

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**TA 1312 of 2010**

Friday day this the 1<sup>st</sup> day of April, 2011

“Hon’ble Mr. Justice Janardan Sahai, Member (J)  
Hon’ble Lt. Gen. P R Gangadharan, Member (A)”

Smt. Roopa Singh W/o Aman Pal  
Singh Teveotia, Village Adampur,  
Post Office & District : Bijnor

.....Applicant

By Legal Practitioner Shri Subhash Chandra Yadav, Advocate.

Versus

1. Union of India through Secretary  
Defence, Ministry of India, New  
Delhi
2. The Chief of Army Staff, Army Head  
Quarters, DHQ P.O. New Delhi.
3. The General Officer Commanding in  
Chief Head Quarters, Southern  
Command Pune (Maharashtra)
4. The Director General of Signals  
(Sig.4) General Staff Branch, Army  
Head Quarterrrs, DHQ, PO New  
Delhi.
5. The General Officer, Commanding-  
in-Chief, Head Quarters, Western  
Command Chandi Mandir

.....Respondents

By Legal Practitioner Shri Sunil Mathur,

Ld. Sr. Standing Counsel.

## ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. Aman Pal Singh, the original applicant who has died during the pendency of this case on 13.01.2007 and who has been substituted by his widow Smt. Roopa Singh has challenged his discharge alleged to have been given on his own request. He was enrolled in the Indian Army on 02.07.1982. He was promoted to the rank of Naik and was ultimately promoted to the rank of Havildar in June, 1992. It appears that on 06.10.1993 Aman Pal Singh was awarded punishment u/s 63 (b) of the Army Act and on 03.06.1994 awarded punishment u/s 39 (b) of the Army Act. He preferred a Statutory petition dated 28.02.1997 to the Chief of Army Staff. It appears that there was substantial delay in disposal of the statutory complaint. He made an application on 05.02.1999 to the Commanding Officer which is reproduced below :-

“REQUEST FOR PREMATURE RETIREMENT ON COMPASSIONATE  
GROUNDS

*With due respect and humble submission, I wish to lay down the following few lines for your kind consideration and favourable action please.*

*I was enrolled in the Army on 02. Jul. 1982 and at present I have completed 15 years of service. During this period I have qualified F of B course Ser No. FB – 61 in 1991 and also qualified S Course Ser No. S-350 in 1993. Due to four red entry I am totally debarred from further promotions. In this period my juniors have*

*got promotion and I feel dishonour to work under the supervision of my juniors.*

*I wish to progress more in life but in this service my future is not bright.*

*You are requested to consider my above written facts on merit basis. So that I could avoid my future financial loss and bright carrier of mine and childrens.*

*Thanking you in anticipation”*

2. This was followed by an application dated 22.02.1999 which is also part of Annexure Part – II quoted below :

“APPLICATION FOR DISCHARGE ON EXTREME COMPASSIONATE ROUNDS

PART – I

1. No. 14245644M Rank NAIK Name APS Teveotia Trade F of S
2. Date of enrolment 02 Jul 1982 Terms of engagement 17/03
3. Whether undergone F of S, Teleprinter Maintenance of P & T advance Electronic and System Engineering Course or Cipher remustering course : F of S
4. Reasons for discharge with details of material changes after enrolment which have adversely affected the individual :-

*(a) I was enrolled in the Army on 02 Jul 1982 and at present I have completed 15 years of service. During this period I have qualified F of S Course Ser No FS-61 in 1991 and also qualified S Course Ser No S-350 in 1993. Bue to four red entries I am totally debarred from further promotions. In this period my juniors have got promotion*

*and I feel dishonor to work under the supervision of my juniors.*

*(b) I wish to progress more in life but in this service my future is not bright.*

*(c) So I could avoid my further financial loss and bright carrier of mine and childrens.*

5. *Certify that :-*

*(a) The above information is correct and hereby seek discharge on extreme compassionate grounds.*

*(b) On arrival at Depot Regt, I will not changes my mind to continue in service.*

*(c) I understand that I will not be eligible for reinstatement after discharge.”*

3. On the basis of these applications the discharge of the applicant is stated to have been approved on 21.05.1999. Thereafter by order dated 02.08.1999 the Chief of Army Staff allowed the Statutory complaint filed by the applicant and set aside the punishment dated 06.10.1993 and 03.06.1994 and granted consequential benefits to the applicant. The applicant then applied on 29.10.1999 seeking permission to withdraw the application for voluntary discharge earlier filed by him. However, no action on that application was taken and the order of discharge was passed on 31.10.1999 and he was prematurely discharged w.e.f. 01.11.1999. The applicant then gave notice dated 20.01.2000 to the Chief of Army Staff, Annexure No. 5 to the Writ Petition. In para 4 of the notice it is stated that the applicant had exemplary service record was frustrated due to illegal punishments of severe reprimand on

08.10.1993 and 08.06.1994. Moreover he was deranked from Havildar to Naik as a result he was debarred from his due promotion of Naib Subedar although as per his qualification of having done all cadre course in 1993 he was entitled for promotion on 03.07.1993.

4. The applicant then preferred a Writ Petition no. 48410 of 2000 which was disposed of with a direction permitting the applicant to make a representation to the Chief of Army Staff. He filed a representation. The Chief of Army Staff rejected the representation by an order dated 23.02.2001. The applicant then filed a Writ Petition 15786 of 2003 (now T.A. 1312 of 2010), the papers of which have been transmitted to the Tribunal.

5. We have heard Shri Subhash Chandra Yadav, Counsel for the applicant and Shri Alok Mathur, Sr. Standing Counsel on behalf of the respondents. It was submitted by the Ld. Counsel for the applicant that the application dated 05.02.1999 is really not an application seeking voluntary discharge but was rather an expression of his frustration against the illegal punishments awarded to him in view of which his chances of promotion had been marred. We have already re-produced the application dated 05.02.1999 filed by the applicant. No doubt the application bears heading 'Premature Retirement on Compassionate Ground' but there is no specific request made in the application for voluntary discharge. The reading of the application as a whole indicates that the applicant was wholly frustrated with the four red ink entries having been given to him and his chances of promotion having been marred and his juniors having been promoted. In his complaint dated 26.12.1997 to the Chief of Army Staff against the two

punishments of severe reprimand dated 06.10.1993 for offence u/s 63 Army Act and punishment dated 03.06.1994 and u/s 39 (d) Army Act his prayers 8(b), 8(e) and 8(f) were as follows :

*“8(b) On 3 June, 1994 he was reduced to the rank of Naik from the rank of Havildar under Army Act Section 80, which was absolutely illegal as he was a substantive Havildar on that day and the Commanding Officer had no power to give this punishment/Summarily, and as such this punishment. Should be set aside. (Army Act Section 80 refers).*

*In para 8(e) he prayed: “He may please be given Seniority with retrospective effect as if no punishment was given to him on 08 October, 1993, and on 03 June, 1994”*

*In para 8(f) he prayed : “If the above mentioned submissions cannot be accepted and no redress is given to him, then he may please be sanctioned release from the Army forthwith, and the pension as due on date of release may also please be sanctioned.”*

It appears from para 8(f) of the complaint that the request for discharge was conditional. To appreciate the nature and intent of the letter dated 05.02.1999 that letter has to be read in the context of the Statutory Complaint. Ld. Counsel for the applicant relied upon the decision of the Apex Court in ***Prabha Atri Vs. State of Uttar Pradesh 2003- LLR-0-230, 2003-LLN-1-762 (TLS) 37449***. In that case the Apex Court was considering an application for resignation which was as follows :

*“your letter is uncalled for and should be withdrawn. I have been working in this hospital since May 10, 1978*

and have always worked in the best interest of the patients. It is tragic instead of taking a lenient view of my sickness you have opted to punish me. If the foregoing is not acceptable to you then I have no option left but to tender my resignation with immediate effect.”

6. The Apex Court on construction of the language used in the letter held that it was not a resignation. Reliance was placed by the Apex Court upon its previous decision in ***P K Ramachandra Iyer and Ors etc. V. Union of India and Ors*** and in para 8 of the reports the Apex Court held as follows :

*“In P.K. Ramachandra Iyer and Ors etc. V Union of India and Ors. etc. this court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and “as such, after showing so much patience in the matter. I am sorry to decide that I should resign from the membership of the faculty in protest against such a treatment and against the discrimination and victimization shown to me by the head of the division in the allotment of students of 1968 and 1969 batches and departmental candidates”. In that context, this court observed that the callous and the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and” out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer”. In Moti Ram V Param Devi and Anr. This court observed as hereunder:*

*“as pointed out by this Court, ‘resignation’ means the spontaneous relinquishment of one’s own right and in relation to an office, it connotes the act of giving up relinquishing the office. It has been held that in the general justice sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [see: Union of India V. Gopal Chandra Misra] If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in present. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become*



*effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.”*

7. Rule 13 (3) (III) (IV) of the Army Rules deals with the case of discharge on his own request of a person attested before fulfilling the conditions of his enrolment. It provides that the Commanding Officer will exercise the power only when he is satisfied as to the desirability of sanctioning the application and the strength of the unit will not thereby be unduly reduced. The Ld. Counsel for the applicant submitted that the application does not indicate any intention on the part of the applicant to take voluntary discharge and rather it expresses his frustration. As regards the application dated 22.02.1999, it is submitted by Ld. Counsel for the applicant that the said application is in conformity of a prescribed proforma which the applicant was required to submit to have his application dated 05.02.1999 processed. The Ld. Counsel for the applicant further submitted that the order of the Chief of Army Staff on the statutory complaint was passed after about two years on 02.08.1999 and it was communicated to the applicant on 22.10.1999. In case the said order had been communicated to the applicant without any delay soon after it was passed, the applicant would have withdrawn the earlier applications dated 05.02.1999 and 22.02.1999 for premature discharge much earlier. However, the respondents did not communicate this decision till 22.10.1999 and immediately thereafter the applicant had filed his application on 29.10.1999 and the respondents did not take any action thereupon although the delay in communicating the order dated 02.08.1999 was on

their part and without any justification. In the Context of the facts which have been stated above, we are of the view that there was delay in the disposal of the statutory complaint by the Chief of Army Staff. Under Regulation 364 of the Regulation for the Army 1987 a Statutory complaint is required to be disposed of within a period of 90 days (for processing at intermediate levels) and 45 days at Army Headquarters. The complaint however remained pending with the Chief of Army Staff for a period of two years. If the COAS had decided the statutory complaint within the time provided in the Regulations it is quite likely that in view of the relief granted in the complaint the applicant would not have applied at all for discharge and the entire episode may not have occurred. We have seen that in the statutory complaint itself Amanpal Singh had prayed that if he is not granted redress against the two punishments he may be released. It is therefore clear from this that the release was being sought conditionally. If the Commanding Officer had not been insensitive to the agony of the applicant who was feeling frustrated having been meted out with punishments he regarded as unjust and against which his complaint was not being decided and had the Commanding Officer handled the issue with more maturity by moving or assuring to move higher authorities for early disposal of the complaint the episode may have been avoided. The respondents were again guilty of delay in communicating the order of the Chief of Army Staff passed on 02.08.1999 and withholding it upto 22.10.1999. In the circumstances, the applicant was well within right to file the application dated 29.10.1999 which was moved at the earliest opportunity after the communication of the decision of the COAS dated 02.08.1999.

8. That apart, an application for cancellation of discharge can be made at any time before the discharge becomes effective. Reliance has been placed by the Ld. Counsel for the applicant upon the decision of the Apex Court in Union of India Vs. Wing Commander T Parthasarthy 2001 – UPLBEC 1 529, 2001 Patljr (SC) – 1 – 1978, 2000 (TLS) 33851. Para 6 of the decision is as follows :

*“We have carefully considered the submissions of the learned counsel appearing on either side. The reliance placed for the appellants on the decision reported in Raj Kumar’s case (AIR 1969 SC 180 : 1969 Lab IC 310) (supra) is inappropriate to the facts of this case. In that case this Court merely emphasized the position that when a public servant has invited by his letter of resignation determination of his employment his service clearly stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the condition of the service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority and that till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned had “locus Penitentiae” but not thereafter. This judgment was the subject matter of consideration alongside the other relevant case law on the subject by a Constitution Bench of this Court in the decision reported in Union of India v. Gopal Chandra Misra, (AIR 1978 SC 694; (1978 Lab IC 660). A request for premature retirement which required the acceptance of*

the competent or appropriate authority will not be complete till accepted by such competent authority and the request could definitely be withdrawn before it became so complete. It is all the more so in a case where the request for pre-mature retirement was made to take effect from a future date as in this case. The majority of the Constitution Bench analysed and declared the position of law to be as hereunder.

*51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or*

*revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.”*

In J.N. Srivastava Vs Union of India AIR 1999 SC 1571 the employee had withdrawn his voluntary retirement notice before it had come into force but the employers did not accept the withdrawal and retired the employee. It was held :

*“It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poem'tentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of [Balram Gupta v. Union of India](#), 1987 Supp SCC 228. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the*

*relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31-1-1990"*

9. In view of the findings recorded above the petition is allowed. The order approving the discharge dated 21<sup>st</sup> May, 1999 and the consequent discharge itself effective from 01.11.1999 is quashed. The applicant would be deemed to have been in service till the normal term of his engagement as

Havildar and shall be granted arrears of salary as well as all consequential benefit w.e.f. 01.11.1999 till the date his engagement was to continue or till date of death whichever was earlier. The respondents shall comply with the order within three months.

(Lt. Gen. P R Gangadharan)  
Member (A)

(Justice Janardan Sahai)  
Member (J)

*usp*

**Extract of Statutory complaint dated 26.12.1997 as referred by the Counsel for the applicant**

b. Shri APS Teveotia was sent for Basic Training in No. 2 Signal Training Centre, Goa where he was given Basic Training in No. 3. Training Regiment upto 30 December, 1982 which he completed successfully.

c. After completing Mid-term Break he was kept in Technical Training Company of No., 3, Technical Training Regiment of No. 2, Signal Training Centre located in Bamboliam Camp, where he did the technical training from 01 February 83, to September 1984 and completed it successfully with good grading as per his statement.

d. On completion of Basic & Technical Training Signal Man APS Teveotia was posted to signal Regiments where he performed his duties the best and to the entire satisfaction of his superiors and earned appreciation from them.

e. As APS Teveotia had joined Army with intentions to go high, he opted for Foreman of Signals (F.OS.) Course for which he was detailed and he did this F of S Course Serial No. FS – 61 in 1991 and completed this course on 5 December, 1991 with 62.9 percent marks and he was informed that he was placed in High Bee grading. Immediately on completion of this course he was made lance Naik in his Regiment.

f. His performance of duties as Lance Naik was appreciable due to which he was promoted to the rank of Naik in February 1992. Again he did well as Naik due to which he was promoted to the rank of Havildar in June, 1992 as per instructions issued by Signal Records.

g. Keeping in view his good performance on and off Parade, Havildar APS Teveotia was detailed to do Senior NCO's Course (S. Course – 350) which he did successfully upto 3 July, 1993.