

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.92 of 2012

Monday, the 29<sup>th</sup> day of July, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Yalla Chandramohan,  
Ex-Serviceman  
(Service No.15159749-H  
(Gunner-General Duty),  
S/o Yella Prem Kumar,  
Racheria Village & Post,  
Prakasham District.

... Applicant

By Legal Practitioner:  
Ms. Tonifia Miranda

Vs.

1. Union of India,  
Rep. by its Secretary,  
Ministry of Defence,  
New Delhi-11.
2. Topkhana Abilekh,  
Artillery Records,  
APS PIN 908802  
C/o 56 APO.
3. The Commanding Officer,  
68 Field Regiment (parbat Ali),  
C/o 56 APO.
4. Headquarter 54 Artillery Brigade  
C/o 56 APO.

... Respondents

Mr.B.Shanthakumar, SPC

**ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiah,  
Member(Judicial)

1. This application has been filed by the applicant seeking to grant the benefits of Ex-Servicemen to the applicant, financial or otherwise and to direct the respondent to issue discharge book, Ex-Servicemen Identity Card and ECHS Card; to grant the relief of considering the candidature of the applicant in any of the respondent organization or to sponsor the name of the applicant to the Defence Security Corps; and to grant compensation of Rs.5 lakhs for the delay committed by the respondents in handing over the Discharge Certificate and other consequential benefits arising out of the discharge.

2. The factual matrix of the case as told in the amended application would be as follows :-

The applicant was recruited in the Indian Army as a Gunner in Artillery on 10.10.2002. During 2007, he was dismissed from service in a proceedings held before the Summary Court Martial. The appeal preferred by him before the appellate authority, The General Officer Commanding, was dismissed by

his order dated 25.5.2008. Aggrieved by the said order, the applicant filed a Writ Petition before the High Court of Andhra Pradesh in W.P.No.21374 of 2008 and after the constitution of this Tribunal, the same was transferred from the said High Court to this Tribunal, which was re-numbered as T.A.No.114 of 2009. After hearing both sides, this Tribunal passed an Order in T.A.No.114 of 2009 on 16.6.2010, modifying the sentence of dismissal into discharge. The applicant made representation on 13.6.2011 requesting them to grant the benefits accrued by virtue of the modification of the dismissal into a discharge like issue of discharge book, payment of Provident Fund, AGIS, Ex-Servicemen Identity Card and medical facilities through ECHS. However, the respondents did not consider the request and, therefore, the applicant caused a legal notice dated 22.10.2011 through his Counsel. Still the respondents did not grant the benefits of Ex-Servicemen, even after 1½ years passed after the Order. The inaction on the part of the respondents makes the applicant to approach this Tribunal for necessary reliefs. The respondents have not complied with the directions passed in the above T.A.No.114 of 2009 even after a lapse of three years. Since the applicant was not given a discharge book in time, he could not go for other employments before State Government agencies, banks under the Ex-Servicemen category. The inaction of the respondents made him lose his seniority and the deprivation of livelihood along with his family members and, therefore, he should be compensated by the respondents to the tune of

Rs.5 lakhs. He would, therefore, request for the grant of the aforesaid reliefs and the application filed for that purpose may be allowed.

3. The objections raised by the respondents in the Reply Statement and the Additional Reply Statement would be as follows :-

The applicant was enrolled in the Army on 10.10.2002 and was serving with 68 Field Regiment with effect from 9.10.2003. During his service in the said Regiment, he committed theft of money of two persons of the same unit by using their ATM cards. A Court of Inquiry was constituted on 17.10.2006 to investigate the matter. The findings and opinion of the Court of Inquiry was followed by a trial before a Summary Court Martial for an offence under Section-52(a) of Army Act, and in result he was sentenced to be dismissed from service and to suffer three months Rigorous Imprisonment of civil jail on 20.1.2007. The terminal benefits like Credit balance to the tune of Rs.18,779/-, AFPP Fund for Rs.34,847/- were sent to the applicant, but it was returned undelivered and, therefore, they were credited with PAO(OR)Arty in the IRLA. However, the AGIF maturity amount for a sum of Rs.13,321/- was paid to the applicant on 16.11.2011. The respondents filed an SLP before the Hon'ble Supreme Court of India against the impugned Judgement and Order dated 16.6.2010 and the same was converted into a Civil Appeal No.19274/2012 and the Hon'ble Supreme Court of India dismissed the said Civil Appeal in the Order dated 15.4.2013. The

respondents have taken steps to file various applications before this Tribunal seeking for permission to file appeal before Supreme Court of India and they were dismissed and thereafter, an appeal was permitted before Supreme Court of India and the same was dismissed and the respondents were taking time to comply with the Order passed by this Tribunal only due to the pendency of the appeal. Immediately after, the Order of this Tribunal passed in T.A.No.114 of 2009 dated 16.6.2010 was confirmed by Hon'ble Supreme Court of India on 15.4.2013, the case of the applicant was examined and Government sanction was granted on 21.5.2013 and accordingly fresh discharge certificate bearing No.RO/4374/2013 dated 2.7.2012 was also forwarded to Zila Sainik Welfare Board, Santgapat, Prakasham District (AP) under intimation to the applicant. There is no delay on the part of the respondents to comply with the orders. The claim for the benefit of Ex-Serviceman, financial or otherwise and also issue of discharge book, Ex-Servicemen Identity Card and ECHS became infructuous, not maintainable, and lack of merits. The said credit balance of Rs.18,779 and AFPP Fund for Rs.34,847/- sent through DD No.101-00026235468 along with letter No.1662/DD/68/NE-4B dated 9.2.2012 was forwarded to the applicant and was paid. The applicant's claim cannot be acceded to and the same is devoid of merit. Therefore, the application may be dismissed.

4. On the above pleadings, we find the following points emerged for consideration in this application :-

- 1) Whether the applicant is entitled for the grant of discharge certificate, financial or otherwise; grant of Ex-Servicemen status and Identity Card and ECHS facilities ?
- 2) Whether the applicant is entitled for consideration of any candidature of the applicant in the respondent's organization or to sponsor his name to Defence Security Corps ?
- 3) Whether the applicant is entitled for the grant of compensation of Rs.5 lakhs for the alleged delay committed by the respondents in complying with the orders of this Tribunal made in T.A.No.114 of 2009 dated 16.6.2010 ?
- 4) To what relief the applicant is entitled for ?

5. Heard Ms. Tonifia Miranda, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel appearing for the respondents.

6. The Learned Counsel for the applicant would submit in her argument that the applicant had filed a Writ Petition before Andhra Pradesh High Court

in W.P.No.21374/2008 and it was transferred to the file of this Tribunal in T.A.No.114 of 2009 in which an Order was passed on 16.6.2010 modifying the Order of dismissal into discharge in favour of the applicant. She would further submit that the applicant is entitled to the benefits of issuance of discharge certificate, Ex-Servicemen status including grant of Identity Card, ECHS Card and other benefits accrued by virtue of the discharge as ordered by this Tribunal. She would further submit that her request for the grant of such benefits were not given to the applicant and, therefore, he had issued a legal notice through his Counsel and still the applicant is not given with any benefit. She would also submit that the applicant was deprived of any civil employment as well as recruitment in other organisations like Defence Security Corps and, therefore, he must be compensated with a sum of Rs.5 lakhs for the enormous delay on the part of the respondents. She would further submit that three years have been passed from the date of the Order of this Tribunal in T.A.No.114 of 2009 and the applicant is yet to taste the fruits of the Order. She would also request that suitable directions may be issued to the respondents and thus the application may be allowed.

7. The Learned Senior Panel Counsel would submit in his argument that the case of the applicant that the benefits accrued on the modification of the dismissal order into discharge was not granted to him till today, is not true. He would submit that the applicant was sent with a DD for a sum of

Rs.18,779/- on credit balance, and Rs.34,847/- towards AFPP Fund, but it was returned undelivered and, therefore, it was ordered to be kept in PAO(OR)Arty in the IRLA. He would also submit that the matured AGIF money of Rs.13,321/- was already paid to the applicant on 16.6.2011 itself. He would further submit that the respondents were advised to prefer appeal against the Order passed by this Tribunal in T.A.No.114/2009 dated 16.6.2010, for which they filed M.A.No.56/2012 and M.A.No.57/2012 for condonation of delay and for the grant of leave to file appeal, but those applications were dismissed by this Tribunal and the respondents have preferred SLP before the Hon'ble Supreme Court of India against the Order of this Tribunal dated 16.6.2010 made in T.A.No.114/2009 and the same was admitted. The SLP was converted into Civil Appeal No.19274/2012 and the said appeal was however dismissed by the Hon'ble Apex Court on 15.4.2013 confirming the Order of this Tribunal dated 16.6.2010, and from the said date, the respondents are taking firm steps to comply with the Order passed by this Tribunal, as confirmed by the Hon'ble Supreme Court of India. He would further submit that the delay was caused only due to the aforesaid reasons. He would further submit that the discharge certificate was also issued to the applicant through Zila Sainik Board with information to the applicant to approach the said Board for issuance of the discharge certificate. He would also submit that the other benefit amounts have also been paid to the applicant. The benefit of Ex-Servicemen status, ECHS



Card, Ex-Servicemen Identity Card and ECHS facilities are not available to the applicant since he did not receive any gratuity on his discharge from the service. He would refer to an Office Memorandum dated 14.4.1987 produced in Annexure R-I in which the qualification for an Ex-Servicemen has been envisaged. He has also produced a Notification of Ministry of Personnel, Public Grievances and Pensions dated 4.10.2012, in which the definition of Ex-Servicemen has been explained in an amendment of Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. According to the said definitions, if a person discharged has received gratuity, is entitled to get the status of Ex-Serviceman as well as other benefits accrued thereon. He would insist in his argument that the applicant did not have such a qualification and, therefore, the Ex-Serviceman status is not available to the applicant and, therefore, the other benefits like ECHS Card and the grant of Identity Card are also not available to him. The recommendation as sought for towards absorption in the organisations under respondents and also in the Defence Security Corps cannot be possible as the applicant was not entitled to an Ex-Serviceman status. He would also submit that if really the applicant is having qualification like any other civil person, he could appear before the organizations concerned seeking a candidature. He would further submit that since the respondents have acted in pursuance of the confirmation of the Order passed by this Tribunal in the appeal pending before the Hon'ble Supreme Court of India, there could not be any delay on

their part to comply with the said Order. The argument advanced by the Learned Counsel for the applicant for the grant of compensation of Rs.5 lakhs towards the damages or loss caused to the applicant, is not sustainable. He would, therefore, request us to dismiss the application.

8. We have given anxious consideration to the arguments advanced on either side.

9. **Points 1 to 3:** The admitted facts arising from the pleadings of the arguments would be that the applicant was serving in the army as a Gunner from 10.10.2002 till 2007 and the appeal preferred against the said dismissal Order was also dismissed and, therefore, he filed a Writ Petition before the High Court of Andhra Pradesh in W.P.No.21374/2008 and the said petition was transferred to this Tribunal on the formation of this Tribunal and was re-numbered as T.A.No.114 of 2009. The said Transferred Application was heard and this Tribunal was pleased to modify the sentence of dismissal into discharge. The respondents had also filed applications before this Tribunal in M.A.Nos.56 and 57 of 2012 in T.A.No.114 of 2009 seeking for condonation of delay and for leave to file appeal before Supreme Court of India against the said Order and both applications were dismissed and therefore, the respondents filed a SLP before the Apex Court and the same was admitted and the case was converted into a Civil Appeal in CA

No.19274/2012 and the said appeal was heard by Hon'ble Apex Court and the same was also dismissed on 15.4.2013.

10. In the said background of admitted facts, the applicant has come forward with this application seeking to enforce the earlier Order passed by this Tribunal as confirmed by Hon'ble Supreme Court of India. According to the applicant, he had represented before the respondents for the grant of benefits accrued as per the modification of the sentence dismissal into discharge on and from 13.6.2011 and till the date of filing of this application on 8.2.2012. The respondents are said to have not complied with the Order and caused much delay in issuing the discharge certificate, Ex-Servicemen status certificate, Identity Card and ECHS benefits. The applicant has also added additional reliefs directing the candidature of the applicant be considered by the respondents in their organisations or to sponsor his name to Defence Security Corps and to pay a sum of Rs.5 lakhs towards compensation for the delay caused in implementing the orders.

11. The first submission of the respondents would be that the reliefs sought for by the applicant became infructuous since the discharge certificate has already been sent to the applicant's address given in the Office of the respondents through Zila Sainik Board on 2.7.2013. The delay was not caused by the respondents wantonly, but for preferring an appeal

before Hon'ble Apex Court of India and the said appeal was dismissed only on 15.4.2013 and, therefore, the respondents had to wait for the orders of Hon'ble Apex Court. It is not disputed that the respondents did not prefer any appeal before Hon'ble Apex Court against the Order of this tribunal dated 16.6.2010 in T.A.No.114/2009. The case of the respondents would be that only after the Supreme Court of India confirmed the Judgement of this Tribunal, the respondents have to act upon and accordingly discharge certificate has been issued to the applicant. As regards the said submission of the respondents, we could see that the respondents have acted immediately after the Order of Hon'ble Apex Court, dismissing the appeal on 15.4.2013. The reason put forth by the respondents that they have waited for the orders passed by the Hon'ble Supreme Court of India is acceptable and is valid in law. The delay was caused only due to the filing of appeal before Hon'ble Apex Court of India against the Order of this Tribunal made in T.A.No.114/2009. Therefore, we cannot fasten the respondents with any liability for any delay and laches in executing the Order. It is not disputed by the applicant that the respondents did not send the discharge certificate. According to the respondents, the discharge certificate of the applicant was sent through Zila Sainik Board on 2.7.2013. So, when the discharge certificate was sent to the applicant by the respondents and, therefore, the said relief ultimately became infructuous.

12. As regards the grant of status of Ex-Serviceman, it is squarely governed by the Office Memorandum dated 14.4.1987 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training. Accordingly the term Ex-Servicemen means :-

*"An 'ex-servicemen means a person, who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian union and*

*(a) Who retired from such service after earning his/her pension or*

*(b) Who has been released from such service on medical grounds attributable to military service or circumstances beyond the control and awarded medical or other disability pension or*

*(c) Who has been released, otherwise than on his own request, from such service as a result of reduction in establishment or*

*(d) Who has been released from such service after completing the specific period of engagements, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity, and includes personnel of the Territorial Army of the following categories, namely :-*

*(i) Pension holders for continuous embodies service.*

*(ii) Persons with disability attributable to military service and*

*(iii) Gallantry award winners.”*

13. In the aforesaid definition, a dismissed or discharged personnel, if he has received gratuity, could be considered as Ex-Serviceman. In the said Office Memorandum, other persons were also included as per the following passage -

*"Any person who has been released :-*

*(a) At his own request after completing 5 years service in the armed forces of the union.*

*(b) After serving for a continuous period of six months after attestation otherwise then at his own request or by way of dismissal or discharge on account of misconduct or inefficiency or has been transferred to the reserve pending such release.”*

14. In the aforesaid inclusion also, five years service in the army as well as continuous period of six months after attestation is required for a discharged or dismissed person to get Ex-Serviceman status. It has not been shown by

the applicant that he was entitled to receive gratuity from the respondents nor had he had worked more than five years of service or completed six months after attestation along with the said five years of service. In the said circumstances, the qualification for attaining Ex-Serviceman status is not available to the applicant as per the service particulars of the applicant. Once the Ex-Serviceman status is not grantable, the applicant is not entitled to any Identity Card of an Ex-Serviceman. The ECHS facilities and other facilities would not also be accruing to the applicant when he is found not entitled to the status of Ex-Serviceman.

15. Further, the applicant was said to have been paid with AGIF Maturity amount for a sum of Rs.13,321/- on 6.11.2011. The said statement made by the respondents in Para-3 of the Reply Statement and in Para-3 of the Additional Reply Statement were not denied by the applicant. Similarly, the credit balance amount of Rs.18,779/- and AFPP amount for a sum of Rs.34,847/- were said to have been paid by the respondents and the DD No. was also referred to in Para-3 of the Additional Reply Statement. However, this fact is also not denied by the applicant. The respondents did not produce any receipt for the said DD, addressed to the applicant. In the circumstances, it is for the applicant to receive the said money, if not received by him so far, from the respondents.

16. The next relief sought for by the applicant is to issue a direction to consider the candidature of the applicant for the organizations of the respondents or to sponsor the name of the applicant to Defence Security Corps. We could find that the applicant was discharged from the army. Once a person is discharged from service, he could not be considered for another service in the army. However, the Defence Security Corps is a different unit and there could not be any recommendation for recruiting the applicant in the said service nor a direction be issued to that effect to the respondents, since the candidature would follow a selection process be done by the authorities concerned on merits. Therefore, we are not inclined to suggest the name of the applicant for being considered by the respondents' organisations or the Defence Security Corps towards recruitment. In the said circumstances, the relief sought for by the applicant cannot be sustained.

17. We have already discussed and found that there was no delay on the part of the respondents in complying with the Orders of this Tribunal dated 16.6.2010. The applicant was harping upon the payment of a sum of Rs.5 lakhs towards compensation on the reason that the applicant was made to wait all these days to taste the fruits of the Orders made in T.A.No.114 of 2009 dated 16.6.2010. Since the respondents are not found responsible for the delay in complying with the Orders of this Tribunal, there could not be



any prejudice or loss to the applicant to lay a claim of compensation towards redressal. In the said circumstances, the claim of the applicant for a sum of Rs.5 lakhs is not sustainable and accordingly the said relief is also dismissed. All the three points are, therefore, held against the applicant.

18. **Point No.4:** For the discussions held above, we are of the considered view that the applicant is not entitled to any relief. However, there is a confusion in respect of the payment of money payable at Rs.18,779/- towards credit balance, and Rs.34,847/- towards AFPP amount, at the time of discharge of the applicant. The Reply Statement of the respondents filed on 11.4.2013 would go to show that the said amounts were remitted to the applicant which was returned undelivered by the Postal authority due to his non-availability at home and the same was credited with PAO(OR)Arty in IRLA. However, in the additional Reply Statement, those two amounts were stated to have been paid through DD No.101-00026235468 dated 9.2.2012. Neither the applicant nor the respondents could say whether the said amounts were actually paid and was received by the applicant as one of the benefits of the discharge. In the said circumstances, we could see that the said amounts are to be paid by the respondents to the applicant, if not already paid. In case it is found as already paid by the respondents, the respondents need not pay the said amount once again. Therefore, we direct the respondents to pay the said sum of Rs.18,779/- towards Credit balance

and a sum of Rs.34,847/- towards AFPP Fund, to the applicant if they were not already paid. In respect of other prayers, we find that the applicant is not entitled to the reliefs as sought for.

19. Accordingly, the application filed by the applicant is dismissed with an observation and direction as indicated above. However, there is no order as to costs.

Sd/-  
LT GEN (Retd) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Sd/-  
JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

**29.07.2013**  
(True Copy)

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No

Internet : Yes/No

To:

1. The Secretary to Government,  
Ministry of Defence,  
New Delhi-11.
2. Topkhana Abilekh,  
Artillery Records,  
APS PIN 908802  
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Counsel for respondents
7. OIC/Legal Cell (Army),  
ATNK & K Area,  
Chennai-600009.
8. Library, AFT, Chennai.

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29.7.2013