

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****COURT NO. 2****T.A. No. 33 of 2012****Wednesday, this the 30th day of November, 2016****"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"**

Surendra Singh Verma (Sepahi) son of Shri Vikrma Singh Verma,
resident of village Pilkhoniya, post office Tochgigarh, Tehsil Iglas,
District Aligarh. **Petitioner**

Versus

1. Union of India through the Chief of the Army Staff, Army Head Quarter, New Delhi.
2. Chief of the Army Staff, Army Head Quarter, New Delhi.
3. Cornel M.K. Nanda, Commanding Officer, 17, Mechanised Infrantry (Reece, S.P.) Bn. C/O 56 A.P.O.
4. Dr. H. Madan, Major A.M.C Surgical Specialist, at present Base Hospital Delhi Cantt.
5. Central Defence Accounts (C.D.A) Pension Allahabad.
6. Sri Rakesh Mehta the then adjutant, Major, 17 Mech. Infrantry Bn. at present Lt. Col. 18 Mech, Infrantry Bn. C/O 56 A.P.O.
7. Sri R.S. Rana, Capt/Record Officer Mechanised Infrantry Regiment Abhilesh Karyalaya, records the Mechanised Infrantry Regiment Ahmad Nagar, 414110**Respondents**

**Ld. Counsel appeared
for the Applicant****- Shri V.P. Pandey,
Advocate****Ld. Counsel appeared
for the Respondents****- Mrs Amrita Chakraborty,
C.G.S.C****Assisted by****- Maj Soma John , OIC Legal Cell**

Order

(Per Se Hon'ble Mr Justice Devi Prasad Singh, Member (J))

1. Petitioner being aggrieved by the impugned order of discharge from service had preferred a Writ Petition being Writ Petition No 37500 of 1993 in the High Court of Judicature at Allahabad which in due course of time stood transferred to the Tribunal in pursuance of the provisions contained in section 34 of the Armed Forces Tribunal Act 2007. It is now registered in this Tribunal as T.A No 33 of 2012.

2. The facts shorn of unnecessary details are that the Petitioner was initially enrolled in the Indian Army as recruit on 19.04.1978. In the year 1982, the petitioner was transferred to 17, Mechanised Infantry when the Unit was raised. In March 1983, he was given promotion as Lance Naik. During the period from 1983 to 1990, the petitioner was visited with red ink entries on four occasions out of which on three occasions, he was visited with the punishment on account of overstaying the sanctioned leave. It is alleged that in the year 1986, the petitioner was afflicted with low back-ache which he attributed to lifting of heavy tank ammunition and was administered treatment at Hissar Cantt. He was later-on referred to

Base Hospital at Delhi for diagnosis and treatment from 24.04.1987 to 05.05.1987. In the course of treatment at Base Hospital at Delhi, he was placed in medical category CEE (temporary) for six months. Later-on, in December 1987, he was placed in medical category CEE (P) and was consequently instructed to come for review of medical category after two years. He was posted back to 39, Mechanised Infantry at Jaisalmer where he joined duties on 14.02.1989.

3. Learned counsel for the Applicant submitted that while posted at Jaisalmer, son of the petitioner was admitted at Military Hospital undergoing treatment under Dr. H.Madan. On his repeated request when his son was not discharged, he met the Commandant of the Hospital and it was on his intervention that the son of the Petitioner was discharged but it annoyed Dr. H.Madan, who asked him to be prepared to face his wrath. Learned counsel further submitted that the petitioner was granted leave from 17.10.1990 to 22.10.1990 for visit to his village where his son again fell ill. During his stay at village, he got the sad news of murder of his father-in-law and he had to rush there and could not return to report for duty immediately after expiry of casual leave. On account of these twin difficulties that befell the petitioner, the petitioner had

to overstay the sanctioned leave for about 13 days. He joined duties only on 05.11.1990. It is further alleged that once he was in the Unit, he was urgently called by Adjutant Major Rakesh Mehta and Capt J.S.Man who upon arrival, battered him with kicks and fists. Apart from assault, it is also alleged, the above officers compelled him to sign on blank papers. When he denied, they forcibly obtained his signatures on blank papers. Thereafter, he was denied the basic facilities and was starved. He was also subjected to harsh treatment and thereafter he was forcibly sent on annual leave in Jan 1991 for a period of two months. When he returned from annual leave in March 1991, he was directed to appear in the record office Ahmad Nagar for discharge drill. On 25.06.1991, the petitioner was discharged by Release Medical Board which assessed his disability as 20% lending colour of compassionate ground without being permitted to complete pensionable service. It is also alleged that the representation preferred by the petition to Chief of Army Staff lingered with him without being disposed of.

4. The main brunt of arguments advanced by learned counsel for the Petitioner is that the petitioner was discharged without serving show cause notice

required under Rule 17 of Army Rules 1954. He also submitted that the prayer for grant of disability pension was also rejected by the authority without any valid basis.

5. **Per contra**, learned counsel for the respondents contended that the petitioner had applied for voluntary retirement on 26.03.1990 on account of personal difficulties and also on account of his prolonged back-ache but on account of non-availability of quota for compassionate retirement, the application was withheld for the year 1990 and the same was sent to Records on 14.01.1991 appended with due recommendation by the Commanding officer. He further contended that Record Office located at Ahmad Nagar had lent approval to discharge on 13.02.1991 under Army Rule 13 (iii) (iv) and thereafter the petitioner was discharged on 25.06.1991. He also submitted that the Medical Board was held at Military Hospital Jodhpur which assessed his disability at 20% which was opined to be attributable and aggravated by Military service but he was otherwise found to be fit to be released from Army Service. He also submitted that the representation submitted to Chief of Army Staff against discharge order was submitted belatedly on 29.05 1992 i.e after one year of his discharge. Learned

counsel for the respondents vehemently denied that signatures of the petitioner were forcibly obtained on blank papers as alleged. He also denied that the petitioner was forcibly sent on annual leave and submitted that he was given annual leave to obtain signatures of his wife on certain documents as preparatory to his discharge.

6. We have heard learned counsel for the parties at length and have also been taken through the materials on record.

7. The question that crops up for consideration in the present is whether a show cause notice should have been served in pursuance of the provisions contained in Rule 17 read with Rule 13 (iii) (iv) of the Army Rules, 1954. The aforesaid Rules being germane to the controversy involved in the instant case are reproduced below for ready reference.

13. Authorities empowered to authorise discharge. —(1) *Each of the authorities specified in column 3 of the Table below, shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the grounds specified in column 2.*

(2) *Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority superior to it.*

(2A) *Where the Central Government or the Chief of the Army Staff decides that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfilment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.*

(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commissioned officer and warrant officers of Remounts, Veterinary and Farms, Corps, the "Commanding Officer" means the Director Remounts, Veterinary and Farms.

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17. Dismissal or removal by Chief of the Army Staff and by other officers. —Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:

Provided that if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government.

8. A conjoint reading of Rule 17 read with Rule 13 seems to make out a case that notice ought to have been issued before the order of discharge was passed. Apart from notice, the Commanding officer ought to have recorded a finding whether the recruit is unlikely to become an efficient soldier or satisfaction is to be recorded as to desirability of sending the Application to Records that the strength of the Unit is not unduly reduced.

9. The alleged Application for voluntarily grant of discharge is dated 26.03.1990. The matter was

processed almost after a year and discharge order was passed on 25.06.1991. The pleading in the counter affidavit leaves no manner of doubt that the petitioner was fit to discharge duty. In para 3 (f) of the counter affidavit, it has been specified that the Medical Authorities assessed the disability to 20% and the same was found to be attributable to and aggravated by military service but otherwise he was found fit to be released from Army Medical Category CEE (P). The aforesaid para 3 (f) being relevant is reproduced below for ready reference.

"(f) That consequent to the discharge order, the petitioner was required to undergo release medical board. The medical board was carried out by Military Hospital Jodhpur. The medical authorities assessed 20% disability to the individual which was caused and aggravated during his military service but otherwise found him fit to be released from Army medical category CEE (P)"

10. It is nobody's case whether action was taken within reasonable time after receipt of alleged application for voluntary retirement. It has been pleaded that application was kept under animated suspension on account of non-availability of quota for compassionate discharge from service. On the other

hand, it has been argued by learned counsel for the Petitioner that the signatures of the petitioner were forcibly obtained on blank papers which were subsequently utilised as Application for voluntary retirement.

11. It would appear from the record that a complaint was made in writing by the petitioner addressed to Chief of the Army Staff voicing the allegations that his signatures were forcibly obtained on blank papers which were subsequently utilised as Application for voluntary retirement. The said complaint lingered and was not decided by the Chief of the Army Staff. In such situation, it is not possible to figure out as to who is making correct statement.

12. Be that as it may, since the Application in question was kept under animated suspension for a year, safeguards provided under Rule 17 of the Army Rules 1954 ought to have been observed in compliance.

13. The principles of natural justice are pulse beats of Indian Constitution engrafted in Article 14 of the Constitution of India. In the present case, admittedly, no notice was served to the Petitioner. No doubt, the petitioner overstayed the casual leave granted to him. The ground urged for overstaying the sanctioned leave

was the illness of his son as well as murder of his father-in-law. Admittedly, it is a case of overstaying the sanctioned almost for 13 days for which reasonable justification has been brought on record inviting attention to the death of father-in-law.

14. While interpreting Section 39 (b) of the Army Act, we have repeatedly held that while awarding punishment on the ground of overstaying the sanctioned leave that too for a short period, satisfaction must be recorded warranting discharge from service keeping in view the materials brought on record by the incumbent. In the present case, no satisfaction in so far as overstaying the sanctioned leave is concerned, has been recorded. The ground for discharge from service cited is alleged application for voluntary retirement. There is a measure of substance in the contention that in case the petitioner had made any application for discharge, the same could not have been kept pending for a year. Be that as it may, in any case, we feel that since the petitioner's case for discharge was considered after almost a year, it was incumbent on the respondents authorities to comply with the provisions contained in Rule 17 of the Army Rules 1954. In case the notice had been served on the petitioner for voluntary discharge indicating there in

the prospective date of discharge, in that event, the petitioner would have had ample opportunity to defend himself. What begets suspicion in our mind is the factum that the Application for discharge is a typed Application in English Language which seems to be typed by the same typewriter. In the circumstances, it cannot be ruled out that the Application was prepared by some interested person in the office on which signatures of the Petitioner had already been obtained forcibly as alleged by the Petitioner. The signatures of the Petitioner are in Hindi Language. No declaration has been recorded that the petitioner understands the contents of the Application which is typed in English language.

15. During summary Court Martial or during Court martial proceeding, in case a person pleads guilty, it shall be incumbent on the Commanding officer to inform him of general effect of the plea of guilty. It shall be obligatory on the part of the authority concerned to draw the plea of guilty in the language which incumbent understands. The provisions contained in section 115 seems to apply to the Court Martial proceedings but analogy may be drawn from it by deciding the case like the present case whether genuineness of the voluntary retirement Application

has been objected. Apart from the above, inspite of the fact that the disability of the petitioner has been quantified at 20% , the respondent authorities have not paid any disability pension with rounding off upto 50% in view of the law settled by the Apex Court in **Sukhvinder Singh Vs Union of India and ors reported in 2014 STPL (Web) 468 SC.**

16. In view of the above, we are of the considered view that the Petition has not been dealt with fairly by the respondents and his services have been dispensed with arbitrarily without following the provisions contained in Rule 17 of the Army Rule 1954 and procedure adopted does not seem to be just and fair.

17. To cap it all, the petitioner was short by only two years to complete pensionable service. It is beyond comprehension that any sane person will submit resignation or application for voluntary retirement that too without any compelling reasons and would always try to complete pension service of 15 years. There is something fishy in the matter which the respondents have not come out with clean hands. In the facts and circumstances, we have no option but to lend credence to the submissions which we find has measure of substance that the Application for voluntarily retirement was never made by him and that his

signatures had been forcibly obtained on blank papers which were subsequently converted into Application for voluntary retirement.

18. In the above conspectus, the O.A deserves to be allowed and is accordingly allowed. The impugned orders dated 25.06.1991 and 25.03.1992 are set aside with all consequential benefits but without back-wages. The Petitioner shall be deemed to have continued in service for 15 years for the sake of Pensionary benefits. He shall be paid all post retiral dues including family pension alongwith arrears thereof within a period not exceeding four months.

19. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Date: November 30 ,2016

MH/-