

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 151 of 2017

Friday, this the 5th day of March, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex-No-15617447 Lance Naik MANISH SHUKLA
S/o Sri Shiv Mohan Shukla
R/o Bill – Junata, Post – Bindki
District – Fatehpur (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Ajit Singh Gaherwar &**
Shri S.N. Gaherwar, Advocate
Versus

1. Union of India, Represented by its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Sena Bhawan, Army HQ, New Delhi.
3. Commanding Officer, Unit – X company 16 Battalion, Brigade of Guard, Nashirabad, Ajmer, Rajasthan.
4. Brigade Head Quarter 340, 12 Cores, South Command, Pune.
5. Commanding Officer Record, Kamptee, Nagpur, Maharastra.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh,**
Central Govt Counsel.

ORDER

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

“To quash the rejection order dated 25-04-2017 of statutory complaint [Ann No-1] further quash the discharge order passed vide Ro II-1/0560/001/2013 dated 30-09-2013 as marked Ann No. 2 & 3 [First Discharge order dated 11-10-2013 passed by

Senior Record Officer in charge N E Group, Station Kampte, Second discharge order dated 20-11-2013 passed by Senior Record officer in charge N E Group], To quash the application for discharge taken under coercion/threat by putting applicant behind the bar/under life treat is Ann No-4 [Ann No-3 of CA filed by respondent in OA No-322 of 2013 Manish Shukla Vs The Govt. of India & others] and reinstated the applicant in service from the retrospective date with all the service benefits and the period from the date of discharge to the date of reinstated may not be treated as break in service.”

2. Briefly stated facts are that applicant was enrolled in Indian Army on 15.03.2003. The applicant got married with Ms. Nutan Mishra @ Shukla on 26.05.2004. On the request of applicant, he was allotted married family accommodation on 20.04.2013. He was residing happily with his wife and two minor children. His father was in UP police, posted at Kanpur and mother was residing with his sister in joint Hindu undivided family. The applicant applied for 15 days casual leave for attending a family function which was sanctioned from 15.09.2013 to 29.09.2013 and accordingly he proceeded to his home town alongwith his wife and children. Prior to proceeding on causal leave there was a quarrel between child of applicant and a child of Havildar GS Rathore of his unit. Later on when the applicant was on leave, the matter of quarrel was reported to the Commanding Officer. Due to some wrong inputs of Havildar GS Rathore, the Commanding Officer directed Havildar Abhay Narayan to recall the applicant from his native village and therefore, on 18.09.2013, Havildar Abhay Narayan informed the applicant that he is required to report to the unit. To implement ex-parte decision of Commanding Officer,

Subedar Kamata Prasad and Havildar Shashi Kumar and Havildar Shiv Baran were sent to the applicant's house in his village on 23.09.2013 and they forcefully brought the applicant to the unit on 24.09.2013 and placed him in detention in the Quarter Guard. Applicant's father and wife also followed and they reached unit location on 25.09.2013 and were accommodated separately in Govt. accommodation. On 27.09.2013 applicant and his wife were separately forced to sign various papers of discharge on fake and false grounds. Thereafter, they were escorted to Nagpur where they also signed some papers. After signing various papers, the applicant was orally told to leave for his home and that his discharge order will follow. Thereafter, applicant preferred statutory complaint against the oral discharge but no reply was received. Thereafter, the applicant submitted RTI application and filed O.A. No. 322 of 2013 before this Tribunal. The case was disposed of on 20.11.2015 with direction to the respondents to decide the pending statutory complaint of the applicant within four months by a reasoned and speaking order. When the statutory complaint of the applicant was not decided, applicant filed an Execution application No. 6 of 2017 before this Tribunal. In the meantime, the respondents filed rejection order dated 25.04.2017 before the Tribunal on 27.04.2017. Being aggrieved with the decision of the respondents, the applicant has filed the present Original Application to quash the rejection order passed by the respondents and reinstate the applicant in service with all consequential benefits.

3. Learned counsel for the applicant submitted that applicant served with unblemished record for 10 years and 7 months without any minor or major punishment during his entire service career. The applicant never applied for discharge from service but application for discharge was signed under coercion and threat by putting the applicant behind bars in the Quarter Guard. Hence, it cannot be treated as an application for discharge from service on his own accord. Issue of two discharge books by the respondents is also indicative of malafide intension on the part of respondents. It is also pertinent to mention here that the so-called application for discharge has no date on it. It is also unbelievable that his relative was made to forward discharge request of the applicant. Learned counsel for the applicant pleaded that applicant be reinstated in service after quashing discharge order with all consequential benefits.

4. Per contra, learned counsel for the respondents submitted that applicant himself applied for premature discharge from service before proceeding on 15 days casual leave. He was granted leave to take consent of his family and to re-think about his decision regarding premature discharge. While the applicant was on leave, Hav Abhay Narayan of 16 GUARDS being on leave and belonging to same area was sent to applicant's home to enquire about the welfare and well being of the applicant, as the applicant had stopped receiving calls. Thereafter, 16 GUARDS sent Sub Kamata Prasad alongwith Hav Shiv Baran and Hav Shashi Kumar to the applicant's home on 23.09.2013 to enquire about the whereabouts of the applicant and to meet his parents. They met the applicant's father and his relatives

and informed them about the general low morale of the applicant to his decision to proceed on discharge. The applicant's father and relatives immediately directed the applicant to report to the unit and voluntarily accompanied the applicant. Accordingly, Records, Brigade of the Guards issued discharge order vide letter dated 30.09.2013 and the applicant was discharged from service on 30.09.2013 under item 13 (3) III (iv) of Army Rules, 1954 at his own request before fulfilling his terms of engagement. Thereafter, applicant filed O.A. No. 322 of 2013 before AFT (RB), Lucknow which was disposed of vide order dated 20.11.2015 with direction to the respondents to decide pending statutory complaint of the applicant by a reasoned and speaking order within four months. The applicant preferred a representation dated 18.12.2015 to the Chief of the Army Staff to quash his discharge order dated 30.09.2013 by exercising his power and to allow the applicant to be reinstated in service. In the meantime, applicant filed a Misc. Application No. 06/2017 before this Tribunal for non compliance of order dated 20.11.2015 which was dismissed vide order dated 28.04.2017. After due consideration, Chief of the Army Staff rejected the statutory complaint of the applicant vide order dated 25.04.2017. Thereafter, the applicant has filed the present O.A. Since the applicant was discharged from service at his own request, hence reinstatement into service is not feasible and the same is against the rule position.

5. Having heard the submissions of learned counsel both sides and having gone through applicant's application for premature discharge, we find that there is no date on the application which as

per respondents, was submitted on 10.09.2013. The following points need deep consideration to decide the case :-

(a) As per respondents, before proceeding on leave (leave period from 15.09.2013 to 29.09.2013), the applicant had submitted an application on 10.09.2013 seeking discharge and he was sent on leave to go to his home and consult his father and other family members before taking a final decision, as in case of premature discharge he would not have been eligible for pension due to less than 15 years minimum qualifying service.

(b) Contention of respondents that unit members visited applicant's home twice, while on casual leave, out of concern for his well being, when the applicant was only on a short leave of 15 days, is not a convincing alibi.

(c) It is also surprising that applicant's request of premature discharge was sanctioned by the Commanding Officer on 26.09.2013 although he could have waited till return of the applicant on 29.09.2013 after leave.

(d) As per discharge order dated 30.09.2013, it is mentioned in Para 2 that "***The indl has already been reported to Depot Coy, GUARDS RC for disch drill and will be finally SOS wef 01 Oct 2013 without terminal benefits at the time of disch.***"

It is not understood how the applicant reported to Depot Coy before issuance of discharge order as the discharge order was issued on 30.09.2013 to be discharged from service on 30.09.2013 and SOS wef 01.10.2013. Any person who is required to proceed on discharge will ordinarily report to Depot Coy only after issue of the discharge order by Records and only after the discharge order has been received by the concerned unit. It is not clear when the discharge order reached the unit and thereafter how the applicant was able to so quickly report to Depot Coy of Guards Regimental Centre at Kamptee, when he was posted in the unit at Nashirabad, Rajasthan. Further it is

strange that formalities of discharge were completed in one day only.

(e) Besides this, in Para 3 of discharge letter, it is written that **“Disch docu in r/o pers having less than 15 years pensionable service and thereby not entitled for pensionary benefits will be sent to Depot Coy through the indl himself/themselves.”** If it was so, then why applicant was not sent to Depot Coy alongwith his discharge documents and if he was sent to Depot Coy then what was the means of conveyance from Nashirabad (Rajaasthan) to reach Kamptee (Near Nagpur) on the same day.

6. The perusal of above mentioned facts show that due procedure and process was not followed to discharge the applicant even if such a discharge was indeed at his own request. It gives rise to a doubt about malafide intentions. Therefore, we find that applicant has been discharged forcefully from service, which is against the rules & regulations of the service and therefore, applicant requires to be reinstated in service with all consequential benefits.

7. Accordingly, O.A. deserves to be allowed and is allowed. The discharge order dated 30.09.2013 is hereby quashed. The applicant shall be notionally reinstated into service and to be in service till he would be entitled for service pension. The applicant shall be entitled to all financial benefits, including pay (Basic Pay + Rank Pay + MSP + DA) in present rank in accordance with law and pension from the date of discharge to the date he reaches pensionable service. The applicant shall be entitled to terminal benefits and pension as per Pension Regulations for the Army, 1961 along with 8% interest on arrears accrued from date of discharge. The respondents are

directed to comply with the order within four months from the date of production of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

8. No order as to costs.

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

Dated: March, 2021
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