

Court No.1ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**Original Application No. 199 of 2015**

Saturday, this 17 day of December, 2016

Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Awdesh Kumar Yadav, (Ex-Sepoy No. 4575009X), son of Sri Mushi Lal Yadav, resident of village Bheeti Hardo, Post Tumpar, Tehsil Khalilabad, P.S.Mahuli, District Sant Kabir Nagar, U.P.

..... Applicant

By Legal Practitioner Shri V.K.Pandey, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, R.K.Puram, New Delhi.
2. OIC Records, The Mahar Regiment Saugor (M.P.)-470 001.
3. Company Commander Depot Coy. The Mahar Regiment Centre.
4. The Commandant, The Mahar Regiment, Saugor (MP)-470001

..... Respondents

By Legal Practitioner Dr. Shailendra Sharma Atal, Learned Counsel for the Central Government

ORDER

1. This application under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred against the impugned order of discharge dated 30.11.2011.

2. We have heard Shri V.K.Pandey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned Standing Counsel appearing for the respondents, assisted by OIC Legal Cell Major Soma John.

3. The applicant was enrolled in the Mahar Regiment on 23.01.2002. On 08.05.2011, he received information that his son master Mahavir was seriously ill, hence he moved an application for grant of leave. He initiated clearance proceedings for leave on 08.05.2011 and completed the same on 16.05.2011 for production before the competent authority. However, his leave was not granted on account of insufficient manpower in the Infantry Soldier Group 'Y'. It appears that on account of serious condition of his son, the applicant left for his native place and remained there from 17.05.2011 to 03.08.2011. The applicant was thus absent without sanctioned leave for 79 days, but he was not declared a deserter under provisions contained in Section 106 of the Army Act. It is not in dispute that the absence without sanctioned leave is a misconduct under Section 39(a) of the Army Act. When the applicant returned back on 03.08.2011, he was punished with RI for 28 days and 14 days' pay fine on 25.08.2011.

4. It has been brought on record by the respondents that the applicant had submitted an application to the Commanding Officer 20 Mahar for discharge from service on compassionate grounds due to his domestic problems. According to the

respondents, the said application was processed and all formalities were completed by the applicant himself before 22.09.2011. The application contains the counter signature, recommendation and approval by the Commanding Officer as well as clearance certificates etc. from different sections of the Unit. The CRO completed his formalities on 22.11.2011 and the order of discharge was approved by respondent No. 2 on 23.11.2011 and in consequence thereof, the impugned discharge order was passed on 25.11.2011. The signature of the applicant was obtained in the register on 30.11.2011 and thereafter he was discharged from service the same day.

5. Learned counsel for the applicant submits that the applicant had never applied for discharge from service on compassionate ground. The applicant has averred that the impugned order of discharge was passed in a very arbitrary and illegal manner and in violation of principles of natural justice. The applicant submitted a representation, copy of which has been filed as Annexure-4 to the O.A, wherein he has averred that he had signed the application for discharge under compulsion and has prayed for his restoration in service.

6. Submission of learned counsel for the applicant is that whole proceedings for discharge have been completed by the applicant while he was serving the RI and in that event, it is not possible for the applicant to have completed all formalities, as alleged, if he was serving the RI, confined in a quarter guard or

cell. His submission is that the application for voluntary discharge was got signed by the applicant under compulsion.

7. Whether the application for voluntary discharge was signed by the applicant under compulsion, is a question, which should have been probed by the respondents, but they have failed to do so. It is not understandable as to how he could have completed all formalities, as alleged, if he was serving the RI, confined in a quarter guard or cell. Attention has been invited to Regulations 508, 509 and 510 of the Defence Service Regulations (DSR), which deal with the procedure for RI, duties of prisoners and detention in military custody. The said Regulations are reproduced as under:

“508. Rigorous Imprisonment-Procedure

For.- Men undergoing rigorous imprisonment will be confined separately in the quarter guard or cell as far as possible and in no case two prisoners will be confined in the same cell. They will always be under the observation of a sentry. If a prisoner is admitted in hospital, a sentry will, if considered necessary, be posted over him.

509. Duties of Prisoners.-

Prisoners will carry out work for 6 hours daily from mid March to mid-October and 7 hours daily from mid-October to mid-March. The work will comprise:-

(a) Military instructions for such period as the OC unit may dectle, subject to minimum of 2 hours daily.

(b) Hard labour for the remaining hours of work. Hard labour will consist of labour tasks such as spade work and working parties but no task will exceed a period of 2 hours at a time. In the hot season, hard labour will be performed under cover.

510. Detention in Military Custody.-
Men sentenced to detention shall be subject to the same restrictions and will be detailed in the same manner as persons undergoing rigorous imprisonment except that :-

(a) there is no automatic forfeiture of pay and allowances;

(b) they can in no case be committed to civil jail; and

(c) they will do normal military training in addition to any collective training that may be imposed. Imprisonment in Civil Prison.”

8. A perusal of the aforesaid Regulations (DSR) *prima facie* reveals that a person under RI shall not be able to leave the cell during the period of detention to approach the different sections of the Unit for obtaining NOC/Clearance certificates, necessary for voluntary retirement or discharge from service. The respondents have not placed any material on record to show that the applicant while serving the RI was released from the cell and after making endorsement in the register was allowed to go to different sections of the Unit for the purposes of obtaining clearance certificates. In the absence of any material on record, as stated above, the only inference which may be drawn is that whatever proceedings have been done before dispensing with the services of the applicant under the colour of voluntary discharge, they were not in accordance with law and the application for discharge allegedly moved by the applicant was not voluntary, but was moved under compulsion. A further inference can be drawn that all formalities were completed by

the officers of the Unit themselves with regard to clearance certificates from different sections and were placed on record.

9. Dr. Shailendra Sharma Atal, learned Standing Counsel appearing for the respondents, on the basis of instructions received, submits that the applicant was not confined to the cell and he was free to move. There is nothing on record to support the above submission of the respondents. In case the applicant was not confined in the quarter guard or cell while serving the RI, then it appears that the Commanding Officer, whosoever was incharge of the detention cell, has not discharged his obligations under the DSR or the respondents are trying to conceal material facts which amounts to commission of fraud and vitiates the entire action of the respondents.

10. In any case, keeping in view the fact that the representation preferred by the applicant is undated and the controversy raised relates to finding of fact, we permit the applicant to submit a fresh representation within a period of two months from today, which shall be considered by the competent authority in accordance with law by passing a speaking and reasoned order expeditiously, say, within a period of two months from the date of receipt of certified copy of this order with due communication to the applicant. In case the applicant is exonerated, the respondents shall ensure that he is restored in service with all consequential benefits. Any observation made in the present order, however, shall not affect the enquiry or

decision by the respondents taken in pursuance of the present order. They shall take a decision independently without being influenced by any factual observation made by us in the present order. It shall be open to the applicant to approach the appropriate forum if he is not satisfied with the decision taken by the respondents in pursuance of the present order.

11. With the aforesaid observations and directions, the OA stands finally disposed of.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P.Singh)
Member (J)

Dated : 17th Dec. 2016
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