



is allowed despite opposition on behalf of the respondents and the delay of **156** days in filing the OA 2781/2021 is thus condoned. The MA 2972/2021 is disposed of accordingly.

**OA 2781/2021**

The OA 2781/2021 bearing previous no 8/2020 AFT RB Kolkata was transferred to the AFT(PB), New Delhi vide order dated 26.11.2021 of the Hon'ble the Chairperson of the Armed Forces Tribunal in AT 42/2021. The applicant vide the present OA has made the following prayers:-

***“(a) To condone the delay and admit the Original Application.***

***(b) An order do issue directing the concerned respondent authorities to release the leave encashment together with interest calculated @12% p.a. and exemplary costs for causing unjust and irreparable hardship and harassment to your applicant in accordance with law.***

***(c) Direction to produce all the records in connection with the instant case, before this learned Tribunal for the ends of justice.***

***(d) To pass such order or orders, direction or directions as the Hon'ble Tribunal may deem fit and proper.”***

**UNREFUTED FACTS ON RECORD**

2. The unrefuted facts brought forth on record are to the effect that the applicant was commissioned as an Officer of the

Indian Army on 19.12.1981 and was discharged from service in the rank of Major on 31.07.2006. During his service w.e.f. 25<sup>th</sup> March 2002 he was placed under disciplinary and vigilance (DV) ban type C and which ban was not withdrawn within the period of three years nor was it rescinded and the applicant retired on 31.7.2006. Despite representations made by the applicant requesting for payment of arrears of pay and pension and release of dues and also release of leave encashment and disability pension in accordance with the 7<sup>th</sup> Central Pay Commission, the same were not paid to him.

3. The applicant filed WP 1280 of 2019 before the Hon'ble High Court of Calcutta seeking leave encashment and disability pension as per the 7<sup>th</sup> Pay Commission along with interest and vide order dated 05.02.2019, the said writ petition was dismissed with liberty to the applicant to seek redressal before the Armed Forces Tribunal to pursue an efficacious alternative remedy pursuant to which the OA 8 of 2020 was filed before the AFT(Regional Bench), Kolkata and was

transferred to the AFT(PB), New Delhi and re-numbered as OA 2781/2021 vide order dated 26.11.2021 in AT 42/2021.

3. The leave encashment amount as per the record through the short affidavit submitted on behalf of the respondents dated 19.04.2023, has since been released to the applicant on 29.06.2022 amounting to Rs. 5,26,630/- on account of encashment of 300 days annual leave.

#### **ANALYSIS**

4. The payment of leave encashment due to the applicant is a right to which the applicant is entitled to in terms of Article-300A of the Constitution of India.

5. The Hon'ble High Court of Delhi vide the said judgment dated 23.09.2008 in WP(C) 6955/2008 has 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 belonged to the Indian Army, the same made no difference to the reasoning contained in **LAC R. Bhaskaran** case. It was thus 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.”**

6. 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 has 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.”**

7. 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.**, and

(vii) vide order dated 16.02.2026 in OA 2058/2018 in the case of **Ex Col Punit Sethi 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 thus nevertheless held entitled to the same in terms of Article 300A of the Constitution of India, it being a right of property akin thereto.

8. In the instant case, the applicant had not been even been dismissed and rather he was discharged from service in the rank of Maj on 31.07.2006. The non-payment of the leave encashment due to the applicant on the date of discharge from service on 31.07.2006 till the date when it was so paid on 29.06.2022 necessarily entails the imposition of interest to be paid by the respondents on the said amount to which the applicant was entitled on 31.07.2006.

**CONCLUSION**

9. The applicant is held entitled to the grant of interest of 8% p.a. on the amount of Rs. 5,26,630/- w.e.f. 01.08.2006 till the date 29.06.2022 which be paid to the applicant within a period of three months from the date of this order, failing which, interest @8% p.a. shall further accrue on the amount so directed to be paid which is to be paid to the applicant.

10. The OA 2781/2021 is thus disposed of accordingly.

Pronounced in the open Court on the 3<sup>rd</sup> day of March, 2026.

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

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

/TS/