

**FORM NO – 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

**ORDER SHEET**

**APPLICATION No : O A 97/2011**

APPLICANT (S) Raj Kumar Thakur  
RESPONDENT (S) Union of India & 4 Ors  
Legal Practitioner of applicant Legal Practitioner for Respondent (s)  
Mrs. Sangita Dasgupta Mr. Souvik Nandy

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b> Order Sl. No. : 9 Dated : 10.12. 2012
	<p>Mrs. Sangita Dasgupta, Id. adv. appears for the applicant and Mr. Souvik Nandy, Id. adv. appears for the respondents.</p> <p>This matter was heard in part on 22.11.12 when Id. adv. for the applicant had concluded her detailed argument. At that point, this Bench had posed two queries before the respondents which have now been answered by the Id. advocate for the respondents, Mr. Souvik Nandy by producing before us a few documents that are available in the personal file of the applicant, as is being maintained by the Mechanized Infantry Records. We have perused those documents.</p> <p>The brief case of the applicant is that he was enrolled in the Army on 25.1.84 under the 8 Mechanised Infantry and was discharged on 23.9.94 under Army Rule 13 (3)(III)(v) i.e. "service no longer required" for contracting plural marriage, which attracts such administrative action, under the authority of para 333 (b) and (c) of Regulation for Army, 1989 (revised edition). Such action was taken by the GOC-in-C, Northern Command vide order dt. 28.6.94 based on which, the applicant was discharged on 23.9.94 after rendering little over ten years of physical</p>

service.

The applicant appealed before the authorities against his discharge on many occasions stating that he did not actually contract any second marriage and, therefore, such an order of discharge was not justifiable. These matters have been mentioned in the reply to the show cause served on the applicant before discharging him by the authorities.

The applicant's wife, Mrs. Devanti Devi, was married with the applicant on 19.5.80, which is recorded in the service records maintained by the authorities. She was in receipt of certain maintenance allowance sanctioned by the prescribed army authority in the year 1991, which subsequently was stopped after the applicant was discharged in 1994.

Notwithstanding the above, the said Devanti Devi filed a proceeding u/s 125 CrPC for maintenance before the court of Ld. Judicial Magistrate, 1<sup>st</sup> Class, Arrah being Misc. Case NO. 3/90 Tr No. 441/92. The said case was decided on 3.8.92, a copy of which is available at annexure- A3. The order is in Hindi, however, English version is given by the applicant at para 4.7, which inter alia states as follows :-

“ After considering all the evidences adduced by the witnesses, it could not be substantiated that the applicant got married with another lady since there is/was no document and/or evidence brought on the record. Therefore, the applicant has not been able to prove her allegations against the respondents as alleged.”

It appears that in the ibid judgement, the Id. Judicial Magistrate, Arrah observed that there was not enough evidence nor any written evidence to conclude that the applicant i.e. Raj Kumar Thakur (respondent in the suit) had ever contracted a second marriage with one Saroja Devi. It further appears that an

appeal was also filed before the Ld. 9<sup>th</sup> Addl. Dist. And Sessions Judge, Bhojpur in Cr. Appeal No. 61/92 against the said judgement, which was also dismissed as being not maintainable vide order dt. 4.12.97.

Notwithstanding above judicial pronouncements, the applicant was discharged under the ibid Army rule with effect from 23.9.94. Being not satisfied with the decision of the authority in discharging him on the allegation of plural marriage, the applicant approached the Hon'ble High Court at Patna by filing writ petition No. CWJC No. 7121 of 2006, which was disposed of on 20.3.07 by issuing the following orders/directions vide annexure-A9 :-

“From perusal of the writ application, the contention of the applicant seems to be correct. Therefore, this Court directs the Commander-in-Chief, Northern command i.e. the respondent NO. 4 to examine the representation contained in Annexure-5 of the writ application and take a decision in this regard within a period of three months from the date of communication on production of the copy of this order. Any decision taken shall be by way of speaking order and the same shall be communicated to the petitioner.

The writ application is disposed of with the above direction”

In compliance with this order of the Hon'ble High Court, the authorities reconsidered the matter and passed a speaking order on 15.6.07. This order was also communicated to the applicant on 18.6.07 (Annexure-A11). In the said speaking order, the concerned authority continued to remain convinced that the applicant had indeed contracted second marriage while the first wife was living and, therefore, it was held that the earlier order of discharge was in order. Being aggrieved the applicant filed

another writ petition before the Hon'ble Patna High Court being CWJC No. 12126 of 2007, which was disposed of by the Ld. Single Judge on 23.6.11. In the ibid order, the Ld. Single Judge of the Hon'ble Patna High Court made some observations while granting liberty to the applicant to withdraw the said writ petition and to file it before appropriate forum. The relevant portion is quoted as under :-

“It is, however, observed that as the petitioner was availing the remedy under Article 226 of the Constitution before this Court by filing this application on 17.9.2007, the Tribunal shall decide the question with regard to the relief of quashing of the order dated 15.6.2007 on merits without subjecting the petitioner to rigors of limitation, if any. The Tribunal in fact will make all its efforts to dispose of the application filed by the petitioner at an early date preferably within a period of six months from the date of filing of such application by the petitioner before the Tribunal.

With the aforesaid observations and liberty, this application is permitted to be withdrawn.”

In accordance with the liberty granted by the Hon'ble Patna High Court, the applicant has filed the instant original application before this Tribunal on 22.11.11.

In the ibid original application the applicant has sought for the relief of quashing of the discharge order dt. 28.6.94 as well as the speaking order dt. 15.6.06 and prayed that he be given all consequential benefits, such as, arrears of salary for the period he was kept out of service, increments and other benefits of service. It is further stated that if under the Army Act, the applicant has attained the age of normal discharge, for which he cannot be reinstated, he may be treated as in continuing service

and be allowed all consequential benefits during the intervening period and also pension which may be fixed in terms of 6<sup>th</sup> CPC.

Ld. advocate for the applicant, Mrs. Dasgupta has very extensively argued the matter and brought to our notice various judicial observations made by different courts as reproduced above. It is pointed out that Ld. Judicial Magistrate, 1<sup>st</sup> Class, Arrah has categorically observed in para 14 of the order that the second marriage of the applicant could not be proved before him. In that view of the matter, the authorities could not have been relied on some other documents to conclude that the applicant had contracted second marriage and thus, discharged him under the army rules, as quoted above. She has reiterated the prayer made in the OA.

We also notice that the matter was being unduly delayed for various reasons whereas the applicant was suffering being without any pension or pay since 1994. Therefore, as per our order dt. 22.11.12, we had imposed cost of Rs. 3000/- to be paid to the applicant's counsel. Mr. Souvik Nandy, ld. adv. for the respondents sought for some more time to comply with the said order of payment of cost to which no objection is raised by Mrs. Dasgupta. Accordingly, we direct the respondents to pay the cost as already ordered as expeditiously as possible.

Mr. Souvik Nandy, ld. adv. for the respondents while arguing the matter, right at the beginning, has brought out the question of limitation. According to him, this application is barred by limitation as prescribed in Sec. 22 of the AFT Act. His contention is that the impugned discharge order was passed in the year 1994 whereas the present application was filed before this Tribunal only in the year 2011. Thus, there was more than 17 years delay and hence, the application is hopelessly barred by limitation. Even the speaking order was passed in 2007 and four years thereafter, this application was filed. So from that angle

also the application is barred by limitation. He has cited two decisions of the Hon'ble Supreme Court in support of his argument that the question of limitation should be dealt with first. These decisions are :-

1. (1996) 6 SCC 229 – M. Bhaskar –vs- J.Venkatraman
2. (2008) 13 SCC 445 – Naharlal Verma –vs- Dist. Cooperative Central Bank Lt. Jagdalpur.

We have gone through these decisions of the Apex Court. We fully agree with the ratio as decided in these decisions. But in our considered opinion, these decisions have no application to the facts of the present case for the reasons that the applicant has been pursuing the matter before different courts of law. Lastly, he went before the Hon'ble Patna High Court against the speaking order dt. 15.6.07, which was issued by the respondent authorities in pursuance of an earlier order of the Hon'ble Patna High Court. In the latter writ petition No. CWJC 12126 of 2007 the Hon'ble Patna High Court permitted the petitioner to withdraw the said writ petition and to file it before this Tribunal. It was clearly observed that "the Tribunal shall decide the question with regard to the relief of quashing of the order dt. 15.6.07 on merits **without subjecting the petitioner the rigors of limitation, if any.**" In that view of the matter, since the Hon'ble Patna High Court has already issued such direction to ignore the question of limitation, we are of the view that at this stage, it is not proper for this Tribunal to deal with the point of limitation, as raised by Mr. Nandy. We, therefore, proceed to consider the matter on merit without subjecting the applicant the rigors of limitation, as directed by the Hon'ble Patna High Court.

We have heard both the sides in detail and gone through the documents placed on record including the personal record of the applicant, as produced today by Mr. Nandy.

We find that in arriving at the conclusion that the applicant had contracted second marriage during the life time of his first wife, the authorities have relied upon only one document, which is a report by a representative of the Zila Sainik Board, Arrah, which is shown to us from the personal file of the applicant. It states that a marriage was held between the applicant and one Smt. Saroja Devi in a Surya Temple in the local village. The said report does not appear to have been authenticated by the Chairman of the Zila Sainik Board, who as per statute, is the Collector of Arrah District. The said report was signed by a mere functionary of the Zila Sainik Board, which is not enough proof to hold that indeed a second marriage was held between the applicant and Smt. Saroja Devi, as alleged. In fact, the date of such marriage is also not mentioned in the report. We also notice from the averment made by the respondents in para 15 of counter affidavit where the respondents have submitted that local military authorities i.e. Zila Sainik Board had enquired and submitted a report to authenticate such second marriage. Having perused all the documents including the personal file of the applicant, we, however, do not find any authentication of any local military authority, who in this case of Arrha, would be the Army authorities at Danapur in the State of Bihar. In the same manner, the Chairman of the Zila Sainik Board has also not authenticated the said report. That besides, the observation of Ld. Judicial Magistrate, 1<sup>st</sup> Class, Arrah is adequately indicative that such second marriage could not be proved. In the absence of any such proof and non-authentication of the report by the competent authority, it is indeed strange as to how an officer of the status and position of GOC-in-C of the rank of Lt. General could come to a decision to terminate the service of a serving jawan merely on some report of a functionary of Zila Sainik Board as discussed above.

We have also gone through the entire contents of para 333 (b) and (c) of Regulation of Army, 1989 (Revised Edition) as was pointed to us by the respondents and we find that there is no such provision that enquiry by civil authority would mean a report from any functionary of Zila Sainik Baord.

In views of the above discussions, we are of the opinion that that the second marriage allegedly contracted by the applicant to one Smt. Saroja Devi is not proved, and therefore, based on such allegation, service of a jawan cannot be terminated under the authority of relevant army rules and the same is liable to be quashed. Consequently, the impugned speaking order dt. 15.6.07 also cannot stand and is liable to be set aside.

We also note that the applicant was a Sepoy and in normal course of his service, he would have served for more than 17 years. However, he could render physical service only fore a little over ten years till 23.9.94 when he was discharged. We also take note of the fact, as admitted by the applicant himself, he may not be fit in terms of physical fitness as per Army Rules.

In the light of our discussions made above, we dispose of the application by issuing the following directions :-

- i) The impugned order of discharge as also the speaking order dt. 15.6.07 are hereby quashed.
- ii) The applicant shall be deemed to be continuing in service notwithstanding his discharge w.e.f. 23.9.94, till the date of his deemed retirement on completion of 17 years of service counting from his initial date of enrolment on 25.1.84.
- iii) However, he will not get any salary for this period since he did not work.
- iv) The respondents shall work out his pension and other retirement benefits, as admissible under the



rules, based on notional pay on the date of his deemed retirement, as per the above order as if he retired after completing his colour service, which as per conditions of service is 17 years for a Sepoy. However, payment of arrear on pension shall be restricted to three years prior to the filing of the first writ petition before the Hon'ble Patna High Court i.e. CWJC 7121/2006. In other words, such arrear of pension will be admissible and payable w.e.f. 31.1.03 only.

- v) This order be complied with within three months from the date of receipt of a copy of this order. If the payment of pension or arrear in terms of the above order is not made within the aforesaid time limit, then, in that event, the applicant will be entitled to get interest at the rate of 18% per annum on such pension and arrears thereof.
- vi) The original records, as produced before us, be returned to the respondents.
- vii) There will be no further order of cost except which has already been imposed on the respondents as indicated earlier.

(LT. GEN K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)