

**COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 2058/2018 with MA 2265/2018**

**Ex Col Punit Sethi** ..... **Applicant**  
**VERSUS**  
**Union of India and Ors.** ..... **Respondents**

**For Applicant** : Mr. S.S. Pandey, Advocate  
**For Respondents** : Mr. Shyam Narayan, Advocate  
Maj Abhishek Kumar, OIC, Legal Cell

**CORAM**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 2265/2018**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1358 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh (2008) 8 SCC 648** and in **Ex Sep Chain Singh Vs Union of India & Ors in Civil Appeal 22965/2017** arising out of Civil Appeal Diary no **30073/2017** and the reasons mentioned, the MA 2265/2018

is allowed despite opposition on behalf of the respondents and the delay of 1358 days in filing the OA 2058/2018 is thus condoned. The MA 2265/2018 is disposed of accordingly.

**OA 2058/2024**

The applicant vide the present OA makes the following prayers:

***“(a) Call for the records based on which the Respondents have denied the Applicant the amount of the Leave encashment vide order dated 27.02.2025 and 26.03.2015 and thereafter quash the same.***

***(b) Direct the Respondents to calculate the Leave Encashment amount of the applicant for 300 days on the basis of the pay and allowances which the Applicant is entitled to with @12% on such amount from the date same was due till its realization following the ratio of the judgment 11.09.2022 in WP(C) 3545/2002, in case of LAC R Bhaskaran Vs UOI.***

***(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”***

***FACTS THROUGH PLEADINGS OF THE PARTIES ON RECORD***

2. The applicant no. IC-40662L Col Punit Sethi(Retd) was commissioned in the Indian Army as a 2<sup>nd</sup> Lt. in the corps of EME on 12.01.1982. He was tried by a General Court Martial(GCM) and was cashiered from service on disciplinary grounds on 18.01.2008. The applicant was not granted his pensionary benefits including leave encashment as averred in the counter affidavit of the respondents dated 11.02.2020 submitting to the effect as per Regulation 16 of the Pension Regulation for the Army 1961 as amended vide Govt. of India, MoD letter no-12(g)/95/D(Pen/Sers) dated 09 Jun 1999, the said benefits cannot be granted. The applicant then submitted a mercy petition on 25.06.2020 for grant of pensionary benefits, the same was considered and the sanction of the competent authority was accorded for the grant of 90% of Service pension and gratuity vide letter no. B/39020/ 565/ AG/ PS-4(Imp-I) dated 18 Sep 2014.

3. The applicant was further apprised vide letter no. 12681/IC-40662/T-9/MP-5(b) dated 12.02.2015 by the respondents as per GOI, MoD letter No 90054/AG/PS-2(b)/5348/D(AG) dated 20 Aug 1990, in cases where any reduction in the amount of pension(including gratuity) has been imposed, encashment of leave shall not be permitted.

4. The applicant was also informed vide the said letter that since he had been granted only 90% of pension and gratuity, his case does not fall under the provisions for grant of encashment of leave. The applicant thereafter again requested for release of the leave encashment amount to which vide letter no. 12681/IC-40662/T-9/MP-5(b) dated 27.02.2015, the applicant was informed that he having been cashiered from service by a GCM on 18.01.2008, his case does not fall under the provisions for grant of encashment of leave. The letter dated letter no. 12681/IC-40662/T-9/MP-5(b) dated 12.02.2015 was stated to be treated as cancelled.

5. The applicant again vide letter dated 27.02.2015 requested for the release of the grant of leave encashment

submitting to the effect that as the PPO no: M/0003/2015 has been issued, the leave encashment amount be released to him. Vide letter no. B/33931/AG/PS-2(b) dated 26.03.2015, the respondents reiterated that there was no provision for grant of leave encashment to service personnel who have been cashiered/dismissed from service on disciplinary grounds whilst making reference to letter no. AT/I/1312/X dated 03.02.1999.

6. The request made by the applicant vide letter dated 10.09.2016 referring to orders of the Hon'ble High Court of Delhi for grant of leave encashment was responded to by the respondents vide letter no. B/33931/AG/PS-2(b) dated 04.10.2016 stating to the effect that the judgment of the Hon'ble High Court of Delhi in the case of **Ex Fg Officer Subhas Pandey vs. UOI** in WP(C) no. 495/2008 decided on 19.5.2008 observing to the effect:-

***“even in cases where an officer is dismissed from service, the amount by way of leave encashment would be admissible being akin to a right of property in terms of Article 300A of the Constitution of India. The issue is, thus,***

***no more res integra. We may note in the end that it is the bounden duty of the respondents to ensure that no further case in this behalf are filed by person who are similarly situated in view of the settled legal position as the respondents are bound to implement the judgment qua the principle of the law settled as foresaid.”***

was challenged by the UOI by filing an SLP which had been dismissed vide order dated 05.05.2003 holding that the legal questions raised in this SLP were left open.

7. The respondents have further submitted that in as much as the Hon'ble Supreme Court had kept question of law open, the legal issue involved had not been decided and thus the order in ***Ex Fg Officer Subhas Pandey***(Supra) was not a precedent having force of law. The respondents further submitted that consequentially the judgment of the Hon'ble High Court of Delhi regarding payment of leave encashment had not been made applicable to all dismissed/cashiered personnel across the board by MoD.

8. Inter alia, the respondents referred to Government of India, Ministry of Defence letter no. 90054/AG/PS-2(b)/5348/D(AG) dated 20.08.1990 to reiterate to the effect that

the applicant had been cashiered from service and thus was governed by the CGDA letter no. AT/I/1312/X dated 03.02.1999 referred to hereinabove in Para-5. The respondents have further contended to the effect that the verdict of the Hon'ble High Court of Delhi dated 11.09.2002 CWP 3545/2002 in **LAC R Bhaskaran(676918 L) Eng Fit vs. UOI & Ors.** is not applicable in the instant case in view of the Regulation-16 of the Pension Regulations for the Army, 1961 as amended vide GoI, MoD letter no. 12(g)/95/D(Pen/Sers) dated 09.06.1999 which states that officers cashier/dismissed under provisions of Army Act 1950 will be ineligible for pensionary benefits in respect of all previous service.

9. Vide orders dated 11.04.2023, 28.07.2023 and 28.03.2024, the Registry was directed to renotify the matter after disposal of the issue pending before the Larger Bench of the AFT(PB), New Delhi in OA 548/2016, OA 210/2015, OA 1085/2016 in which the issue involved was the aspect of grant of encashment of leave where the applicant thereof had been dismissed from service. Vide order dated 23.09.2023,

MA 4198/2025 filed by the applicant seeking an early hearing was allowed in as much as the OA prayed only for the grant of the leave encashment for the particular period, and the OA has thus been taken up for hearing. Furthermore, it is essential to observe as laid by the Hon'ble Supreme Court in ***Union Territory of Ladakh and others vs. Jammu and Kashmir National Conference and Another*** (2023) SCC Online SC 1140 decided on 06.09.2023 that unless specifically directed by the Hon'ble Supreme Court to await an outcome of a reference or a review petition, as the case may be, it is not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. The observations of the Hon'ble Supreme Court in para-35 of the said verdict read to the effect:-

***“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it***

***absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.***

10. It is also essential to advert to the judgment dated 06.12.2024 of the Hon'ble High Court of Delhi in WP(C) 14446/2024 in ***Maj(Retd) Dr. Rajesh Kumar Bhardwaj vs. Union of India through its Secretary, Ministry of Defence & Ors.***, whereby vide Para-15 thereof, it has been observed to the effect:-

***“15. Only because an issue of law is pending adjudication before the Supreme Court, in our view, the learned AFT should not have refused to exercise its own jurisdiction to adjudicate on that issue. Refusal of the learned AFT to adjudicate on the issue would, in fact, amount to refusal to exercise jurisdiction vested in it by law. Guidance in this regard may be taken from the judgment of the Supreme Court in***

**Union Territory of Ladakh (supra), where the Supreme Court reiterated that the High Courts cannot refrain from deciding cases merely because a leading judgment of the Supreme Court is either referred to a Larger Bench or a Review Petition relating thereto is pending. The Court held the High Courts must proceed to decide the matter on the basis of the law as it stands. Unless specifically directed by the Supreme Court, it is not permissible to await the outcome of a Reference or a Review Petition. We quote from the judgment as under:-**

**“35....(Already reproduced hereinabove in para-7)”**

11. It is essential to observe that the said aspect was also considered by this Tribunal vide order dated 17.04.2025 in OA 1597/2023 in **Ex Col Pratap Kumar Mohanty vs. UOI & Ors.** as observed vide Paras-6 and 7 thereof to the effect:-

**“6. During the course of submissions made on behalf of the respondents, it is submitted to the effect that the aspect of grant of leave encashment to personnel of the Armed Forces who have been dismissed from service is sub judice before the Larger Bench of this Tribunal in OA 210/2015, OA 548/2016, OA 1085/2016 and OA 1638/2023.**

**7. Qua the said aspect, it is essential to observe that the pendency of an issue before the Larger Bench without any embargo of any stay for the grant of leave encashment or consideration thereof, does not preclude this Tribunal from deciding**

***on the aspect of grant of leave encashment to a person who has been dismissed from service.”***

12. The questions referred to before the Larger Bench of the AFT(PB), New Delhi in OA 548/2016, OA 210/2015, OA 1085/2016 are to the effect:-

***“i) Whether in absence of any provision in the Pension Regulation specifically providing forfeiture of past service for the grant of Leave Encashment, can the Respondents by way of administrative instructions deny the benefit of Leave Encashment to those individuals who have suffered the punishment of Dismissal/ Cashiering on conviction by Court Martial.***

***(ii) Whether by not extending the benefit of Leave Encashment to the service personnel who have been dismissed/ cashiered from service on conviction by the Court Martial, an Army official can be denied the leave encashment by way of administrative instructions even though the Leave Encashment have been held to be property under Article 300A of the Constitution of India which can be only by the Parliament by law.***

***iii) Whether by not granting the Leave Encashment which is earned by an individual after sacrificing his leave due to his dismissal/cashiering of service on conviction by Court Martial by way of an administrative instruction can meet the test let down under Article 33 of the Constitution of India which provides that the right under Part-3 of the Constitution can be restricted by the***

***Parliament by law only to meet the twin objective. Firstly for proper discharge of duties and Secondly for maintenance of Discipline amongst the Armed Forces Personnel.”***

13. On a parity of reasoning, we thus hold that merely because the matter in issue in the instant case is also pending consideration of the Larger Bench of the AFT(PB), New Delhi in OA 548/2016, OA 210/2015, OA 1085/2016, the same does not and cannot deter us to proceed to adjudicate on the issue in question in the instant case. It is essential to observe that vide verdict dated 11.09.2002 in CWP 3545/2002 in the case of **LAC R Bhaskaran(676918 L) Eng Fit vs. UOI & Ors.** , the Hon'ble Division Bench of the High Court of Delhi whilst referring to the grant of leave as being subject matter of leave rules for the services, forming part of the Defence Services Regulations referring to Para-915 of the General Duties and Miscellaneous Provisions in relation to the Indian Air Force observes to the effect that nothing has been pointed out that there were any rules and/or regulations issued with regard to the encashment

of leave and vide para-21 of the said verdict, it was observed to the effect:-

**“21. The Central Government having adopted a scheme for grant of leave encashment, if leave is not availed of by an employee, in our opinion, the same would be paid to a personnel, despite the fact that he was dismissed from Government service. Once a provision is made for payment of certain amount by way of leave encashment, it becomes akin to a right of property in terms of Article 300 A of the Constitution of India. Such a right can neither be taken away nor curtailed by reason of a mere circular. We therefore, are of the opinion that the petitioner herein will be entitled to leave encashment.”**

14. Thus, qua the challenge to this verdict dated 11.09.2002 of the Hon'ble High Court of Delhi in **LAC R Bhaskaran(676918 L) Eng Fit**(Supra) by the UOI and other respondents arrayed to CWP 3545/2002 vide order dated 05.05.2003 of the Hon'ble Supreme Court was dismissed the said SLP observing to the effect:-

**“Delay condoned.  
The legal questions raised in this SLP are left open. We see no reason to interfere with the impugned order. Having regard to the peculiar facts of the case, the SLP is dismissed.”**

15. Significantly vide judgment dated 23.09.2008 in WP(C) 6955/2008 in the case of **Ex Lt Col S.S. Panglia vs. UOI & Ors.**, the Hon'ble Division Bench of Hon'ble High Court of Delhi in relation to the petitioner thereof having been tried by the GCM in April-May 2002 on various charges and having been sentenced to be dismissed from service by the GCM on 22.05.2002 which petitioner thereof was granted pensionary benefits to the tune of 50% of the entitlement on the grant of mercy on his filing a mercy petition was vide judgment dated 23.09.2008 of the Hon'ble High Court of Delhi held entitled to the grant of the amount by leave encashment it being admissible as being akin to a right of property in terms of Article 300A of the Constitution of India with it having been observed that the said issue was no more *res integra*.

16. The Hon'ble High Court of Delhi vide the said judgment dated 23.09.2008 in WP(C) 6955/2008 had further observed categorically that even though the case in **LAC R. Bhaskaran** related to a personnel of the India Air Force whereas the petitioner of the case in WP(C) 6955/2008 belongs to the Indian

Army, the same made no difference the reasoning contained in **LAC R. Bhaskaran** case. It was observed by the Hon'ble High Court of Delhi in WP(C) 6955/2008 to the effect:-

***“10. Learned counsel for the respondents submits that the case in issue related to the Air Force while the present one relates to the Army. In our considered view, this would make no difference in view of the reasoning contained in LAC R. Bhaskaran’s case(Supra). The Division Bench referred to the fact that the grant of leave is subject matter of the leave rule for services which is a part of Defence Services Regulation, India and, thus, what has been already granted(which is in the form of leave encashment) cannot be taken away. Thus, even where an officer is dismissed from Government service, once a provision is made for payment of certain amount by way of leave encashment, it becomes akin to a right of property in terms of Article 300A of the Constitution of India and can, thus, neither be taken away nor curtailed by reason of a mere circular. This reasoning, thus, would not in any manner be affected by which service the petitioner was deployed in i.e. Air Force or Army.***

***11. We follow the same course of action and direct the respondents to pay a leave encashment amount to the petitioner within a maximum period of three months from today.”***

17. The Hon'ble High Court of Karnataka vide judgment dated 25.04.2024 in **H. Channiah vs. Chief Executive Officer and others** (2024) SCC Online Kar 54 vide Para-13 thereof had laid down to the effect:-

**“13. In light of the foregoing analysis and the authoritative pronouncements of the Supreme Court, this Court holds that:**

**(i) Leave encashment cannot be viewed as discretionary bounties but as legal rights enforceable under the Constitution of India.**

**(ii) The entitlements to these benefits are safeguarded under the fundamental rights guaranteed by Article 19(1)(f) and Article 31(1) of the Constitution.**

**(iii) Administrative instructions, lacking the force of law, cannot override the constitutional protections and deprive individuals of their entitlements as mandated by Article 300-A of the Constitution.”**

18. Vide order dated 11.10.2018 in OA 550/2014 in the case of **Ex LAC Jai Narayan vs. UOI & Ors.**,

(ii) vide order dated 28.07.2022 in **Ex Sgt Udhojee vs. UOI & Ors.** in OA 685/2022,

(iii) vide order dated 28.02.2023 in OA 285/2023 in the case of **Ex Wg Cdr H S Bagga Adm vs. UOI & Ors.** ,

(iv) order dated 10.03.2025 in OA(Appeal) 3506/2024 in **Ex LAC Bhuwan Gaur vs. UOI & Ors.**,

(v) order dated 17.04.2025 in OA 1597/2023 in **Ex Col Pratap Kumar Mohanty vs. UOI & Ors.** and

(vi) order dated 16.05.2025 in OA(Appeal) 183/2016 in the case of **Ex Lt Col Shachindra Sharma vs. UOI & Ors.**,

the AFT(PB), New Delhi has consistently upheld the grant of leave encashment to the applicants therein, even though dismissed or cashiered from the Defence services who were nevertheless held entitled to the same in terms of Article 300A of the Constitution of India, it being a right of property akin thereto.

19. In the circumstances, the matter in issue being no more *res integra* the applicant is held entitled to the grant of leave encashment and thus to the amount of leave encashment due to him from the date of his dismissal i.e. 18.01.2008 with

interest @8% p.a. which shall continue to accrue till the date of payment of the said amount.

20. The OA 2058/2018 is thus disposed of accordingly.

Pronounced in the open Court on the 16<sup>th</sup> day of February, 2026.

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

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

/TS/