

COURT- 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 342 of 2022
Friday, this the 10th day of Nov, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Lt Gen Anil Puri, Member (A)”

No. 15149639-A Hav Dinesh Chand Tyagi (Retd) aged about 41 years,
S/o Shri Nabab Singh Tyagi, R/o Village – Puramansharam, Post :
Saiyan, Dist : Agra (UP)-283124

.... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh,**
Advocate

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), DHQ PO, New Delhi-110011.
3. Directorate General of Artillery (Arty-10), General Staff Branch, IHQ of MoD (Army), DHQ PO, New Delhi-110105.
4. OIC Artillery Records, Pin 908802, C/O 56 APO
5. CO 638 SATA Bty, PIN-926938, C/O 56 APO
6. Lt Col (now Col) Karamjit Yadav, No 164 Medium Regiment, PIN 926164, C/O 56 APO

... Respondents

Ld. Counsel for the Respondents : **Shri Shailendra Sharma Atal**
Sr. Govt Standing Counsel

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“(a). To summon the order of discharge from service issued by Respondent and quash the same in terms of Hon’ble Supreme Court Order passed in Balram Gupta vs UOI, Shambu Murari Sinha vs Project & Development of India, AFT (PB) New Delhi Order dated 07.05.2020 passed in TA 270 of 2010 (Sep Vijay Pal Singh vs UOI) and this Hon’ble Bench Order dated 21 Sep 2017 passed in TA 7 of 2012 (Hav Ganpati Singh vs UOI and others.

(b). To direct the respondents for re-instatement of the applicant in the service with all consequential benefits so as to complete his tenure of service till 31 Jul 2027 as he was promoted to the rank of Havildar.

(c). To summon the summarily trial proceedings of Jul 2019 and to quash the same being excessive, illegal and unjust and may pass any order deemed fit and proper especially against Respondent No 6.

(d) To pass any other relief including cost of application as considered deemed fit and proper in the circumstances by this Hon’ble Tribunal be awarded in favour of the applicant.

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 05 Jul 2001. The applicant applied for pre-mature discharge from service on 19 Dec 2018 on compassionate grounds citing reasons that his old aged father was suffering from kidney problem and other domestic issues. His application was considered and being genuine case discharge order

was approved by Artillery Records with direction to struck of strength from service w.e.f. 31 Oct 2019 (A/N). However due to COVID-19 Pandemic his discharge date was postponed to 31 May 2020 (A.N.) and accordingly he was discharged from service w.e.f. 31 May 2020 (A.N.). As per applicant, on 14 Jun 2019, he had applied for withdrawal of his earlier application for pre-mature discharge but it was not considered and he was forcibly discharged from service w.e.f. 31 May 2020 (A.N.) while on leave. Being aggrieved, the applicant has filed the present Original Application for re-instatement into service.

3. Learned counsel for the applicant submitted that he was enrolled in the Army on 05 Jul 2001 and had served with various Commanding Officers upto Apr 2018. In the year 2017, he was awarded as 'Best NCO' by Brigadier Rajiv Ghai, Cdr 136 (I) Infantry Brigade. In the month of May 2018, Col Karamjit Yadav (Respondent No 6) was posted as his Commanding Officer. Applicant was asked to take over charge of Quarter Master Duties within one day which was practically not possible, so he requested for 03 days to take over the charge. For this he was subjected to Summary trial under Section 41 (1) of Army Act 1950 and was awarded 'Severe Reprimand' and 14 days pay fine. Applicant apprised Commanding Officer that there is a case of illegal fuel sale in the unit which needs to be corrected but in spite of taking action on the culprits, he was victimized and harassed by one or the other way. Due to immense pressure of Commanding Officer and other dignitaries, he applied for premature discharge from service at his own request which was processed and sanctioned w.e.f. 31 Oct 2019 (A/N),

later on re-scheduled to 31 May 2020. Ld Counsel for the applicant argued that on 14 Jun 2019 i.e. well before discharge date, applicant had applied for withdrawal of his application for pre-mature discharge from service but without considering the same, he was forcibly discharged from service w.e.f. 31 May 2020 (A.N) while he was on leave, which is in contravention to the order passed on 01 Sep 1987 by Hon'ble Supreme Court in Balram Gupta vs Union of India & Anr, Shambu Murari Sinha vs Project & Development of India, AFT (PB) New Delhi Order dated 07.05.2020 passed in TA 270 of 2010 (Sep Vijay Pal Singh vs UOI) and this Hon'ble Bench Order dated 21 Sep 2017 passed in TA 7 of 2012 (Hav Ganpati Singh vs UOI and others).

4. Learned counsel for the applicant submitted that arbitrary order of discharge be cancelled and the applicant be re-instated in service with all consequential benefits as his case is squarely covered under orders of Hon'ble Supreme Court (supra).

5. On the other hand, learned counsel for the respondents submitted that applicant had applied for pre-mature discharge from service on 19 Dec 2018 through proper channel on compassionate grounds. His application was examined in the light of existing rules/regulations/Government policies by Unit Committee and weighed the gravity of reason and found that the case was genuine and recommended for premature discharge from service on extreme compassionate ground. The applicant was asked to submit pre-mature retirement documents so that pension can be sanctioned which he did willingly. His pre-mature discharge was sanctioned w.e.f. 31 Oct 2019

(A/N) which was later on re-scheduled to 31 May 2020 (A/N) due to ongoing situation of COVID 19 pandemic. Accordingly he was discharged from service on 31 May 2020 (A.N).

6. Ld. Counsel for the Respondents submitted that on enquiring at all levels; it has been found that no written application is available in the unit for cancellation of his pre-mature retirement application/order. After a lapse of two years, the applicant has represented and alleged through petitions/legal notices which were examined in the light of existing Government policies and replied to him suitably as the allegation made through petitions/legal notice is baseless, devoid of merit and lacking substance and not tenable in the eyes of law. He further submitted that efficiency of the Armed Forces depends largely on rigorous discipline expected from its members. Military discipline expects a very high sense of honesty and integrity. The applicant had committed an offence under Army Act Section 41 (1) on 23 Jul 2019 for which he was awarded Severe Reprimand and 14 days Pay Fine as punishment to maintain good order and military discipline. The allegation made against the Commanding Officer is baseless and devoid of merit; hence he pleaded for dismissal of O.A.

7. We have heard learned counsel for the parties and perused the records.

8. We have given our thoughtful consideration to the facts and rival contentions. It is not disputed that he had applied for pre-mature discharge from service at his own request citing domestic problems. The Unit Pre-mature Discharge Committee found his case genuine and

forwarded his application duly recommended to Record Office. Record Office sanctioned his discharge w.e.f 31 Oct 2019 (A/N) and due to COVID-19 pandemic, re-scheduled it to 31 May 2020 (A/N). Accordingly, the applicant was discharged from service w.e.f 31 May 2020 (A.N.).

9. Ld Counsel for the applicant argued that applicant had submitted an application on 14 Jun 2019 to Unit Adjutant for withdrawal of his earlier application for pre-mature discharge but in spite of taking any action, he was forcibly discharged from service while on leave w.e.f. 31 May 2020 (A/N). On the other hand, Respondents have denied receipt of any application for withdrawal of his earlier application for pre-mature discharge. As per verdict of Hon'ble Apex Court passed on 01 Sep 1987 in Balram Gupta vs UOI & Anr, a person can withdraw his request for pre-mature discharge at any time before it becomes operative but no record is available in the unit regarding his withdrawal request. If his case was not being considered by the Commanding Officer, he should have approached higher authorities in chain of command for redressal of his grievance but he did not do so. Also he did not give any proof to establish that he had handed over the application to Unit Adjutant and obtained receipt. Though, he has enclosed a copy of the withdrawal application along with Original Application but the same is without any signature/seal of the respondents, which cannot be treated as proof. The applicant had also represented his case after lapse of two years from the date of discharge; therefore, it appears that the applicant had concocted the story after his discharge from service.

10. The applicant had committed an offence under Army Act Section 41 (1) on 23 Jul 2019 for which he was awarded Severe Reprimand and 14 days Pay Fine as punishment to maintain good order and military discipline. The allegation made against the Commanding Officer is baseless and devoid of merit.

11. In view of the above, we are of the opinion that applicant was discharged from service at his own request. He has not been able to show any proof regarding withdrawal of his earlier application for premature retirement; hence he cannot be re-instated into service.

12. Resultantly, the Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : Nov, 2023

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