

COURT NO: 1**(RESERVED)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 469 of 2019****Friday, this the 11th day of August, 2023****“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Chandrabhan Singh (No. 15738956Y Rect.), Son of Gyan Singh,
 Permanent Resident of Village: Shumbhui, Post Office:
 Daranagar, District: Kaushambi (Uttar Pradesh).

..... Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi - 110001.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO New Delhi - 110011.
3. Director General of Signals (Sigs - 4), General Staff Branch, Integrated Headquarters of Ministry of Defence (Army), ‘A’ Wing, Sena Bhawan, DHQ PO New Delhi - 110011.
4. Officer - in - Charge, Records, Corps of Signals, C/o 56 APO.
5. Commandant, Headquarters 2 Signal Training Centre, Panji, Goa.
6. Commanding Officer, 6 Technical Training Regiment, 2 Signal Training Centre, PIN - 900197, C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Yogesh Kesarwani,
 Central Government Counsel.**

ORDER**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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 reliefs :-

“(a) Issuing / passing of an order setting aside the order dated 15.05.2017 said to be passed by the Chief of Army Staff vide which the statutory complaint of the applicant preferred against his discharged from Army service has been rejected.

(b) Issuing / passing of an order directing the respondents to reinstate the applicant with continuity of service and all other consequential service benefits.

(c) Issuing / passing of any other order or direction as this Hon’ble Tribunal may deem fit under the circumstances of the case.

(d) Allowing this Original Application with cost.”

2. The facts of the case as enumerated in the petition are that the applicant was enrolled in Indian Army on 02.01.2014. A show cause notice was issued mentioning therein that the applicant had sought discharge from service on 16.09.2014. The applicant was discharged from service on 29.09.2014. The Applicant had filed O.A. No. 133 of

2015 for cancellation of his discharge order and reinstatement into service. The above O.A. was disposed off vide order dated 09.10.2015 with directions to applicant to submit fresh representation and directing the respondents to pass a reasoned and speaking order. The representation submitted by applicant was rejected by the respondents by speaking and reasoned order dated 15.05.2017. The applicant filed Writ A. No 50692 of 2017 before Hon'ble High Court of Judicature at Allahabad challenging the order dated 15.05.2017 but the same was disposed of on the ground of territorial jurisdiction with liberty to approach appropriate forum. This O.A. has been filed by the applicant for quashing of impugned order dated 15.05.2017 and to reinstate him into service.

3. Submission of learned counsel for the applicant is that the applicant successfully completed his basic military training. On completion of basic training, the applicant was granted 30 days leave from 17.08.2014 to 15.09.2014. After expiry of leave, the applicant rejoined the training centre for trade training. During trade training, the applicant was issued show cause notice dated 23.09.2014. He was directed to submit reply to show cause notice by 30.09.2014 but before expiry of said period for reply, he was discharged from service on 29.09.2014. Due to shock, he fell ill but no medical facility was provided to him by the respondents. From 09.12.2014 to 27.01.2015, the applicant remained under medical supervision and

treatment of civil psychiatrist. The applicant submitted representation against discharge but of no avail. He filed O.A. No 133 of 2015 before this Tribunal challenging the discharge from service which was disposed of vide order dated 09.10.2015 permitting the applicant to prefer statutory complaint and directing the respondents to pass a reasoned and speaking order. The applicant preferred statutory complaint but the same was not decided by the applicant. Then the applicant filed Ex. A. No 158 of 2016 which was disposed of by the Tribunal vide order dated 16.09.2016 with direction to decide the statutory complaint within two months. Ultimately, statutory complaint was rejected vide order dated 15.05.2017. He further filed writ petition before Hon'ble High Court Allahabad which was disposed off with the direction to approach appropriate forum. As per Certificate of service dated 29.09.2014, the applicant was discharged under the provisions contained in Rule 13 (3) Item IV of Army Rules, 1954 on the ground that he is unlikely to become an efficient soldier whereas according to impugned order dated 15.05.2017, the applicant has been discharged on his own request. Thus, there is apparent contradiction with regard to reason for discharge of the applicant from Army service. The applicant made persistent efforts to rejoin the service by submitting representations and approaching the court of law immediately after his discharge from service. An order passed

without assigning any reason is not sustainable in the eyes of law. He pleaded for setting aside of impugned order dated 15.05.2017 passed by Chief of Army Staff vide which statutory complaint of the applicant was rejected and to re-instatement him in service.

4. On the other hand, learned counsel for the respondents submitted that on completion of recruit leave, the applicant had reported at 6 Technical Training Regt (TTR) for technical training. He was interviewed by Sub Maj and Commanding Officer of 6 TTR as per procedure. During interview, the applicant requested for volunteer discharge from service and he gave application dated 16.09.2014 for his unwillingness for service in the Army. His application was processed and case of the applicant for premature discharge from service was approved by the competent authority. A show cause notice dated 23.09.2014 was issued and applicant was discharged from service under Army Rule 13 (3) IV. The applicant replied show cause notice on 27.09.2014 and in his reply the applicant had again expressed his unwillingness to continue his service in Army. He was in sound state of mind when he replied to show cause notice. The applicant was discharged from service on the basis of his unwillingness for further service, hence there was no illegal, unfair, arbitrary and whimsical manner engaged for discharging applicant from service. The applicant was discharged from service on his own request and there is no policy to reinstate

the applicant into army service. Since applicant had himself made a request for premature discharge, it was sanctioned by following due process and no injustice was made to him. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both the sides and perused the material placed on record.

6. In the instant case the applicant rejoined his duty at 6 TTR on 15.09.2014 after availing recruit leave and requested Sub Maj and Commanding Officer for discharge. On 16.09.2014 he gave an application stating that he does not want to serve in the army and prayed for discharged. His application was considered by the committee. A show cause notice dated 23.09.2014 was issued to which he submitted his reply vide letter dated 27.09.2014. In reply to show cause notice, he prayed that he is not willing to serve in the army and he wants to join a civil job to earn more money. In reply to show cause notice, he further prayed for discharge from service at the earliest. His application for premature discharge was processed as per rules and his premature discharge was sanctioned and applicant was discharged from service on compassionate grounds wef 29.09.2014. Applicant filed statutory complaint dated 29.09.2014 which was rejected by Chief of Army Staff by a reasoned and speaking order vide letter dated 15.05.2017.

7. From the aforesaid, it is crystal clear that applicant had himself given premature discharge application on compassionate grounds and accordingly, his discharge was sanctioned. There seems to be no foul play on the part of the respondents that applicant was intimidated to write down application for premature discharge. The submission of learned counsel for the applicant that applicant was forced to write down the application for his premature discharge does not appeal to us inasmuch as nothing has been brought on record to show that the applicant was forced to write down the application under coercion. It is nowhere mentioned in the O.A. that either the Sub Maj or Commanding Officer in the unit were unfair to applicant. In the circumstances, it does not commend to us for acceptance that applicant was forced to write down application for premature discharge. From the contents of the application and reply to show cause notice, it appears that the application was written by the applicant voluntarily and without being coerced. Applicant had rendered only about 08 months of service at the time of his discharge and had not completed even his Technical Training. 09 years have been elapsed from the date of discharge, at this stage no relief can be granted.

8. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents to discharge applicant at his own

request. Applicant is therefore, not entitled to be reinstated into service at this stage.

9. In view of the above, O.A. No. 469 of 2019 has no merit, deserves to be dismissed and is hereby **dismissed**.

10. No order as to costs.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member (J)

Dated : 11 August, 2023

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