

RESERVED
Court No. 1

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

Original Application No. 178 of 2016

Thursday, this the 31st day of January, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Kushal Yadav S/o Subedar Major Ram Bilash R/o Village –
Mdanapur, Post Office – Umaran, Police Station – Thathiya,
District Kajjoj, Uttar Pradesh posted as Washerman Army No.
18005800X.

.... Applicant

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

Versus

1. Union of India through its Secretary, Ministry of Defence,
Government of India at New Delhi.
2. The Chief of the Army Staff, Head Quarters, South Block,
New Delhi-110011.
3. Commandant Bengal Engineer Group Centre, Roorkee,
Uttarakhand.

... Respondents

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

ORDER**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

- (i) *That this Hon’ble Tribunal may kindly be pleased to quash the order dated 19.04.2016 passed by the Opposite parties and further direction may also be given to the opposite parties to reinstate applicant in service with all the service benefits.*
- (ii) *That this Hon’ble Tribunal may kindly be directed to the respondent/opposite parties to verify the genuineness of the signature of the applicant on discharge request or any other document after summoning the same from opposite parties and to set aside the same.*
- (iii) *That this Hon’ble Tribunal may kindly be directed to the respondent/opposite parties to treat the applicant continuous in duty and the concern authorities be directed to pay the salary from the date of alleged discharge till the date of joining the duty by the applicant.*
- (iv) *That this Hon’ble Tribunal may kindly be pleased to pass any other orders or directions which is deemed, just and proper in the circumstances of justice.*
- (v) *That this Hon’ble Tribunal may kindly be directed to direct opposite parties that the applicant may kindly be allowed to join the duty as washerman in his unit at the same situation or any other appropriate place, as may be directed by the opposite parties within the time fixed by the Hon’ble Tribunal.*

(vi) That this Hon'ble Tribunal may kindly be directed to direct the opposite parties to call up upon the record and send the signature or allowed as this forged document of resignation to the C.F.S.L. and obtain this report in the interest of justice.

2. In brief the facts necessary for the purpose of the instant Original Application are that the applicant was recruited in the Indian Army on 03.08.2010. Only few days, thereafter during the training, because of the illness of his mother the applicant was sanctioned two days leave from 11.08.2010 to 12.08.2010. The applicant joined on 14.08.2010 after expiry of sanctioned leave, he was late by two days. Subsequently, on 21.08.2010 the applicant was discharged from Army. Feeling aggrieved by the aforesaid order the applicant preferred statutory petition dated 11.11.2010 which was not disposed of by the respondents. Thereafter, the applicant preferred O.A. with Misc. Application No. 1780 of 2015 on 21.09.2015 and the Misc. Application was disposed off, vide this Tribunal's order dated 09.03.2016, with the direction to the respondents to dispose of the pending representation of the applicant by a reasoned and speaking order with due communication to the applicant and the applicant was also given an opportunity to move a fresh representation. Applicant also sent fresh representation along with copy of order of this Tribunal on 01.04.2016. In view of the aforementioned order of this Tribunal the respondents vide order dated 19.04.2016 have disposed of the representation of the applicant and rejected the same.

3. The case of the respondents as emerged from the said order is that during his training the applicant gave an application on 19.08.2010 requesting for his voluntary discharge from Army on the grounds of prolonged sickness of his mother. The said order has been challenged by the applicant in the instant Original Application. The case of the respondents is that the applicant during his training period has himself given a written application wherein he has made a request for his voluntary discharge because of illness of his mother and he was discharged from Army and therefore, the respondents have not committed any irregularity or illegality as alleged by the applicant.

4. The Ld. Counsel for the applicant has vehemently argued that during the pendency of this case vide order dated 17.10.2016 this Tribunal directed the respondents to conduct an inquiry. We consider it appropriate to reproduce the said order which is on the order-sheet dated 17.10.2016 and reads as under :-

“Present : Shri Satendra Kumar Singh learned counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell.

Shri Kushal Yadav, Applicant is present in court. The precise case is that the Applicant had not made any application for premature discharge from service and the Application and signatures made thereon which has been acted upon leading to his premature discharge are all fake and forged.

The statement made across the Bar by the Applicant is to the effect that one JCO of the One Training Battalion of B.E.G. Centre had made a demand

of illegal gratification to the tune of Rs.50,000/- after almost 20 days of his enrolment in the Army and on his refusal to grease his palm, the order of voluntary discharge was prepared behind his back acting upon the Application which he had never made nor signed and consequently he was discharged from Army service.

We have tallied the signatures made on the Application with the signatures made by him on the O.A. The two signatures are quite distinct and do not tally.

Let the entire original record be produced before us for perusal on the next date of listing.

Looking to the nature of the case, we are of the view that the matter be referred to the Chief of the Army Staff to look into the matter and institute inquiry vis a vis the allegations of the Applicant treating the present order as statutory complaint on behalf of the Applicant. It is desirable that the inquiry may be ordered to be taken to finality by the next date of listing of the present case.

In the facts and circumstances of the case, it is directed that the Applicant shall also file an affidavit by the next date of listing making averments vis a vis the statement made before us today in Court.

Besides the original record shall be produced before us for perusal, it is also directed that some responsible officer from Recruitment Centre shall be sent along with original record of the Applicant for being produced before us for perusal.” (underlined by us)

5. Ld. Counsel for the applicant has argued that the discharge of the applicant was ordered without following the prescribed procedure and no opportunity of hearing was provided to the applicant and apart from it voluntary discharge application dated

19.08.2010 is a fabricated and forged document, which in view of the observation of the Tribunal is, prima facie, fabricated document because the signature of the applicant on the said application does not tally with his signatures present in the instant Original Application. Apart from it, it has also been argued that the copy of the said order of discharge was given to Sub. Sukhbir Singh of No. 1 Training Battalion and not to the applicant and the respondents have not furnished any explanation for it. Ld. Counsel for the applicant placed reliance on the following two case laws which shall be considered at the relevant place of the Judgment :-

1. Veerendra Kumar Dubey Versus Chief of Army Staff and Others, Civil Appeal No. 32135 of 2015, decided by the Hon'ble Supreme Court on 16.11.2015.
 2. Rect. Rakesh Kumar Versus Union of India and Others, T.A. No. 131 of 2009, decided by Armed Forces Tribunal, Regional Bench, Lucknow on 22.04.2016.
6. Ld. Counsel for the respondents has argued that the allegation made by the applicant with regard to demand of Rs.50,000/- from the applicant is absolutely false. There was no such allegation in any representation sent by the applicant that any person has demanded money from the applicant. Apart from it there is no such averment in this Original Application that any one has demanded money from the applicant. It has also been argued that the signature of the applicant on the application for voluntary discharge are absolutely identical with his signature on the earlier

Misc. Application filed by him. The applicant has admitted to his signatures on the Misc. Application No.1780 of 2015. Deliberately to mislead the Tribunal the applicant has signed the instant Original Application in a different manner and has now raised plea orally for the first time that one JCO has demanded Rs.50,000/- from the applicant. On the basis of such oral submission an interim order to hold an inquiry was passed. In pursuance thereof an inquiry was conducted by the competent authority and in the said inquiry the allegations made orally by the applicant were found to be false. At this juncture it is appropriate to reproduce the findings of the said inquiry as under :-

“FINDINGS OF THE COURT

1. *No JC-329004X Sub Sukhbir Singh performing the duties of Coy sub “Tirah Coy” of No 1 Trg Bn, BEG & Centre Roorkee wef 04 Oct 2009 (As per witness No1).*
2. *No JC-329509N sub Maj/Hony Lt Jai Vallabh Singh performing the duties of Bn SM of No 1 Trg Bn wef Aug 2015 (as per witness No2).*
3. *No 1491323X Hav Govind Singh Khati performing the duties of Coy CHM Tirah Coy wef 20 Apr 2017 (as per witness No 3).*
4. *No 18005800X Rect Kushal Yadav of T-17/2010 was enrolled in Army on 02 Aug 2010 and was allotted T-17/2010 PI for Army Basic Training. He had submitted his personal application to CO, No 1 Trg Bn for requesting voluntary discharge from service and the same was sanctioned by the CO. The indl was thereafter discharged from service on 20 Aug 2010.*
5. *The Rect was discharged from service after the then CO had approved his application for voluntary discharge*

from service and the indl was discharged on 20 Aug 2010 from service as per Exhibit 'B'."

7. During the course of arguments when we asked the Ld. Counsel for the applicant as to what compelled the applicant to put different signatures in the subsequent Original Application, then he avoided to reply the said query. However, he admitted that the earlier Original Application (Misc. Application No.1780 of 2015) was filed by the applicant. In this perspective the signatures of the applicant has to be looked. Ld. Counsel for the applicant has relied upon the law laid down by the Hon'ble Apex Court in the case is **Veerendra Kumar Dubey Versus Chief of Army Staff and Others** (Supra). The said case has no bearing in this case because in the said case there were four red ink entries and without following the procedure provided in the policy for discharge in such eventually and without conducting a preliminary inquiry the order of discharge was passed and the said order was held to be unsustainable. In that case petitioner was duly attested soldier who had served for twelve years. While in the instant case the applicant was only a Recruit having seventeen days of service. So the said Judgment of the Hon'ble Apex Court does not render any help to the applicant. The next order on which the applicant was relied upon is an order of Coordinate Bench of this Tribunal in the case of **Rect. Rakesh Kumar Versus UOI and Others** (Supra). In the said case though the petitioner was a Recruit and was not attested and after discussing various aspects the Tribunal in para 19 held as under :-

“19. Be that as it may, since the respondents have not come forward with clean hands while filing affidavit, the impugned order does not contain reasons or precise grounds of cancelling the petitioner’s recruitment or termination passed on some irregularity, the order seems to have retrospective tenor, the T.A. aforesaid deserves to be allowed and the impugned order deserves to be set aside with all consequent benefits.”

8. This order is dated 22.04.2016. On this issue the Hon’ble Apex Court in the case of **Union of India and Others Versus Manoj Deswal and Others**, reported in (2016) 15 Supreme Court Cases 511, in Para 15 has held as under :-

“15. It is an admitted fact that Respondent 1 had not been attested. Certain formalities are required to be done for being attested as per the provisions of Section 17 of the Act and admittedly the said formalities had not been done. The status of Respondent 1 was just like a probationer, whose service could be terminated without holding any enquiry. In spite of the fact that service of Respondent 1 could have been terminated without holding any enquiry, an enquiry had been held on 29-7-2005 and it was found that Respondent 1 had remained absent for 108 days without any sanctioned leave. The said act is an act of gross indiscipline. Absence of Respondent 1, being a finding of fact, we would not like to interfere with the same especially when after holding the said enquiry Respondent 1 had also been declared deserter.”

9. Thus the said Order on which the Ld. Counsel for the applicant has placed reliance was pronounced without considering the Judgment of the Hon'ble Apex Court in the case of **Union of India and Others Versus Manoj Deswal and Others** (Supra). Since on this point the Hon'ble Apex Court has given a different view which is contrary to the view taken by the Coordinate Bench of this Tribunal, therefore, the view expressed by the Hon'ble Apex Court is binding on this Tribunal and applicant is not entitled to the benefit of the case law of co-ordinate Bench of this Tribunal.

10. Now the sole question to be considered is whether the application for voluntary discharge on the basis of which the applicant was discharged was a fabricated/forged document? It is pertinent to mention here that the applicant had preferred statutory complaint dated 11.11.2010, which under the order of this Tribunal was disposed of by the respondents by a reasoned and speaking order. Even in that statutory complaint there was absolutely no allegation of the applicant that any one has demanded Rs.50,000/- from him. Such allegation does not even find place in the instant Original Application which was filed in the year 2016. It was only during the course of hearing on one date the Ld. Counsel for the applicant, on the instructions of the applicant, had alleged that one JCO of Training Battalion had made a demand to the tune of Rs.50,000/- after about twenty days of enrolment in the Army and on his refusal to pay the same this order of discharge was passed on the basis of an application which was never signed by the applicant. It transpires that

keeping in view the seriousness of the allegation this Tribunal tallied the signature of applicant on this application for voluntary discharge with the signature made by him in the instant Original Application. Admittedly, the two signatures were different and without the comparison of signatures made in the earlier Original Application (Misc. Application No. 1780 of 2015) the order of inquiry was passed. When we go through the record of the earlier Original Application (Misc. Application No.1780 of 2015), record of which under our order, was produced before us along with this Original Application at the time of hearing, we find that the signatures on the Original Application (Misc. Application No. 1780 of 2015) were absolutely identical with the signatures that has been put in by the applicant on his application for voluntary discharge. Copy of the said application for voluntary discharge is on record and a bare perusal of the same gives rise to the only conclusion that the signature made by the applicant on his application for voluntary discharge is absolutely identical with his signature made by the applicant on each and every page of earlier Original Application (Misc. Application No. 1780 of 2015). As we have stated earlier that the Ld. Counsel for the applicant has utterly failed to explain as to what compelled the applicant to file this Original Application with changed signatures. Even after the order of this Tribunal an inquiry was held and the allegation was not substantiated. Perusal of statements recorded during such inquiry makes it clear that the witnesses have stated that the applicant had an interview with the CO. So if there had been any

such demand then he could have brought the same to the notice of the CO. Law is settled on the point that official acts are presumed to have been done in a correct and prescribed manner and a person who challenges the same or alleges any malafide or illegality in the same, has to prove it. When an official act is conducted, then the general presumption is that it has been conducted in accordance with the rules and procedure, provided for the purpose. Reference in this regard may be made the following case:-

- (i) Updesh Kumar Versus Prithvi Singh (2001) 2 Supreme Court Cases 524.

11. Apart from it in the case of **Venkataramana Udupa Versus Kannan Chettiar**, reported in AIR 1963 Ker 9, Hon'ble Kerala High Court made following observation :-

“The presumption under Illustration (e) to Section 114, Evidence Act, is that judicial acts have been regularly performed. “Regularly performed” can only mean performed in accordance with form and procedure. It can-not imply that the officer or the Judge had authority to perform an act which is not ordinarily within the competence. This is made clear by the legislature itself in the rider attached to the aforesaid illustration (e).

“But the Court shall have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:

as to Illustration (e) – a judicial act, the regularity of which is in question, was performed under exception circumstances;

The adversative conjunction ‘but’ indicates that the rider is set in contrast or as an exception to what is mentioned in the Illustration (e).”

12. It is quite surprising that in the instant O.A. there is no allegation of demand of money nor in the earlier Original Application (Misc. Application No. 1780 of 2015). There was no such allegation of any demand of money in the statutory complaint and it was only a oral submission made by the Ld. Counsel for the applicant that too was very vague that one JCO had demanded Rs.50,000/- from the applicant and such an allegation in the inquiry could not be substantiated. Even the name of such JCO was not disclosed by the applicant. Therefore, we do not find any substance in this allegation. It is really surprising that the applicant has not mentioned the name of JCO who had demanded the money from him. Therefore, this ground is only an afterthought which has absolutely no substance. The intentional change in the signatures by the applicant made by him in the earlier Original Application (Misc. Application No.1780 of 2015) and in the present Original Application shows that the applicant has not come before this Tribunal with clean hands and has made absolutely false allegations. Apart from it, since there is no evidence in support of such allegation, therefore, it has to be presumed that the official act has been done in a prescribed and legal manner. Apart from it, the allegation of fabricating the application for voluntary discharge of the applicant has also no substance because in view of the pronouncement of Hon’ble Apex Court in the case of **Union of**

India and Others Versus Manoj Deswal and Others (Supra) the applicant who was not attested and was only a recruit hence before attestation the respondents had ample power to discharge him if he was not likely to become an efficient soldier without holding an inquiry. We do not find any substance in the submission made by the Ld. Counsel for the applicant that the said application was a fabricated document. It transpires that the applicant could not bear the stress and strain of military training so he prayed for voluntary discharge and on his own application for voluntary discharge he was discharged. When the applicant realized his mistake then he is making false allegations against the respondents. The Army is a highly disciplined force and such type of false allegation will demoralize the Army Officers and adversely affect the highest degree of discipline of Army.

13. In view of the discussion made above, we are satisfied that the applicant was discharged from service on the basis of his own written request for voluntary discharge, which was duly signed by him. Therefore, this Original Application has no force. Simply because the copy of discharge order was handed over to one Sukhbir Singh cannot be treated to be a valid ground to hold that the order of voluntary discharge was illegal or irregular.

14. Before parting we would like to observe that since the applicant by changing his signature in this Original Application has made allegation of serious nature against the respondents and this conduct of the applicant virtually amounts to abuse of the process of Courts, though such conduct of the applicant

persuades us to impose heavy cost on the applicant for filing a frivolous Original Application and making false allegations but since the applicant is out of service, hence we refrain ourselves from imposing the cost on the applicant.

15. With the above observation this Original Application is hereby **dismissed**.

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

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

Dated : January, 2019

AKD/-