

Court No.3**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION NO 625 of 2010**Wednesday, this the 04th day of February 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)Rajveer Singh, son of Raj Bahadur Singh, Resident of Village
Lonar, Post Lonar, Tehsil and District Hardoi.

...Petitioner

Ld. Counsel for the: **Shri P.N. Chaturvedi,**
Advocate **Advocate**

Versus

1. The Union of India.
2. The Sub Area Commander, Head Quarter, Bareilly
(Indian Army) Sub Area, Bareilly.
3. Col. A.A.G. (Legal) for G.O.C. Head Quarter-Uttar
Bharat Area, Bareilly.

.....Respondents

Ld. Counsel for the : **Shri D.K. Pandey, Central**
Respondents. **Govt Counsel assisted by Lt Col**
Subodh Verma, OIC Legal Cell.

ORDER (ORAL)

1. Being aggrieved with the impugned order of discharge 20.08.2007, the petitioner approached the High Court of Judicature at Allahabad by preferring Writ Petition No 25287 of 2008 which has been transferred to the present Tribunal in pursuance to powers conferred by section 34 of the Armed Forces Tribunal Act and has been re-numbered as T.A. No. 625 of 2010.

2. We have heard Ld. Counsel for the parties and perused the records.

3. The petitioner was enrolled in the Indian Army on 15.09.2002 on the post of Soldier (Musician). He was on leave from 07.05.2007 to 08.05.2007, thereafter it appears that on account of illness the petitioner was admitted in the hospital. From the hospital he was released on 13.07.2007 and joined his duties on 20.07.2007. With regard to absence from duty he was punished by the competent authority.

4. According to Ld. Counsel for the petitioner, the Commanding Officer forcibly obtained signature of the petitioner on blank paper on 31.07.2007 and thereafter he was released by the impugned order dated 20.08.2007. Further submission of Ld. Counsel for the petitioner is that order of discharge from service suffers from vice of arbitrariness since

the petitioner was compelled to sign application for voluntarily release from Army.

4. On the other hand Ld. Counsel for the respondents submits that application dated 31.07.2007 in Hindi was handed over by the applicant to the Commanding Officer. It is also submitted that the petitioner had also submitted willingness certificate. Submission is that the Commanding Officer at no point of time had forced the petitioner to sign the aforesaid application.

5. Feeling aggrieved with the impugned order of discharge the petitioner had preferred statutory complaint which has been decided by order dated 08.01.2008. The order dated 08.01.2008 shows that the order of dismissal is based on three offences which are alleged to have been committed and also on account of medical illness suffering from 'Vertiginous Epilepsy'. The order dated 08.01.2008 also shows that the petitioner himself voluntarily submitted application for discharge.

6. Attention has been invited to statutory complaint submitted by the petitioner dated 29.11.2007. The statutory complaint shows that the petitioner set up a defence to the affect that the Commanding Officer had directed him to do certain domestic work and on denial by the petitioner he compelled him to sign the application as well as the willingness certificate. It is submitted that order of discharge has it's foundation only because of annoyance of the Commanding

Officer since the petitioner had refused to discharge duties as domestic servant and his signatures were obtained forcibly.

7. We have perused the records and also gone through the orders passed by the appellate authority which shows that the grounds/defence set up by the petitioner have not been considered. No finding have been recorded by the appellate authority as to whether petitioner's signature were obtained under duress or compulsion on account of refusal on his part to the Commanding Officer to serve as domestic servant and he was compelled to submit willingness certificate. There appears to be major difference between the grounds of the dismissal dated 20.08.2007 and the appellate order dated 08.01.2008. On the face of record the appellate authority could not have travelled beyond the grounds which makes foundation of the impugned order of discharge dated 20.08.2007. He should have appreciated material on record and record a finding with regard to correctness of the grounds which form the basis for discharge. Apart from this the appellate authority had not recorded any finding with regard to defence set up by the petitioner that he was compelled to sign the application for discharge and also the impugned order was passed for extraneous reasons on account of annoyance of the Commanding Officer since the petitioner had declined to discharge certain domestic duties.

8. It is well settled proposition of law that it shall be incumbent upon the appellate authority to record finding on the

grounds taken as well defence set up by the incumbent while preferring appeal, which was expected from him while deciding the appeal.

9. In view of the above, we find it a fit case which should be remitted and the matter should be remanded to the appellate authority to decide the matter afresh keeping in view the observations made herein above as well as statutory complaint dated 29.11.2007.

10. In view of the above the T.A. deserves to be allowed, hence allowed. Impugned order dated 08.01.2008 passed by the General Officer Commanding, Uttar Bharat Area is set aside and the controversy is remitted to appellate authority to decide the statutory complaint of the petitioner afresh in the light of observations made hereinabove expeditiously, say, within one month from the date of presentation of a certified copy of this order with due communication to the petitioner.

11. T.A. is allowed accordingly.

No orders as to cost.

(Air Marshal Anil Chopra)
Member (A)

Anb

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