

Court No.1
Reserved Judgment

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

Original Application No. 164 of 2016

Tuesday this the 22nd day of May, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

No. 3005374-H (Ex-Sepoy/Musician) Rajveer Singh
S/o Shri Raj Bahadur Singh
Village & Post – Lonar
District – Hardoi – 241001 (UP)

.....Applicant

Ld. Counsel for : **Shri R. Chandra, Advocate**
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi.
3. The Officer-in-Charge, Records The Rajput Regiment PIN – 900427, C/o 56 APO
4. The General Office Commanding HQ Uttar Bharat Area, Bareilly (UP)
5. Commanding Officer, Administrative Battalion, The Rajput Regiment Centre, Fatehgarh (UP)

.....Respondents

Ld. Counsel for the : **Shri Bhanu Pratap Singh,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

“(i) The Hon'ble Tribunal may be pleased to set aside the discharged order dated 30/09/2007 (Annexure No A-1), Order dated 28/03/2016 (Annexure No A-2) and Order dated 27/05/2016 (Annexure No A-3).

“(ii) To direct the respondents to re-instate the applicant in the service w.e.f. 01/10/2007 with all consequent benefits as given to his batchmates with the interest of 24 percent per annum.

“(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. In brief, the facts necessary for disposal of the instant O.A. may be summarised as under :

Prior to filing this O.A., the applicant has filed Writ Petition No.25287 of 2008 which was transferred to this Tribunal and was registered as T.A.No.625 of 2010 and was finally disposed off vide order dated 04th February 2016. In the aforementioned O.A., the prayer of the applicant was to quash the impugned order dated 08.01.2008 and to treat the applicant in continuous service and to redetermine the appeal. While deciding the aforementioned T.A., this Tribunal passed the following :

“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.”

3. In pursuance of the order passed by this Tribunal, the statutory petition of the applicant was decided again by a speaking order on 28th March 2016 and his statutory complaint was dismissed.

4. The facts are that the applicant was enrolled in the Army in Rajput Regiment on 15.09.2002. In the year 2004 he was absent without leave from 25th September 2004 and, therefore, he was awarded 28 days RI in Military custody.

Again on 24.11.2004, the applicant was absent without leave and he surrendered on 30.11.2004 and he was again awarded 28 days RI on 04.01.2005. From 07.05.2007 to 08.05.2007, the applicant was on leave. Thereafter, due to illness, he was admitted in the Military Hospital, Bareilly, from where he was discharged on 13.07.2007 and he joined the duty on 20.07.2007 and for this offence, he was awarded 07 days RI in Military custody on 24.07.2007 to 30.07.2007. As per averments of the applicant, on 31/07/2007 in the morning, Commanding Officer, Administrative Battalion called the applicant and he threatened the applicant and pressurized to sign the applicant on blank papers which were kept on the Commanding Officer's Table but applicant denied to sign the same. At this time Company Commander of the applicant was also present. After that Commanding Officer ordered to the Company Commander to put the applicant in Quarter Guard again. In the Quarter Guard, applicant was physically and mentally tortured to put his signature on blank papers. In the last applicant put his signature some blank papers in pressure and under threat of removal from his service. It is pleaded that this torture was done only due to denying the Sevadari (to do certain house hold work) in the Commanding Officer's House by the applicant. It is further submitted that the applicant was detained in Unit Quarter Guard up to 20/08/2007 without any authority only on the order of Commanding Officer. On 20.08.2007 the applicant met the Commandant, The Rajput Regiment Centre to explain his grievance of his forceful discharge, but he was informed that he has been discharged from service on the basis of three red ink entries and on medical grounds. On 20.08.2007 the respondent no.3 approved the discharge and the same was forwarded to the respondent no.5 in which the respondent was required to discharge w.e.f. 20.07.2007 afternoon. On 01.01.2007, the applicant met the GOC, Uttar Bharat Area for his forceful discharge, but he also said that he was also discharged from service on the basis of three red ink entries and on medical grounds. Thereafter on 30.09.2007, he was discharged from service under Army Rule 13(3) III (iv) at his own request. On 29.01.2007, the applicant's counsel submitted his Appeal under Section 26 of the Army Act, 1950 before Sub Area Commander (UP) in which the applicant submitted his facts and grounds that he was discharged from service by obtaining signatures on blank papers by the Commanding Officer of the applicant by force.

5. Learned counsel for the applicant has submitted that the signatures of the applicant were obtained under pressure and the order of discharge dated

08.01.2008 was set aside by this Tribunal in T.A.No. 625 of 2010, therefore, the respondents were under obligation to reinstate the applicant and thereafter to proceed against him in accordance with law. The order dated 08.01.2008 has neither been filed by the applicant himself nor by the respondents. In order to see the order dated 08.1.2008, we have perused the record of T.A.No. 625 of 2010. The order dated 08.01.2008 is the order of the GOC, Uttar Bharat Area, whereby the statutory appeal of the applicant has been rejected. Learned counsel for the applicant has submitted that the said order of discharge is absolutely illegal. But it is not the order of discharge, but the order of the appellate authority passed on the statutory petition of the applicant, which was set aside and direction was given to reconsider the case of the applicant, therefore, the case of the applicant was reconsidered and the statutory petition was again dismissed by a speaking order. Therefore, this submission of the learned counsel for the applicant has absolutely no substance.

6. The only submission of the learned counsel for the applicant is that his signatures on the petition were obtained by force. During the course of arguments, we asked the applicant, who was present in person, whether he has any person who can give evidence in his support that his signatures were obtained by force, then he informed us that at that point of time, he was confined in Unit Quarter Guard and one Army personnel had come inside the Quarter Guard and obtained the signatures, so there was no other witness who can testify in his favour that his signatures were obtained by playing fraud. But this statement of the applicant himself before us is absolutely contrary to his own pleadings, which we have quoted in the earlier part of the judgment, whereby he has stated that he was called in the office and was asked to sign the papers in the presence of the Company Commander. Apart from it, the order dated 08.01.2008 also shows that similar allegations were made by the applicant even at an early stage against Major Nandan Singh in 2004, who was his Platoon Commander. It is an admitted fact that the applicant remained absent without leave on several occasions and he was punished for the same.

7. Thus, in the aforesaid facts situation, we do not find any substance in the submission of the learned counsel for the applicant that the applicant was forced to sign the letter.

8. There is yet another aspect which supports that the applicant has made a prayer for his voluntary discharge on compassionate ground, was his bonafide

prayer because admittedly he has remained absent on several occasions due to which he was punished every time. During the course of arguments, learned counsel for the respondents has fairly conceded that because of the certain personal problem, the applicant had to remain absent without leave. This aspect also supports that because of such personal problem, the applicant was not in a position to continue in Army service and he never behaved as a disciplined soldier. Thus, we are of the view that the applicant himself made a request for his premature discharge and the allegation that he was forced to sign on blank papers, is absolutely incorrect. Here we would like to observe that perusal of the said request letter for seeking his voluntary retirement, shows that it was written by someone else and the applicant has only signed it, but the signature of the applicant is at the correct place without any overlapping. A perusal of this letter shows that it was first written and thereafter it was signed at the place where he was required to sign. A copy of this letter has been filed by the applicant as Annexure No.8 to the O.A. Thus, in this case, the arguments advanced by the learned counsel for the applicant has absolutely no substance.

9. Accordingly, O.A. lacks merit, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated: May , 2018.
PKG