

RESERVED
Court No. 1

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

O.A. No. 611 of 2017

Friday, this the 11th day of January, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No.4086625-P Ex-Rfn Sunil Kumar, son of Jiva Nand, Resident of Village- Dhaura Palla, Post- Chametha Khal, Kotdwara, District Pauri Garh.

.... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Sena Bhawan, New Delhi-110011.
3. Commandant, Garhwal Rifles Regiment Centre, Lansdown, Pauri Garhwal.
4. Commanding Officer, Record Office, Garhwal Rifles, PIN-900400 C/o 56 APO

...Respondents

Ld. Counsel for the: **Shri Asheesh Agnihotri**, Advocate.
Respondents.

ORDER

“(Per Hon’ble Mr Justice SVS Rathore, Member (J))”

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

“(A) To quash the impugned discharge order dated 31.01.2015 passed by the respondents which is annexed as Annexure No.1, to this Original Application.

(B) To reinstate the petitioner with all consequential benefits.

(C) To pass an order or direction commanding the respondents to pay the arrear of the amount due along with the interest @ 18% per annum till actual realization of the aforesaid amount.

(D) To pass an order which this Hon’ble Tribunal deems fit and just under the facts and circumstances of the case, in favour of the applicant.

(E) Allow the Original application with exemplary cost.”

2. In brief the facts giving rise to the instant O.A. may be summarised as under:

The applicant was enrolled in the Indian Army as Sepoy on 05.10.2002 and was discharged on 31.01.2015 under Army Rule 13(3) III (iv) of Army Rules, 1954. The case of the applicant is that he was discharged from service fraudulently and in an illegal manner. The applicant had completed 12 years, 03 months and

26 days of service in the Army and his service career was unblemished. The case of the applicant as pleaded in the O.A. is that his signatures were taken on a blank paper and thereafter an application for his voluntary discharge was prepared fraudulently and on the basis of same the applicant was discharged from service.

3. In the counter affidavit it has been pleaded on behalf of the respondents that the applicant while serving with 14 Rashtriya Rifles (Garhwal Rifles), submitted an application for his voluntary discharge from service on compassionate ground, which was recommended by the Commanding Officer, 14 Rashtriya Rifles (Garhwal Rifles) on 28.11.2014 and his application was forwarded for discharge alongwith concerned documents to Records vide letter dated 28.11.2014. The copy of the application moved by the applicant for his voluntary discharge has also been filed by the respondents alongwith the counter affidavit.

4. Admittedly, after his discharge the applicant has not preferred any representation or statutory appeal to the competent authority challenging his discharge order but for the first time after his discharge a legal notice under Section 80 C.P.C. was given by the applicant. In reply to an application moved under the R.T.I Act by the wife of the applicant certain information was given, whereby it was informed that payment of Rs.1,61,711/- towards Army Group Insurance, Rs.3,42,168/- towards gratuity and Rs.91,120/- towards last salary payment has been made to the

applicant and he was not entitled for pension as he had not completed requisite pensionary period of service of 15 years. The date of giving legal notice has been withheld by the applicant in the O.A. and also in the list of dates.

5. During the course of arguments it has been admitted by the learned counsel that the said notice was forwarded by the Records, Garhwal Rifles vide letter issued in September, 2016, which is clear from Annexure No.3 of the O.A.. Thus, for the first time the applicant has challenged his discharge order after about one year.

6. The only argument on which the discharge order has been challenged is that the signature of the applicant was obtained on a blank paper, which was converted into application for his voluntary discharge while this fact has been denied on behalf of the respondents in the counter affidavit. There is no documentary or oral evidence in support of this submission of the applicant.

7. On behalf of the respondents it has been argued that the applicant had voluntarily signed application for his discharge and the story of signing blank paper is only an afterthought of the applicant. We find substance in this submission of the respondents because had this plea of the applicant been true, then he must have felt seriously prejudiced by the said order of discharge and he would have taken steps immediately by moving representation, preferring appeal or by approaching the Tribunal. But none of the said steps were taken for a long period of about

one year. This itself shows that at the time of discharge the applicant was fully satisfied with his discharge order. It transpires that the applicant had served in the Army only for 12 years, 03 months and 26 days at the time of his discharge and he had not completed the requisite pensionary period of 15 years of service to entitle him for pension. Therefore, the submission of the applicant that his signatures were obtained on blank papers has absolutely no substance. Law is settled on the point that if any person has alleged fraud he has to prove it, while in the instant case the applicant has utterly failed to substantiate his allegation. There is always presumption under the law that the official acts are performed in the prescribed way in accordance with law unless otherwise established. There is absolutely no documentary or oral evidence or circumstances in support of this claim of the applicant. On the contrary the delay in approaching the Tribunal against the said discharge order by itself substantiate that at that time the applicant was fully satisfied with his discharge order and, therefore, he has not taken any steps to challenge the same.

8. In view of what has been discussed above, we do not find any substance in this O.A. Accordingly the O.A. deserves to be dismissed and is hereby **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: January 11, 2019

JPT

(Justice SVS Rathore)
Member (J)

