been handed over to you except the option letter dated 04 Jun 2010.*

7. *It is clear that inspite of clear instructions and best efforts on the part of this office in the matter of reinstatement offers sent to you, you have not rejoined and instead have avoided to accept the offer of reinstatement. Your such conduct and attitude amounts to refusal of reinstatement for which you yourself are to be blamed and not the department.*

8. *It is further informed that you were asked to submit a non re-employment certificate vide Para 5(a) of option letter No. 5104/NER/SP/Reinst dated 04 Jun 2010 and JC-377184H/SP/NER/Reinst dated 10 Aug 2010. You have also failed to submit the non re-employment certificate till date for reasons best known to you.*

9. At this stage, no provision exists to reinstate you in service, as you forfeited the right of rejoining by avoiding orders of IHQ of MoD (Army) and later on Govt sanction for implementation of Court Order."

21 In conclusion, the counsel for the respondents stated that it is apparent from the action and behavior of the applicant that despite clear opportunity to rejoin the service at his designated Centre, the applicant resisted this and sought every opportunity to make a case for grant of consequential benefits despite the fact that he has been formally separated from service. It seems that the applicant, who is in receipt of his terminal benefits, is not desirous of depositing the same, and therefore, is seeking every opportunity to discredit the offer made by the respondents by creating additional grounds, having passed the date of his superannuation (which would have been effective if he was still in service). As such, taking note of the action by the respondents to implement the directions of both the Hon'ble High Courts, the inaction of the applicant together with inaccuracy in his statements need to be viewed by this Court and the O.A. deserves to be dismissed.

Consideration by the Court:

22. As a consequence of the arguments and the presentation of the documents, specially by the petitioner, it is relevant to summarize the undisputed facts in this case. Consequently, the facts, which are not in dispute, and clearly emerge, are as follows:-

- (a) The petitioner was discharged from service, being in a low medical category, on 29.02.2008.
- (b) The petitioner was paid all his terminal and consequential benefits, as a consequence of his separation from service, and became part of his 'dues' of discharge.
- (c) The Hon'ble High Court of Delhi had passed a judgment on 20.11.2008, instructing the Army Headquarters, to reinstate all the personnel who had been discharged from service being in low medical category, and certain terms and conditions for this reinstatement had been laid down, which are given in para-18 above.

- (d) The respondents sent a communication, based on the Hon'ble Delhi High Court judgment, to the petitioner to rejoin the service, and this communication, according to the respondents, is dated 10.12.2008.
- (e) The petitioner claims no knowledge of the communication mentioned in sub para (d) above.
- (f) The petitioner approached the Hon'ble High Court of M.P. (Jabalpur Bench), and obtained an order in his favour on 18.08.2009, and forwarded a copy of this order to the respondents. The respondents have originated an option letter on 04.06.2010, and a telegram concerning the same issue on 17.06.2010, to the petitioner, who claims that while the option letter was not received, the telegram was indeed received on 03.07.2010.
- (g) Consequent to correspondence, the option letter was sent once again to the petitioner by the respondents on 10.08.2010, this was received by the petitioner on 24.08.2010.
- (h) While there have been several subsequent applications, RTIs and other interventions by the petitioner, he has not rejoined duty to this date.
23. Based on the letters from the respondents, which are indicated in sub paras (f) and (g) above, the offer of extension of date for reinstatement in service was finally declined on 05.11.2011. It is apparent to the Court that the petitioner has produced an exceedingly well documented; methodical, and a voluminous case for consideration of the Court. The petitioner has gone to a great length to present a body of evidence supported by a plethora of documentary data. During the course of consideration and arguments, when the petitioner was confronted with a question as to why he did not join the service even though instructed on the second occasion by the second option letter dated 10.08.2010 (indisputably received by the petitioner), he stated that he was engaged with the admission of his son for a Diploma Course in a college, as also at a short notice, he was unable to gather his finances to re-deposit them, and report in accordance with the option letter, which has been quoted in paras-9 & 10 above.

24. From the pleadings, and the arguments advanced by the petitioner, it clearly emerges that the petitioner, who was initially seeking for reinstatement in service, began to focus the issue related to the consequential benefits of reinstatement, such as, ante date promotion, batch parity promotions, scales of salary etc., in his various representations to the respondents.

25. The respondents have produced a concise and clear case, wherein they first sent an offer on 10.12.2008, consequent to the Hon'ble Delhi High Court directions, and then subsequent to the Hon'ble High Court of M.P. directions on 04.06.2010 and 10.08.2010. Out of these three, the petitioner has claimed lack of knowledge/non-delivery of the first two. However, the fact that the third option letter was indisputably dispatched and received by him, remains germane for our consideration. For a person, who seems to have been completely motivated to serve, and was committed to rejoin service, it is apparent to the Court that with the passage of time of his separation from service, other considerations have filtered into his decision making matrix. This is clearly demonstrated by the fact that when a special option letter (third) was originated for him on 10.08.2010, he failed to join his duty, once again circumventing the offer, issued for a valid period of 30 days (from date of receipt), and he stated that he in fact, needed more time. This seems to be a strange predisposition of the petitioner, who admittedly is only seeking to get the privilege and benefit of reinstatement in service. The actions of the petitioner speak significantly, in view of the fact that the petitioner claimed that he undertook the journey to his centre post receipt of the telegram to obtain a copy of the option letter. Consequently, on the actual receipt of the option letter, his being unprepared to execute its pre-requisites to rejoin, defies logic. The hesitation and indeed lack of energy of the petitioner to unambiguously go and rejoin duty after fulfilling the conditions of the option letter, cannot escape the focus of attention of this Court. His subsequent communications and appeals also lend credibility to the clear intention of prevarication, with an effort to keep intact his pensionary benefits, and in fact by intervention of this Court again, gain additional consequential benefits, by notional re-instatement.

26. What ever had been the circumstances of discharge, once there has been intervention by the Hon'ble High Courts, the respondents have fulfilled their commitment, consequent to the direction of the Hon'ble High Courts, but pursuant to the option letter of the respondents, there has been no clear and unambiguous action of the petitioner to rejoin the service. It is evident to the Court that despite a clear option letter and the communication being received by the petitioner, he failed to fulfill the conditions of the option letter, and rejoin the service. It is also amply evident that the petitioner is a well informed, aware and educated person. At this stage, the offer extended to the petitioner, and the right for him to rejoin the service, does not remain valid. The petitioner is pursuing his case(s), in various fora, without having fulfilled the clear requirement of rejoining the service within the specified period. Therefore, we reach a definite conclusion that the petitioner cannot, at this stage, be reinstated. Further, in view of the circumstances and facts; there is no case for notional reinstatement.

27. In view of the above, we find no force in the petition, and it is accordingly dismissed.

28. In the facts and circumstances, there shall be no order as to costs.

New Delhi

Dated: 29.10.2014”

[Emphasis supplied]

7. Subsequently, the applicant filed a Review Application before this Tribunal, praying for review of the judgment dated 29.10.2014, which came to be dismissed on 11.12.2014, holding that there was no error apparent on the face of the record. Challenging the aforesaid orders, the applicant filed a Civil Appeal No. 11172/2015 in the Hon'ble Supreme Court, however, the same were dismissed on 27.07.2015, finding no merit therein.

8. Despite remaining unsuccessful up to the highest Court, the applicant did not sit quite and has filed the present OA before this Tribunal seeking the following prayer:

“(a) Direct respondents to convert Release Medical Board to Invalid Medical Board and reason of discharge from Army Rule 13 (3) item 1 (iii) (C) being read in conjunction with Sub Rule 2A being all other cases of discharge to Army Rule 13 (3) item III (iii) medical unfit/invalided out from service as applicant case squarely covered by T.A. No. 41 of 2011 decided on 17.05.2013 titled Atul Chandra Karmakar Vs. Union of India by Hon'ble Armed Forces Tribunal (RB) Kolkata.

(b) Direct respondents to grant pension of 27 years 10 months and 2 days by adding weightage of 5 years (22 years 10 months and 2 days + 5 years of weightage).

(c) Direct respondents to grant pension benefits notionally at least up to 04.06.2010 (date of sending of option letter) with their batch-mates as applicant Review Medical Board was not conducted by Respondents while he was in service as applicant case is squarely covered by Hon'ble AFT (PB) New Delhi order on 24.04.2012 TA 20/2011 Suit No. 2196/1996 Titled M.J. Joseph Vs. UOI & Ors.

(d) The applicant be granted any other relief which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of the natural justice and in the facts and circumstances of the case.”

9. After hearing the parties and on perusal of the judgment dated 29.10.2014 we find that similar arguments, grounds and issues regarding non receipt of option letter/documents, reasons why he

could not re-join the service earlier, regarding mala fide on part of respondents, in adopting ways to deny the claim of applicant, and issue related to reinstatement of his batch mates, notional pensionary benefits etc., raised by the applicant in this petition have already been argued, considered, and denied in an earlier round of litigation in OA 296/2013.

10. In view of the facts and circumstances of the case, we find that the prayer of the applicant to convert RMB to IMB is misconceived, as his discharge order on the ground of Low Medical Category had already been set aside, and he was asked to re-join the service despite being provided ample opportunities pursuant to the orders of the Hon'ble High Court(s) to rejoin service, the applicant did not do so. As also evident from paragraphs 25 and 26 of the judgment reproduced hereinabove He, therefore, cannot claim pensionary benefits for the period during which he has not served in the Indian Army. This tribunal, in this regard, accepts the argument put forth by the respondents and agrees that the prayer of the applicant for grant of pensionary benefit for 27 years 10 months and 2 days by adding a weightage of 5 years to his total service of 22 years 10 months and 2 days, and notional pensionary benefits upto 04.06.2010, cannot be granted. The applicant cannot be held entitled to a relief which is consequential to and traceable to his own wrong.

11. In *Machhindranath v. Ramchandra Gangadhar Dhamne*, [(2025) 7 SCC 456], the Hon'ble Supreme Court has held as under :-

"40. Undoubtedly, the present case comes under a unique category where a person on the one hand comes before a court seeking that his own actions be nullified on the ground that it was void and on the other hand wants relief in his favour, which is consequential to and traceable to his own wrong. It would not be proper for a court of law to assist or aid such person who states that the wrong he committed be set aside and a relief be granted dehors the wrong committed, after condoning the same. In the present case, the plaintiff cannot be allowed to benefit from his own wrong and the Court will not be a party to a perpetuation of illegality."

12. Furthermore, the tribunal is of the view that the instant case is one of misuse of judicial process. The applicant since 2008 has jumped from one forum to another, both legal and administrative, agitating his grievance repeatedly, whereas he has been granted relief by Hon'ble Delhi High Court and Hon'ble High Court of M.P. on two separate occasions for the same cause of action, however owing to his own fault or not depositing the terminal benefits and not reporting to the place of work for rejoining scheme he could not avail the benefits of the reliefs granted to him. Multiple rounds of litigation have resulted not only in harassment to the respondents but has also wasted precious judicial time of various courts.

13. The Hon'ble Supreme Court of India in *Pandurang Vithal Kevne Vs. Bharat Sanchar Nigam Limited & Anr.*, [2024 SCC OnLine SC 4108], held as under :-

"22. Considering that precious time of this Court and the High Court was wasted by the petitioner, in our opinion the petitioner deserves to be burdened with heavy cost, to give clear message to the unscrupulous litigants like the petitioner for not daring to play with the Judicial System. Such type of litigants are not only polluting the stream of justice but putting hurdles in its dispensation to others. The precious judicial time which the petitioner has wasted, could very well be used for taking up the cases of other litigants who are waiting for justice. In fact these types of litigants are choking the system of the court, which is resulting in delays in decision of other cases. It is also the duty of the Courts at different levels to curb such type of litigation so that more time is available for dealing with genuine litigation."

14. In light of the repeated failure on the part of the applicant to comply with the Tribunal's orders for filing the necessary applications for condonation of delay, his omission to pursue all available remedies in earlier proceedings, as well as his own inaction despite being afforded multiple opportunities to rejoin service in accordance with the reinstatement order(s) of the competent court(s), this Tribunal finds that the present OA is not only barred by Order II Rule 2 of the Code of Civil Procedure, 1908, but also constitutes a clear misuse of

the judicial process. In view of the aforesaid, we find no merit in this case, and the application is accordingly dismissed.

15. Consequently, the OA 1774/2017 is dismissed with the costs of Rs. 10,000/- to be deposited with the Armed Forces Tribunal Bar Association, Principal Bench. This fund shall be utilized for the purchase of computer/system to facilitate virtual hearings for the benefit of the advocates.

16. Accordingly, MA 3133/2024, MA 642/2025 and any other pending miscellaneous application(s), stand disposed of.

Pronounced in the open Court on 19th day of November, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)


(RASIKA CHAUBE)
MEMBER (A)

/SJ/