

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

**O.A No. 2894 of 2023
&
M.A No. 4012 of 2023**

Ex Rect Naveen .. **Applicant**
Versus
Union of India and others .. **Respondents**

For Applicant : **Mr. Ajit Kakkar, Advocate**
For Respondents : **Mr. Neeraj, Sr. CGSC with Mr.
Rudra Paliwal, Advocate**

CORAM:
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, IDAS, MEMBER (A)

JUDGMENT

M.A No. 4012 of 2023:

There is a delay of 186 days in filing the OA and to condone the delay the applicant has filed this application. In light of the reasons stated in the affidavit and in light of the decision in Union of India and others v. Tarsem Singh (2009(1) AISLJ 371), the application is allowed condoning the delay in filing the OA.

O.A No. 2894 of 2023:

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (for short, "the AFT Act"), the applicant challenges the legality and validity of the impugned order dated 15.09.2022, by which he was dismissed from service on the

ground of having gained entry into the Army through fraudulent means.

2. The applicant's case, in brief, is that he participated in a recruitment rally conducted by the Rajput Regimental Centre, Fatehgarh and was enrolled into the Army on 02.07.2021 under the Unit Headquarters Quota (UHQ). On 30.08.2021, a show cause notice was issued to him stating that in accordance with the recruitment policy, only one member from a family is permitted to avail of the UHQ benefit. It was pointed out that the applicant's father, Sub Vikram Singh, was serving in the Indian Army and had retired and that both his sons had obtained recruitment under the UHQ, which was impermissible.

3. The applicant contends that he had no knowledge of the declarations made by his father and had participated in good faith. He claims that both he and his brother were selected through different Recruitment Centres and neither was aware of the other's application under UHQ. During documentation, it emerged that both sons of Sub Vikram Singh had availed of UHQ benefit, his brother having been recruited at the Artillery Centre, Hyderabad. Upon this revelation, a Court of Inquiry (CoI) was conducted. It came to light that the applicant's father had submitted two separate applications seeking relationship certificates for both sons, falsely declaring that only one of them had availed UHQ benefit.

4. The applicant was issued a show cause notice, after which he absented himself from duty. As per prevailing rules, he was declared a deserter with effect from 18.09.2022 due to being Absent Without Leave (AWL) for more than 30 days. Subsequently,

he was dismissed from service. Aggrieved, he approached this Tribunal.

5. The applicant pleads that his dismissal was not justified, as he had not made any false declaration and had no intent to commit fraud. In addition to seeking quashing of the dismissal, he alternatively prayed for conversion of the dismissal into discharge, so that he may not face disqualification from future civil employment.

6. During the course of hearing, it was brought to light that both the applicant and his brother received 20 bonus marks under UHQ, which was a decisive factor in their selection. Upon this, on 28.11.2024, the learned counsel for the applicant sought time to obtain instructions. Subsequently, on 12.03.2025, it was submitted that the applicant was willing to withdraw his claim for reinstatement if his dismissal was converted into discharge, thereby allowing him to pursue civilian employment.

7. The respondents, however, vide communication dated 03.04.2025, opposed this request, citing the following reasons:

(a) No 3024868F Rect Naveen enrolled at Rajput Regimental Centre on 02 Jul 2021 by utilizing Unit Headquarter Quota (UHQ) benefits deliberately concealing the fact that his brother Sachin Kumar had already availed the benefit of the same during enrolment at Artillery Centre, Hyderabad on 21 May 2021 through Unit Headquarter Quota. Further, in order to avoid legal action, indl absented himself without leave and as per existing provisions was declared deserter with effect from 18 Sep 2022 on being AWL for more than 30 days, thereby, compounding an already existing misdemeanour.

(b) Taking leniency in such cases will set a bad example and precedent among other troops and therefore, it is recommended that applicant's dismissal should not be converted to discharge.

8. We heard the matter at length on 30.04.2025, confined to the limited relief of converting the dismissal into discharge.

9. It is evident from the records that the applicant was in service for only about one year and two months and is not entitled to any post-retiral benefits such as pension, gratuity or provident fund. If his dismissal is converted into discharge, the only benefit accruing to him would be removal of the disqualification for civil employment. This would not result in any financial burden on the respondents nor would it entitle the applicant to ex-serviceman status.

10. The applicant, aged only 25 years, comes from an economically disadvantaged background. It appears that his father attempted to secure a career for both sons by exploiting a loophole through separate recruitment centres and upon realisation, offered to withdraw one son's candidature. While we do not condone such conduct, the primary issue now is whether the impugned dismissal order dated 15.09.2022 warrants interference to the limited extent of converting it to a discharge.

11. As regards reinstatement, we are not inclined to interfere. The applicant, having knowingly participated in a recruitment process despite being aware of his brother's selection under the same quota, bears responsibility. The integrity and standards of recruitment in the Armed Forces must be upheld and such conduct disqualifies him from continuing in service.

12. However, with regard to the alternate prayer, it is well-settled in some jurisprudence that Courts and Tribunals have the authority to convert an order of dismissal into one of discharge in appropriate cases. In *S. Muthu Kumaran v. Union of India & Others*, (2017) 4 SCC 609, the Hon'ble Supreme Court, while upholding the legality of the dismissal, exercised its discretion to convert the punishment into discharge, taking into consideration the appellant's future livelihood prospects. Paragraph 11 of the said judgment is reproduced below:

11. No doubt, the dismissal order passed against the appellant was within the powers of the concerned authorities. However, as far as the dismissal from service is concerned, it is an extreme punishment imposed against the appellant. The appellant has to thrive in civil life by doing an appropriate job suitable to his qualification. In the facts and circumstances of the present case, we are inclined to modify the punishment of dismissal from service into discharge from service. The modification of the sentence of dismissal from service into that of discharge will not change the position of the appellant, so as to claim any re-instatement into service.

A similar view was taken by the Principal Bench in *Ex Cpl Nitish Kumar v. Union of India & Others* (O.A. No. 184 of 2012), and more recently in *Ex LAC Sunny v. Union of India & Others* (O.A. No. 629 of 2022, decided on 04.08.2023). Paragraphs 13 and 14 of the latter decision read as under:

13. Having taken note of various aspects of the matter, we find that in the present case the appellant has not completed the qualifying service to earn pension. As observed by the Hon'ble Supreme Court in the cases of S. Muthu Kumaran (Supra) and Ex LAC Nazzam Shiva (supra), the punishment of dismissal from service will act as a harsh punishment to the extent that the appellant would be debarred and disqualified from applying for civil employment elsewhere and as noted by the Hon'ble Supreme court

there is no harm in such cases in converting the punishment from dismissal to discharge. As noted by the Hon'ble Supreme Court, in the case of S. Muthu Kumaran (Supra) modification of punishment from dismissal to discharge will not change the position of the employee to claim reinstatement into service. Because of such a change, he is not entitled to claim any employment or any re-employment into Army, at the same time he can seek civil employment in a private establishment or any other job and the dismissal will not come in his way seeking such re-employment.

14. Taking note of the totality of the circumstances, we are of the considered view that applying the principles of law laid down by the Hon'ble Supreme Court in the case of Ex Sepoy Madan Prasad (Supra) and this Tribunal in the case of Narendra Kumar Rai (Supra), the respondents will not be put to any loss simply by converting the dismissal into discharge. On the contrary the appellant by getting an opportunity to seek employment in any civil establishment would be able to look after his family and earn for his family.

13. Following the ratio of these decisions and considering the applicant's young age, socio-economic background and the fact that conversion into discharge entails no financial or legal benefit (such as pension or ex-serviceman status), we are of the considered view that the relief sought may be granted.

14. Accordingly, the impugned order of dismissal dated 15.09.2022 is modified to that of discharge from service. It is clarified that the applicant shall not be entitled to any pensionary or post-retiral benefits, he shall not be eligible for any re-employment in the Armed Forces and he shall not be entitled to claim the status of an ex-serviceman or any benefit associated therewith.

15. We are also informed that a FIR has been registered against the applicant for being absent without leave. In view of our finding

that the applicant has already suffered the major penalty of dismissal (now converted into discharge), continuation of such proceedings would be oppressive and further prejudice his chances of securing civil employment. In the interest of justice, we direct that the investigation in respect of the FIR registered against the applicant for the same cause be quashed and no further proceedings be initiated in connection therewith.

16. The OA stands partly allowed to the above extent. No order as to costs.

Pronounced in open Court on this the 9th day of May, 2025.

Sd/-
(Justice Rajendra Menon)
Chairperson

Sd/-
(Rasika Chaube, IDAS)
Member (A)

Alex