

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

O.A. No. 323 of 2020

Thursday, this the 16th day of September, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex. No. 18018133N, Rect Prasanta Kumar Singh son of Shri Arun Kumar Singh, Village & Post – Brajrajnagar, District – Jharsuguda (Orissa),

..... Applicant

Ld. Counsel for the: **Shri Vinay Pandey**, Advocate
Applicant

Versus

1. Union of India, through, Secretary, Ministry of Defence (Army), DHQ PO, New Delhi-11.
2. Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi-110011.
3. The Officer-in-Charge Records, Bengal Engineers Group, Roorkee (U.K.).
4. The Commanding Officer, No. 2 Training Battalion, Bengal Engineers Group Roorkee.
5. PCDA (P), Allahabad.

..... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal, Advocate.**
Respondents Central Govt Standing Counsel.

ORDER (Oral)

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

(a) Issue/pass an order or direction of appropriate nature to quashing the illegal Discharge of the applicant with effect from 09.11.2016 and re-instate in service.

(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears pay along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs to the tune of Rs. 5,00,000/- including mental agony and harassment as well as advocate fees.

2. Brief facts of the case are that applicant, having been recruited in Army on 25.06.2016, was undergoing basic military training in No. 2 Training Battalion of Bengal Engineering Group was discharged from service on 09.11.2016 under own request on the ground of his demise of father and younger brother. His premature discharge application was sanctioned by Commandant on 26.10.2016 and he was discharged from service w.e.f. 10.11.2016 under Rule 13 (3) (iii) (iv) of Army Rules, 1954. In the year 2017, applicant is stated to have preferred a representation dated 05.06.2017 and 07.07.2017 for his re-instatement in service, but as per record no reply has been

received till date. This O.A. has been filed to quash discharge order dated 09.11.2016 and re-instate him into service.

3. Learned counsel for the applicant pleaded that during the basic military training and trade training at Training Centre, Bengal Engineer Group, Roorkee, his father passed away on 24.08.2016. On 24.08.2016 applicant was informed by Company Havildar Major (CHM) that his father was seriously ill and applicant was granted 06 days casual leave w.e.f. 25.08.2016 to 30.08.2016. He proceeded to his home on 24.08.2016 (AN) and reported back from leave on 30.08.2016. Learned counsel for the applicant further pleaded that applicant's younger brother became seriously ill and was admitted in hospital and ultimately passed away on 17.09.2016. He was, therefore again sent on 06 days casual leave w.e.f. 26.09.2016 to 01.10.2016 with permission to prefix 25.09.2016 and suffix 02.10.2016 to attend last rites in respect of his brother. Learned counsel for the applicant submitted that applicant was overcome with mental trauma due to the sudden demise of father and brother within a period of less than one month and, therefore, he was forced to sign a pre-written document at the time of roll call on 14.10.2016 and applicant was never requested for premature discharge from Army Service intentionally rather he was upset for few days as he was not allowed to go home to attend the last ritual's of his younger brother. Discharge application given by applicant and the said discharge application may have been signed under coercion when he was under mental trauma, therefore, the aforesaid discharge is illegal and

arbitrary. He pleaded that applicant be reinstated in Army with full pay and allowances.

4. On the other hand, submission of learned counsel for the respondents is that the applicant had himself given application for premature discharged and the same was sanctioned in accordance with rules. His further submission is that the respondents have discharged applicant by following due procedure as per Army Rules, 1954 and there is no provision for reinstating a person in Army who has given application to proceed on premature discharge voluntarily. He pleaded for dismissal of O.A.

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

6. It is undisputed fact of the parties that applicant was recruited in the Army on 26.06.2016 and he was discharged from service w.e.f. 09.11.2016 on receipt of his premature discharge application which was processed as per procedure in vogue. In para 4.13 of O.A. applicant has mentioned that he had never submitted such an application for premature discharge but perusal of records reveals that applicant himself had given an application dated 14.10.2016. For convenience sake extract of application dated 14.10.2016 is as under:-

प्रेषक :
 नंबर- १८०१८१३३एन, रैंक - रिक्रूट
 नाम- प्रशांत कुमार सिंह
 प्लाटून - सी-40/16
 यूनिट - 2 टीसी

प्रेषित - श्रीमान कमान अधिकारी महोदय
 नं० 2 पृशिक्षन बटालियन

बंगाल इंजीनियर ग्रुप एवं केंद्र
रुड़की (2247667)

बिषय : स्वेच्छा से सेवनिव्रत हेतु प्रार्थना पत्र

महोदय,

सविनय निवेदन है इस प्रकार से है कि मैं नं० १८०१८१३३एन रिक्रूट प्रशांत कुमार सिंह जो की वर्तमान मे आपके अधीन नं० प्रशिक्षण बटालियन मे ट्रेनिंग कर रहा हूँ।

महोदय मेरी समस्या इस प्रकार से है की मेरे पिताजी और भाई का निधन एक महीने के अंदर होने के कारण मैं अपने परिवार की देखभाल करने के लिए मैं डिस्चार्ज लेना चाहता हूँ।

अतः महोदय से नम्र निवेदन है की मेरी समस्या को मध्यनजर रखते हुये मुझे डिस्चार्ज देने की कृपा करें

दिनांक - १४/१०/१६

स्थान - रुड़की

आपका आज्ञाकारी सैनिक

नं० १८०१८१३३एन

रैंक- रिक्रूट

नाम- प्रशांत कुमार सिंह

यूनिट- २टी०बी०

प्लाटून- सी-४०/१६

हस्ताक्षर

7. From the aforesaid, it appears that applicant had himself given aforesaid premature discharge application which was recommended on 15.10.2016 and sanctioned on 26.10.2016. On the basis of recommendation of the Officiating Commanding Officer, premature discharge was sanctioned on 26.10.2016 to proceed on discharge w.e.f. 09.11.2016. There seems to be no foul play on the part of the respondents that applicant was forced to prefer application for premature discharge. The submission of learned counsel for the applicant that applicant was forced to prefer the application for his discharge does not appeal us inasmuch as nothing has been brought on record to show that the applicant was forced to write down the application under coercion. It is nowhere mentioned in the O.A. that either the Officiating Commanding officer or any junior officers in the Centre were in any way biased or prejudiced towards the applicant. In the circumstances, it does not commend to us for

acceptance that applicant was forced to write the application for premature discharge. From the contents of the application, it appears to us that the application was written by the applicant voluntarily and without being coerced into writing it. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents to discharge applicant at his own request. Applicant is therefore, not entitled to be reinstated into service at this stage, more so, when he has given voluntarily application for premature discharge and his discharge order was passed under prevalent Army Rules and Regulations.

8. In view of the above, O.A. No. 323 of 2020 has no merits, deserves to be dismissed and is hereby **dismissed**.

9. No order as to costs.

10. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 16th September, 2021
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