

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

15. O.A. No. 92 of 2017

Ex-Sep Shankar Krishna Yamkar
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Mr. S.K. Chinchalikar, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p style="text-align: center;">Original Application is dismissed.</p> <p style="text-align: center;">For orders, see our order passed on separate sheets.</p> <p style="text-align: center;">Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%; text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</div> <div style="width: 45%; text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</div> </div> <p>AKD/AMK/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 92 of 2017

Friday, this the 26th day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Shankar Krishna Yamgar, No. 6808377, Rank : Ex-Sep, R/o.
VPO-Agran Dhulgaon, Tah.- Kavathe Mahankal, Dist.- Sangli,
(Maharashtra)

..... Applicant

Ld. Counsel for the : **Mr. S. K. Chinchalikar**, Advocate.
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,
New Delhi.
2. The OIC Records, Army Medical Corps Records, Lucknow
(UP)
3. The Chief of Army Staff, Army Headquarters D.H.Q., P.O.,
New Delhi-110110.
4. The Principal C.D.A. (Pension), Allahabad (UP).

.....**Respondents**

Ld. Counsel for the : **Mr. A.J. Mishra**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under
Section 14 of the Armed Forces Tribunal Act, 2007 for the
following reliefs:-

- “(a) This Hon’ble Court be pleased to order directing the Respondents to grant service pension benefit and other benefits to the applicant.*
- (b) This Hon. Court be pleased to set aside the impugned orders dated 07.12.2016 and 22.10.2016 passed by Respondent No.2 and thereby rejecting claim of service pension and other benefits to the applicant.*
- (c) Cost of this appeal be granted;*
- (d) Such other and equitable order as the circumstances of the case may be granted.”*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in Army Medical Corps of Indian Army on 21.11.1962 and discharged from Army service on 28.09.1967 (AN) after rendering 4 years 10 months and 8 days of service due to the reason “being surplus no longer services required”. The applicant states that at the time of his enrollment in Army he was physically and medically fit and was fully qualified and eligible for the post of Sepoy. The applicant has completed his basic and advance training at AMC Centre Lucknow (UP) and he was posted to 4 Grinade at Ladak. While in service he was discharged from Army service w.e.f. 28.09.1967 having not passed Army Hindi Class-II. However, he was not given an appropriate opportunity either to attend necessary classes or to appear in Army Hindi Class-II test, which was mandatory on the part of Military Authority concerned. The applicant states that he had not left the service voluntarily but he was discharged from service without giving an opportunity to appear in Army Hindi Class-II test. The applicant through Advocate served legal notice under Section 80 of the Code of Civil Procedure, 1908 to grant the service pension to the

extent of 1/3rd share out of 15 years service pension entitlement from 28.09.1967. The respondent replied the said notice vide letter dated 22.10.2016 and informed that the applicant was discharged from service being unsuitable for further military service, and the applicant had rendered 4 years and 10 months of service and as per para 132 of Pension Regulation for the Army, 1961 minimum 15 years of qualifying service is mandatory for grant of service pension, hence applicant is not eligible for service pension. Being aggrieved, the applicant preferred Mercy/1st Appeal for grant of service pension on various grounds but without giving an opportunity of being heard, same was rejected on same ground by letter dated 07.12.2016. Hence, this Original Application.

3. Learned Counsel for the respondent submitted that applicant was discharged from service due to “unsuitable for further military service” not due to “being surplus no longer service required” as alleged by the applicant. He further submitted that service documents (Sheet Roll) in respect of the applicant have been destroyed on expiry of its preservation period i.e. after retention of stipulated period of 25 years in terms of Para 595 of Regulations for the Army 1987 being a non-pensioner. He further submits that the applicant had served a legal notice dated 29.08.2016 through Advocate and the same was replied by Army Medical Corps Record Office vide letter dated 22.10.2016. He further submits that the applicant served mercy petition/1st Appeal for grant of service pension and the same was suitably replied by Army Medical Corps Record Office vide letter dated 07.12.2016. The applicant cunningly approached the Hon’ble AFT after a lapse of more than 49 years. He further submitted that the

applicant being a case of non-pensioner, all service documents including medical documents pertaining to the applicant have been destroyed after expiry of retention period as per para 595 of Regulations for the Army 1987. He pleaded the Original Application to be dismissed being devoid of merit.

4. We have heard Mr. S. K. Chinchalikar, learned counsel for the applicant and Mr. A. J. Mishra, learned counsel for the respondents and have also perused the record.

5. Upon hearing submission of both sides, we find that documents relating to the Ex-Serviceman have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. In absence of service documents, case cannot be decided on merit.

6. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 50 years from the date of discharge from service. Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

7. No order as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 26th August, 2022

AKD/AMK/-