

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

158.

OA 532/2019

Ex Nb Ris Rohitashv Kumar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Sukhbir Singh, Advocate for
Mr. V.S. Kadian, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
18.03.2026

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

“(a) Quash and a set aside the impugned 508102/Clk/CA-1 dated 06.01.2018 and limited part of letter No 488102/Gen/CA-2 dated 29.11.2018 where grant of pay and allowances was restricted.

(b) Direct the respondents to re-instate the applicant in service with effect from the date of discharge with all consequential benefits of service.

(c) Direct the respondents to grant pay and allowances for the period from ante date seniority to him was granted and arrears of the said period be paid with interest @12% p.a.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

2. The applicant was enrolled in the Indian Army on 16.11.1995 and at his own request was discharged on compassionate ground w.e.f. 31.01.2018. It is the grievance of the applicant that on account of various issues pertaining to his service, i.e., his posting, non-grant of adjustment, not providing proper married accommodation, cancellation of his posting orders and certain alleged harassment, the applicant on 25.04.2017 vide Annexure A-5 submitted an application seeking Premature Retirement (PMR) from service on compassionate ground. It is the case of the applicant that he had to do so not only because of his family problems and commitment but also on the arbitrary action of the higher authorities which put him under depression. The request of the applicant for grant of PMR was considered by the respondents and it was accepted by the respondents on 21.06.2017 vide Annexure R-1. After the Competent Authority accepted the prayer for discharge, the applicant underwent the discharge drill and other formalities and was finally struck off from the roles of Indian Army on 31.01.2018. However, after the PMR application was accepted by the Competent Authority vide Annexure R-1 on 21.06.2017, the applicant on 21.09.2017 vide Annexure

A-2 sought withdrawal of the request of PMR granted to him under Rule 11(2) of the Army Rules, 1954, and submitted that under Rule 11(2), the PMR application may be withdrawn. The request was forwarded to the Competent Authority in accordance to the statutory provisions of Army Rule 11(2) and the same having been dismissed, the applicant has challenged the action of the respondents in rejecting his prayer for PMR in this OA, primarily, on the ground that once the applicant had submitted his application for withdrawal of the PMR application without considering the same in accordance with the requirement of the Rules, the action of the respondents in refusing cancellation of the PMR is not proper.

3. Learned counsel for the applicant placed reliance on a judgement of the Hon'ble Supreme Court in the cases of Union of India Vs. Wing Commander T. Parthasarathy [2001 AIR (SC) 158] and Balram Gupta Vs. Union of India & Anr., [1987 AIR (SC) 2354] in support of his contention that the withdrawal of the PMR application should have been allowed. That apart, it is the case of the applicant that he was not granted proper seniority in the rank of Lance Dafadar (LD) while in service. The applicant's seniority was

wrongly fixed on the ground that he did not pass the promotion cadre and was denied promotion to the next higher rank. However, he passed the promotion cadre on 16.07.1999 and was granted promotion but as his seniority was not granted retrospectively in the cadre of Lance Dafadar w.e.f. 16.12.1998, Dafadar w.e.f. 01.03.2001 and Naib Risaldar w.e.f. 01.02.2014, he filed a statutory complaint on 09.11.2017 vide Annexure A-6. Even though the statutory complaint has been allowed and the seniority as prayed for in the rank of Lance Dafadar, Dafadar and Naib Risaldar has been granted but the benefit of pay and allowances on such retrospective seniority has been denied to the applicant. Seeking monetary benefit in the matter of grant of pay and allowances on such re-fixation of the seniority, the prayer is made vide prayer Clause 8(a).

4. Respondents have filed a detailed counter affidavit and it is their contention that the applicant was enrolled in the Armoured Corps on 16.11.1995 and under Rule 13 (3) Item I(i)(b) of the Army Rules, 1954, he was discharged w.e.f. 31.01.2018 after rendering 22 years, 02 months and 15 days of service and has been granted service pension vide the PCDA(P), Prayagraj in accordance with his

entitlement and in the year 2019, when he invoked the jurisdiction of this Tribunal, his pension was fixed at Rs.25,050/- and was being paid to him as service pension. In Para 2 of the counter affidavit, the respondents have detailed the service particulars of the applicant and the same is not disputed.

5. It is the case of the respondents that PMR from service is governed by the provisions of Rule 13 read with Rule 11 of the Army Rules, 1954. When the applicant submitted his application for PMR on 25.04.2017 vide Annexure A-5, the same was forwarded to the Competent Authority and accordingly, the Competent Authority approved the discharge of the applicant vide Annexure R-1 on 21.06.2017 and after conducting the discharge drill with the date of striking off from the roles of the Army w.e.f. 31.01.2018. The respondents submitted that after acceptance of the request for PMR, the applicant, on 14.10.2017, submitted an application seeking cancellation of the discharge in accordance to the statutory provisions contained in Rules 11(2) of the Army Rules, 1954 read along with Para 36(b) of the Defence Service Regulations (Regulations for the Army) 1987 (Revised), the matter was forwarded to the Competent

Authority and the Competent Authority did not approve the request for cancellation of the PMR. The decision of the Competent Authority was intimated to the applicant vide Annexure A-10 on 11.11.2017. The applicant submitted a Review Application on 29.12.2017, again for cancellation of the PMR under Rule 11 of the Army Rules, 1954. The Review Application (Annexure A-11) was also considered under Rule 11 of the Army Rules, 1954, and was rejected vide Annexure A-4 on 06.01.2018. It is the case of the respondents that thereafter, the applicant filed a statutory complaint which was also rejected. According to the respondents, discharge from service of an Army Personnel is governed by the Army Rules, 1954, and the authorities competent to authorized discharge are stipulated in Rule 13 and the provision for discharge is contained in Rule 11. The applicant's application was processed and accepted by the Competent Authority and after acceptance of the PMR by the Competent Authority, the applicant does not have any right to withdraw the discharge in accordance to the settled principles of law as laid down by the Hon'ble Supreme Court in various judgements.

6. The respondents relied upon the judgement of the Hon'ble Supreme Court in this regard in the cases of Union of India Vs. Gopal Chandra Misra [(1978) 2 SCC 301] and Secy., Technical Education, U.P. And Others Vs. Lalit Mohan Upadhyay and Another [(2007) 4 SCC 492] to argue that once a discharge is accepted by the Competent Authority, the same cannot be withdrawn. The reliance placed on the law laid down in the case of Wing Commander T. Parthasarathy (supra) is disputed by the respondents on the ground that in the case of Wing Commander T. Parthasarathy (supra) pertaining to the Indian Air Force, no statutory rule was pointed out before Court and, therefore, the Court in that judgement held that the request could be withdrawn before the actual date of discharge. However, in this case, the rules are very clear, once the discharge is accepted it could only be sanctioned with the consent of the Competent Authority who has accepted the discharge and can be cancelled only by the said authority. In this case, the Competent Authority examined the same and having rejected it in the absence of any circumstances being brought out, it is argued that the contention of the applicant that he could withdraw discharge cannot be accepted.

7. As far as, payment of pay and allowances for the period on grant of retrospective seniority in the ranks of Lance Dafadar, Dafadar and Naib Risaldar are concerned, it is the case of the respondents that the applicant could not be promoted in time because he did not pass the promotion cadre examination and taking a sympathetic view of the matter while considering his statutory compliant, the Competent Authority, namely, the Chief of the Army Staff (COAS) granted him retrospective seniority without pay and allowances on the ground that he had not discharge duties in the higher rank.

8. As far as, the prayer for grant of Meritorious Service Award is concerned, it is the contention of the respondents that Meritorious Service Award is granted for exemplary and extraordinary services performed. It is conferment of an award for distinguish service and the entire service records of the applicant was examined and finding no extraordinary meritorious work which warrants grant of such benefit, the same has been rejected by the Competent Authority and the statutory complaint filed has also been rejected. Accordingly, the respondents pray for dismissal of the OA.

9. Having heard learned counsel for the parties, we find that three issues raised by the applicant warrant consideration:

(i) The issue with regard to his right to withdraw the PMR granted at his own request.

(ii) Payment of pay and allowances in the rank of Lance Dafadar, Dafadar and Naib Risaldar on re-fixation of his seniority.

(iii) Denial of Meritorious Service Award to the applicant.

10. As far as, the first issue with regard to permission to withdraw the request for PMR is concerned, Annexure A-5 dated 25.04.2017 is the request made by the applicant and in Para 2, he gives certain reasons mainly family issues which compelled him to submit the request for PMR. The applicant, thereafter, in Para 3 makes a request to consider his request and grant him PMR on compassionate grounds during the month of August/September, 2017. The application was forwarded after approval on 25.04.2017 to the Competent Authority and after detailed evaluation, the Competent Authority vide Annexure R-1 dated 21.06.2017 approved his discharge in accordance to the provisions of Rule 13 of the

Army Rules read along with Rule 11 of the Army Rules, 1954, and in Para 12, it was specifically pointed out in the discharge acceptance order that the request for discharge can only be changed as per the statutory provisions stipulated in Army Rule 11(2), i.e., with the sanction Competent Authority and not otherwise. In the Discharge Order (Annexure R-1) from Para 3 onwards, detailed procedure to be followed, namely, the discharge drill to be undertaken as per the statutory rules and regulations were indicated to be followed and thereafter, the employee be struck off from the role. It is, therefore, clear from the materials available on record that the applicant on his own submitted an application for PMR on 25.04.2017 and the Competent Authority accepted the discharge on 21.06.2017 vide Annexure R-1. The law with regard to withdrawal of resignation or retirement premature from service has been considered in various cases including in the case of *Gopal Chandra Misra* (supra) by a Constitution Bench of the Hon'ble Supreme Court and it has been clearly held and there can be no dispute that the settled principle of law is to the effect that an employee is entitled to withdraw his resignation before its acceptance by the Competent Authority. This is the principle laid down in the case of *Lalit*

Mohan Upadhyay and Another (supra) and in Para 19 after placing reliance on the law laid down by the Hon'ble Supreme Court in the case of *Gopal Chandra Misra* (supra) and *J.K. Cotton Spg. & Wvg. Mills Co. Ltd. Vs. State of U.P.* [(1991) 4 SCC 27]. Even though, the Hon'ble Supreme Court in the case of *Wing Commander T. Parthasarathy* (supra) observed that the request for PMR which required acceptance of the Competent Authority will not be completed till its acceptance by the said authority and the request could be withdrawn before it became complete and there is certain indication made in the judgement particularly in Para 6 to say that the request could be withdrawn if an effective future date for making it effective is indicated. The law earlier laid down in various cases included in the case of *Raj Kumar Vs. Union of India* (AIR 1969 SC 180) was distinguished by the Hon'ble Supreme Court in this case only on the ground that when a date for discharge is specifically pointed out, it cannot be withdrawn.

11. In our considered view, the said principle will not apply in the case of the present applicant for the simple reason that discharge in this case is governed by Rule 13 read along with Rule 11 of the Army Rules, 1954. Rule 13

stipulates that the Competent Authority is authorized to accept discharge and Rule 11(2) stipulates that discharge of a person after valid sanction by the Competent Authority can be cancelled by the superior authority only and not otherwise. In this case, as per the rule, the claim of the applicant was forwarded to the sanction authority, the sanction authority rejected the claim and the review application filed, was also rejected.

12. Apart from the aforesaid, a perusal of the request for discharge made by the applicant (Annexure A-5) indicates that in Para 3 of the application for PMR, the applicant makes a request for PMR on compassionate grounds. He does not give any specific date to make the discharge effective and makes a vague request that he may be granted the discharge on compassionate grounds sometime by August or September, 2017. That being so, even if the applicant wanted his discharge to be withdrawn, he should have done so on or before August/September, 2017. In this case, he did not do so and it is only after the discharge was accepted on 21.06.2017 that he moved a request for withdrawal of his discharge even after August and September, 2017, i.e., on 14.10.2017. Accordingly, in our considered view, the law laid down in the

case of Wing Commander T. Parthasarathy (supra) will not apply in the present case in view of the specific statutory provision applicable in the present case.

13. As far as, grant of pay and allowances after re-fixation of his seniority in the rank of Lance Dafadar, Dafadar, Naib Risaldar is concerned, admittedly, the applicant did not pass the cadre course within the stipulated period. He did not discharge duties on the promoted ranks and on the principle of no work no wages, the denial of pay and allowances for this period cannot be held to be illegal or unsustainable in law.

14. Finally in the matter of grant of Meritorious Service Award, the same is not a vested right or a legal right available to an individual member of the Armed Forces. The Meritorious Service Award is conferment of an honour for the meritorious service rendered while in service and the same is evaluated based on the service records, performance, etc., of the individual by the Competent Authority and if on examination of the same, the Competent Authority did not find any outstanding meritorious performance warranting conferment of any such distinguish award, the same being within the statutory power available to this Tribunal under

the scope of judicial review, no interference can be made in the matter.

15. Accordingly, in the facts and circumstances of the case, finding no ground to grant any further benefit to the applicant, the OA stands dismissed.

16. No order as to costs.

17. Pending miscellaneous application(s), if any, stands closed.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

Neha