

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

16. O.A. No. 99 of 2017

Ex Naik Waman Laxman Engale
By Legal Practitioner for the Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Applicant

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.08.2022</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>Heard Mr. A.P. Singh, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is dismissed.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div><div>(Vice Admiral Abhay Raghunath Karve) Member (A)</div><div>(Justice Umesh Chandra Srivastava) Member (J)</div></div> <p>AKD/AMK/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 99 of 2017

Monday, this the 22nd day of August, 2022

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

No. 4535012, Ex. Naik Waman Laxman Ingale, Village & PO :
Dudha, District and Taluka : Buldana-443106 (Maharashtra).

..... **Applicant**

Ld. Counsel for the : **Mr. A.P. Singh**, Advocate.
Applicant

Versus

1. The Union of India, (Rep. by Defence Secretary),
Department of Defence, South Block, DHQ Post, New
Delhi-110011.
2. The Chief of the Army Staff (AG Branch), Integrated
Headquarters, MOD (Army), DHQ Post, New Delhi-110011.
3. The Commanding Officer, 2, Mahar Regiment, C/o Records
Office The Mahar Regiment, PIN-900127, C/o 56 APO.
4. The Officer-in-Charge, Records The Mahar Regiment
Centre, PIN: 900127, C/O 56 APO.

.....**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) *to set aside the all impugned orders passed by Record Officer, The Mahar Regiment rejecting petitions of the applicant illegally and without jurisdiction.*
- (b) *to direct the respondent to grant pensionary benefit from the date of dismissal from service and or alter the sentence of dismissal to discharge from the same date i.e. 29 Jan 1976.*
- (c) *May pass such other order or direction as deemed fit in the facts and circumstances of the instant case.*
- (d) *Costs of this petition may be allowed to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 24.01.1960 and was dismissed from service on 30.01.1976 by Summary Court Martial. Applicant preferred several representation but all in vain. The applicant sent a legal notice dated 14.01.2017 to the respondents but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was neither provided with Summary Court Martial proceedings nor informed at any time that he has right to appeal under Section 164 of the Army Act, 1950 before General Officer. He further submitted that applicant while posted in Field Area Rajori Sector of J & K he was dismissed by Summary Court Martial.

4. On the other hand, learned counsel for the respondents submitted that applicant was non pensioner, therefore, his service documents including Sheet Roll have been destroyed by burning

after expiry of retention period of 25 years as per para 595 of Regulations for the Army 1987. Only service details are available in the Long Roll Register. As per Long Roll Register held with Records, The Mahar Regiment, the applicant had rendered only 16 years and 06 days of service. Further submission of learned counsel for the respondents is that since documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, nothing can be ascertained at this stage. He pleaded the Original Application to be dismissed being devoid of merit.

5. Heard Ld. Counsel of both sides and perused the records and we find that documents relating to ex army person have been destroyed after mandatory retention period in terms of para 595 of Regulations for the Army, 1987. We could have decided the case, had there been related medical documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite service documents.

6. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 40 years from the date of dismissal from service. Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

7. Pending misc. applications, if any, are disposed off.

8. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 22 August, 2022

AKD/AMK/-