

RESERVED
COURT NO. 2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

M.A.No. 2104 of 2016

In re:

T.A.No. 535 of 2010

Friday, this the 09th day of March, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

Ramendra Singh, son of Sri Gorakh Nath Singh, resident of Durga Sari Centre, Palika Bazar, Deoria.

..... Applicant

Ld. Counsel for the: **Col (Retd) A.K. Srivastava, Advocate**
Petitioner/applicant

Versus

1. The Union of India.
2. Chief of the Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Records Jammu and Kashmir Light Infantry, Haftchinar, Srinagar,-190009. (Jammu & Kashmir State)

.....Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal,**
Respondents. Addl. Central Govt. Standing Counsel
assisted by **Maj Salen Xaxa,** OIC
Legal Cell.

ORDER

Per Justice SVS Rathore, Member (J)

1. Heard learned counsel for the parties and perused the record.

2. This is an application for recall of order dated 21.10.2011 passed on merit by this Tribunal in TA No. 535 of 2010. By means of this MA, the applicant has made the following prayers:

*“ i) That judgment given in TA Application 535 of 2010 given on Friday the 8th April and reaffirmed in the Review Application No. 19 of 2011 in Re: T.A.No. 535 of 2010 given on Friday the 21st October 2011, be **recalled** on the basis of grounds mentioned in Para 4 & 5.*

ii) That the appeal of letter dated 25th April 1988 and representation dated 12th Dec 1991 be allowed with due entitled promotion, full pay and allowances admissible from time to time.

iii) That applicant be awarded due compensation for his protracted mental, physical harassments suffered from all Court proceedings because of fraudulent and illegal discharge by the respondents.

iv) That the cost of application, counsel fee and ancillary expenses to the tune of Rs.50000, be awarded.

v) That issue/pass any other order/decision as this Hon'ble Tribunal may deem fit in the circumstances of the case in favour of the applicant against the respondents.

vi) That Hon'ble Tribunal may allow the application with costs, considering the agonies the applicant suffered.”

3. It transpires from a perusal of the record that initially the applicant was enrolled in ASC (Supply) as Sepoy Clerk in December, 1963. He was transferred to the Brigade of Guards on 21.08.1965 and thereafter to Ladakh Scouts on 21.05.1967 and was posted there on 01.10.1975. Vide respondent No. 1's Policy Letter dated 30.03.1978, the clerks

of Ladakh Scouts were affiliated to Jammu & Kashmir Light Infantry (JAK LI for short) for promotion and turn over (postings) purposes. The applicant was posted to 2nd Battalion Jammu & Kashmir Light Infantry (2 JAK LI for short) stationed in a peace station at Roorkee on 19.12.1978 for his peace tenure. He was downgraded to medical category "CEE (P)" with restriction for posting to high altitude area on 17.04.1979 due to "THICKENED PLEURA (OLD)". The Re-categorisation Medical Board Proceedings (AFMSF-15A) and the opinion of the Graded Specialist (Medicine) are on record. Since the applicant was placed in medical category lower than AYE and was unfit for service in high altitude area, he was attached to JAK LI Regimental Centre on 06.09.1979.

4. On the basis of aforesaid medical report, the Commanding Officer 2 JAK LI served a show cause notice dated 18.09.1979 to the applicant. He, in response to the aforesaid show cause notice, intimated the authorities vide letter dated 09.10.1979 that he was willing to continue to serve in the Army despite his low medical category and that his case may be considered sympathetically. However, respondent No. 3 passed an order discharging the applicant from service with effect from 01.05.1979.

5. The applicant made a detailed appeal/representation to respondent No. 2 on 10.07.1979 and number of other representations against the said order in 1980 including one on 25.04.1988. However, the appeal was not decided by

respondent No. 2 and, therefore, he preferred Civil Misc Writ Petition No. 22164 of 1990 in the Allahabad High Court. The Hon'ble High Court, vide its judgment and order dated 04.04.1991, was pleased to issue a writ of mandamus directing the Chief of Army Staff (Respondent No. 2) to dispose of the appeal preferred by the applicant in accordance with law expeditiously as far as possible within three months from the date of receipt of the certified copy of the order.

6. Since the respondent No. 3 did not comply with the aforesaid order of Hon'ble High Court, the applicant filed Civil Misc. Contempt Petition No. 634 of 1992. Respondent No. 2 then passed speaking order dated 07.07.1992 rejecting the appeal/representation of the applicant pursuant to the judgment and order dated 04.04.1991. Reply to this effect was filed by the respondents in that case and on that basis, the contempt proceedings were dropped vide order dated 16.09.2003.

7. The applicant filed recall application dated 16.09.2003 stating that the order dated 07.07.1992 was never served to the applicant nor was the same annexed to the counter affidavit filed by respondent No. 2 in the Contempt Petition, therefore, the applicant was unable to challenge the same. On the aforesaid application, the Hon'ble Court directed the Chief Standing Counsel, Union of India to file a copy of the order dated 07.07.1992. Aggrieved by the impugned order (Annexure No. 10 to the TA), the applicant filed Civil Misc.

Writ Petition No. 29176 of 2004 praying therein the following reliefs:

“(i) order, or direction in the nature of certiorari quashing the impugned order dated 07th July 1992 passed by respondent No. 2 served and communicated to the petitioner on 14th January 2004 and allow the appeal dated 25th April 1998 and representation dated 12th December 1991 and set aside the order of discharge dated 10th July 1979 passed by Officer-In-Charge Records Jammu and Kashmir Light Infantry.

(ii) order or direction in the nature of mandamus directing the respondents to consider the petitioner in service with effect from 01st May 1980 and allow all service benefits admissible to the petitioner.

(iii) any other writ order or direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) to award cost of the petition to the petitioner.”

8. The aforesaid Civil Misc. Writ Petition No. 29176 of 2004 was transferred to this Tribunal vide order dated 29.03.2010 and was renumbered here as TA No. 535 of 2010. After hearing the parties’ counsel, the Tribunal declined to interfere in the matter and dismissed the TA vide its order dated 08.04.2011 with the observation that the applicant has been granted service pension as well as disability pension for the services rendered by him in the Army from 09.12.1963 to 01.04.1980, hence he has been duly compensated for the services rendered and disability accruing to him from military service. Thereafter the applicant had filed Review Application No. 19 of 2011, which was dismissed by this Tribunal vide its order dated 21.10.2011 as devoid of merit.

9. Feeling aggrieved, the applicant preferred Civil Appeal No. 4658-4659 of 2012 before the Hon'ble Apex Court, which too, on preliminary hearing was dismissed on 10.05.2012.

10. Having met his waterloo upto the Hon'ble Apex Court, now the applicant has come up again before this Tribunal by means of this MA, challenging the same discharge order and praying for recall of the Tribunal's order dated 08.04.2011 passed in TA No. 535 of 2010, on the ground of fraud, which, according to him, was committed while discharging him from service. The grounds of alleged fraud, as mentioned in the instant MA, are as under:

“5 GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1 *BECAUSE, the decision of appeal dated 12th Dec 1991 against the discharge order of the applicant from the Army service by the chief of the Army Staff was supplied through letter dated 07.07.1992 purportedly issued by the Chief of The Army Staff is **Liab**le to be **forged document**.*

5.2 *BECAUSE, the aforesaid order dated 7th July 1992 was **neither signed** by the then Chief of The Army Staff nor it was office-stamped (Annexure No. A1).*

5.3 *BECAUSE, the purported order dated 7th July 1992 is computer typed and at the time of decision, all the other documents were found generally typewriter written. If it is compared copy of the typewriter written document, it must be compared with original document or attested by any competent authority.*

5.4 *BECAUSE, the response to RTI letter dated 31 Dec 2015, was given by the letter No. B/6012/RTI/Inf-6 (Perse), dated 12 Jan 2016, clearly states that no records exist that letter No. 89553/ CAOS/ 5519?LS/LS/Inf-6 (Pers), **dated 07.07.1992** has been initiated by this Directorate. (Annexure A-1).*

5.5 *BECAUSE, order dated 7.7.1992 was the same letter against which appeal was preferred to this Honorable Tribunal on.... Therefore, due to this forged document whole legal proceeding is vitiated and fraud is committed on the Tribunal.*

5.6 *BECAUSE, the discharge of the applicant from the army Service sanctioned on document IAFY-1948A dated 29 Nov. 1979 by allegedly officiating Brigade Commander, 77 Mountain Brigade is seemed to be **forged document** as it is confirmed through letter no. 5600/17/edn. Dated 30, Nov. 2011 issued by HQ 77 MTN Bde (CHINDITS), C/o 56 APO through RTI, Act 2005, in para 2(a) that **Brig I S Vasishtha** was the Commander of 77 Mountain Brigade for the month of Nov 1979 and Para 2(b) that the **Commanding Officer** of 2 JAK LI from 19 Nov. 1979 to 30 Nov. 1979 was **Col. B A Kariappa**.*

5.7 *BECAUSE, it is settled law that Officiating Commander cannot be appointed in presence of Commander.*

5.8 *BECAUSE, the discharge of the applicant is done in fraudulent manner by the alleged Lt. Col Officiating Brigade Commander, 77 Mountain Brigade who was not existed or appointed at that point of time of the discharge. That the respondents did not disclose the **fact and circumstances** which led the delegation of power of Brigade Commander, 77 Mtn. Brigade to the Lt Col as Officiating Commander in presence Brigadier I S Vasistha, Commander, 77 Mountain Brigade and Officer Commanding of the 2 JAK LI. Col. B A Kariappa, to sanction the discharge of the applicant from military service by endorsing the document IAFY-1948A dated 29. Nov. 1979 on page no. 4 of the said document submitted as by the respondents as annexure SCA1.*

5.9 *BECAUSE, the order dated 7th July 1992 filed along affidavit in Civil Misc, Contempt Petition No. 634 of 1992 by the Chief of The Army Staff General S F Rodrigues in which the appeal is purportedly decided, states that discharges order was sanctioned by **Commander, 77 Mtn Brigade**.*

5.10 *BECAUSE, The Counter Affidavit filed by the then Chief of the Army Staff, General S F Rodrigues in Civil Misc., Contempt Petition No. 634 of 1992 (Annexure A-6), Allahabad High Court, is false, because*

in Para 3(f) of the affidavit filed by Chief of The Army Staff, it is stated that discharge is sanctioned by **Officiating Commander 77 Mountain Brigade**.

5.11 *BECAUSE*, the Supplementary Counter Affidavit submitted by the respondents through Major Rajender Prasad in Civil Misc, Writ Petition of 2004 (AnnexureA-9) is false because in para 3 of that, it is mentioned that **Officiating Brigade Commander, 77 Mountain Brigade** Sanctioned the discharge order dated 19. Nov. 1979, while there existed/ appointed no **Officiating Brigade Commander** at that point of time.

5.12 *BECAUSE*, due to the forgery, concealment and the fraud played on the Tribunal as well on the applicant, the legal and the rightful claim of the applicant was frustrated and applicant is facing the mental and economical losses day by day.

5.13 *BECAUSE*, the any judgment obtained through fraud, misleading the tribunal by forged documents, giving false affidavit, committed on the Tribunal is a nullity and non est in the eyes of law. Hon'ble Supreme Court has held in **V Papayya Shasthy v. Government of AP (2007) 4 SCC 221** that such a judgment decree or order passed by the first court or the final court is to be treated as nullity by every court, Superior or inferior. It can be challenged in any court at **any time**. The applicant is fully covered under aforesaid judgment.

5.14 *BECAUSE*, applicant is also covered with judgment of **Indian Bank v. Satyam Fibres (India) (p) Ltd. (1996) 5 SCC 550**, in which Hon'ble Supreme Court after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus, "where the Court is misled by a party or the courts itself commits a mistake which prejudices a party, the Court has inherent power to recall its order".

5.15 *BECAUSE*, in the interest of justice, the judgment detained by the respondent through playing fraud in T.A. No. 535 of 2010 are liable to be recalled and respondent are liable to re-instate the applicant in the service with effect from 1st May 1980 and to be paid all benefits to applicant with effect from 1st May 1980 admissible from time to time.

5.16 BECAUSE, applicant has full hope of justice from this Hon'ble Tribunal, as such he is humbly submitting this Recall application for redressal of their grievances for kind consideration of this Hon'ble Court."

11. Before proceeding further, it would be pertinent to mention here that the applicant, as observed above, had preferred Civil Appeal No. 4658-4659 of 2012 before the Hon'ble Apex Court, challenging the order dated 29.03.2010 passed by this Tribunal in TA No. 535 of 2010 and the same has already been dismissed by the Hon'ble Apex Court. The said order of the Tribunal, by lapse of time and with the dismissal of Civil Appeal by the Hon'ble Apex Court, has attained finality.

12. According to the learned counsel for the applicant, in case the applicant was to be discharged on the ground of low medical category, then it was necessary for the respondents to conduct Invaliding Medical Board but the same was not done, hence his discharge is not proper as the same was ordered pursuant to discharge proceedings under Rule 13(3)(iii)(v) of the Army Rules.

12. Learned counsel for the respondents has submitted that the applicant is receiving the benefit of discharge order which was consequent to the report of medical board, by receiving disability pension and on the other hand, he is challenging the same on the ground of alleged fraud. We have given our anxious consideration to the grounds which the applicant is raising to show that the respondents have played fraud and the discharge of the applicant was the result

of fraudulent act of the respondents. We do not find any substance in the grounds raised by the applicant because the fraud, as alleged by the applicant, came to his notice through the speaking order dated 07.07.1992 passed by the Chief of Army Staff. Writ Petition No. 29176 of 2004 (TA No. 535 of 2010) was filed thereafter. Perusal of record of aforementioned writ petition shows that the copy of order dated 07.07.1992 was also annexed therein. So now, the claim of the applicant has no substance. He had full opportunity to take the ground of alleged fraud in the writ petition. Any ground of challenge, which was available to the applicant in previous litigation, if not taken, shall be deemed to have been waived. Hence, raising the said plea as a ground in the instant MA for recall of the Tribunal's order dated 21.10.2011 is not permissible under law. The Tribunal's order dated 21.10.2011 passed in TA No. 535 of 2010 is a detailed judgment in which all the grounds and points raised by the applicant at that time have been discussed. Nothing like fraud, if any, having been committed in the matter was ever alleged by the applicant during the course of earlier court proceedings. As per record, he was discharged from Army on 01.05.1989 and for the first time, after a lapse of about 18 years, he is making allegation of fraudulent act of the respondents while discharging him from service. None of the grounds raised and submissions made by the learned counsel for the applicant in this behalf are sustainable.

13. In view of above, it is evident that the controversy has already been set at rest by this Tribunal. The applicant, on the one hand, is challenging the discharge order based upon the report of medical board of the Army and on the other, he is receiving service pension as well as disability pension on account of aforesaid discharge. He has wasted the precious time of the Court and has desperately tried to make out a case in second innings by moving the instant MA for recall of the Tribunal's order passed earlier on unsustainable grounds.

14. Accordingly, this MA being misconceived is hereby **dismissed** with costs of Rs.5000/-, which, if not deposited by the applicant within a period of one month in the Registry of the Tribunal, shall be recovered from him as arrears of land revenue.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 9th March, 2018
LN/-