

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

**Original Application No. 91 of 2018**

**Thursday, this the 25<sup>th</sup> day of March, 2021**

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

No. 15456428 Rect (HK) Maneesh Kumar S/O Hanoman Prasad,  
R/O Village-Manjhar, Tehsil-Hydergarh, District-Barabanki U.P.

..... Applicant

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

Versus

1. Union of India, Through Secretary of Defence, Ministry of Defence, 228-B Wing, Sena Bhawan, New Delhi-110011.
2. The Chief of Army staff, Integrated Headquarters of MoD (Army), Sena Bhawan, DHQ, PO-New Delhi-110011.
3. Commanding Officer, No 2 Military Training Battalion, AMC Centre & College, Pin-908770, C/O 56 APO.
4. Chief Records Officer, AMC Centre & College, Pin-908770, C/O 56 APO.

..... Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh, Advocate**  
Respondents Central Govt Counsel.

## ORDER

1. This 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) That the applicant has suffered mental agony against the grave injustice of illegal discharge. He was exposed to grave harassments caused by the superior military authorities in No 2 Military Training Battalion & Army Medical Corps, Records, Lucknow Cantt.
- (b) That in view of the grave injustice caused to the applicant, it is prayed that :-
  - (i) Keeping in view the serious injustice committed by respondents movement order No 951\*10/Tej Coy/2014 dated 25.06.2016 may be quashed. As a consequence applicant may be reinstated in services and granted arrears of all pay and allowances.
  - (ii) The Hon'ble Tribunal may pass any other order as it deems appropriate in this matter along with cost.

2. Brief facts of the case are that applicant was enrolled in the Army on 22.03.2016. He applied for leave which was granted and he reported back on 12.04.2016 to undergo basic military training. After expiry of basic military training, applicant submitted application dated 17.06.2016 to proceed on premature discharge on the grounds of looking after his domestic affairs after demise of his father. Applicant was discharged from service following due process w.e.f. 25.06.2016 in terms of Rule 13 (3) III (iv) of Army Rules, 1954. This O.A. has been filed to quash discharge order dated 25.06.2016 as applicant has stated that he was harassed by unit officers and he was made to sign on blank papers which was later

turned into an application for premature discharge from service.

3. Learned counsel for the applicant submitted that applicant has never applied for premature discharge but he was made to sign on blank papers when he requested for leave, after expiry of basic military training. It was also submitted that Commanding Officer of Training Battalion forcefully ordered him to write application for premature discharge against his wish. Learned counsel for the applicant has also alleged that the Commanding Officer has made up a story and stated that applicant had asked for voluntary discharge from service. His further submission is that the discharge document should have been supported with detailed speaking order and not a movement order which was handed over to applicant. Relying upon ***Centre for Public Interest Litigation & Anr vs Union of India & Others***, reported in 2005 (8) SCC 202, learned counsel for the applicant contended that the Commanding Officer had declared that applicant was discharged from service as per his own request, in terms of Army Rules, 1954, without even a mention that his discharge was done prior to fulfilling the conditions of his enrolment as held in Defence Service Regulations, para 134 (ii). Concluding his submissions, learned counsel for the applicant pleaded for setting aside discharged order dated 25.06.2016 with all consequential benefits.

4. On the other hand, learned counsel for the respondents submitted that applicant has himself asked for premature discharge from service and his discharge was sanctioned by following due procedure of law and no injustice or illegality was done while discharging him from service. His further submission is that immediately after commencement of basic military training, applicant made a request for leave which was granted. He

asserted that the Commanding Officer never singled out a recruit like the applicant to forcefully write an application for discharge from service; rather the Commanding Officer with his maturity understood the needs of a newly enrolled recruit and his mind set and adjustment problems with the tough military training and associated environment. Further submission of learned counsel for the respondents is that the allegation stating that the applicant was called on 16.06.2016 and asked to sign on a blank paper is baseless. On the contrary the applicant himself had written an application with his own handwriting and anything otherwise is a self concocted story. In his application for discharge, applicant had mentioned that he lost his father and there was no one to take care of his household but when it was cross checked from his mother this information proved to be false. Learned counsel for the respondents pleaded for dismissal of the O.A. on the ground that applicant had himself requested for premature discharge which was sanctioned by following due procedure.

5. We have perused the record and heard submissions of both the parties.

6. The applicant was enrolled in the Army on 22.03.2016 and 08 days after start of training, he was granted leave on compassionate grounds to look after his family. He was imparted basic military training and on its termination in the month of June, 2016, he applied for premature discharge from service as per application dated 17.06.2016, which for convenience sake is reproduced as under:-

"प्रेषक -

सैन्य स. 15456428 Y  
रैंक - रेक्यूट/यच के  
नाम - मनीष कुमार  
यूनिट - न. 2 मिलिट्री ट्रेनिंग बटालियन  
ए एम सी सेंटर एंड कॉलेज, लखनऊ

सेवा में -

श्रीमान कमान अधिकारी महोदय  
न. 2 मिलिट्री ट्रेनिंग बटालियन  
ए एम सी सेंटर एंड कॉलेज, लखनऊ  
(द्वारा निर्धारित प्रणाली)

विषय - मैं नौकरी छोड़ने की अनुमति चाहता हूँ ।

महोदय, सविनय निवेदन यह है कि मैं सैन्य स. 15456428  
Y, रैंक रेक्यूट/यच के मनीष कुमार तेज कंपनी सेक्सन 5 का हूँ ।  
मेरा यहाँ पर बिलकुल मन नहीं लगता है । मैं काफी परेशान रहता  
हूँ, मेरे पापा जब मैं आर आर में था तभी खत्म हो गए थे । मेरे  
घर की देख भाल करने वाला कोई नहीं है, इसलिए मैं नौकरी छोड़ने  
की अनुमति चाहता हूँ

अतः श्रीमान से निवेदन है कि मुझे घर जाने की अनुमति दें ।  
आपकी महान कृपा होगी ।

sd/- x x x x x x x

कंपनी कमाण्डर की टिप्पणी

*Recommended and forwarded as the individual is insisting on  
discharge despite constant persuasion to continue in service.*

sd/- x x x x x  
17.06.2016

कमान अधिकारी महोदय की टिप्पणी

Recommended.

sd/- x x x x x x x"  
17.06.2016

7. The allied contention of learned counsel for the applicant is that applicant ought to have been discharged by following due procedure as held in para 166 of Defence Service Regulations, Rule 11 and 13 of Army Rules, 1954. For convenience we reproduce the aforesaid Rules as under:-

**“Para 166- Dismissal or discharge procedure-**

(a) *Recommendations for dismissal under Army Rule 17 or discharge under Army Rule 13 of any person subject to the Army Act will be made on IAFY 1948A on which the authority authorizing dismissal or discharge will endorse the necessary order to which the OC unit of the person concerned will give effect.*

(b) *Recommendation for the compulsory discharge of a JCO under Army Rule 13 will be submitted on IAFY 1948A to the authority competent to sanction the discharge through the authorized channels. Recommendation for dismissal of a JCO under Army Rule 17 will be submitted on IAFY 1948A to the Chief of the Army Staff through the authorized channels. It will be accompanied by the confidential dossier of the JCO containing his annual confidential reports (IAFI 1153) and a full report of the grounds on which the recommendation is based and a report from CDA (P) regarding the pension or gratuity admissible. Successive forwarding officers will add a definite recommendation and any observation likely to assist in a final decision being reached.*

(c) *A JCO or OR sentenced to death by court-martial or civil court will not be discharged or dismissed, but will be struck off the strength of his unit or corps on the date on which the sentence is carried out.*

(d) *Discharge will be carried out with all convenient speed in accordance with the terms of Army Rule 11 and 13.*

**Army Rule 13.** *Authorities empowered to authorize discharge - (1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge from service person subject to the Act specified*

*in column 1 thereof on the grounds specified in column 2.*

*(2) Any power conferred by this rule on any of the aforesaid authorities shall also be exercisable by any other authority Superior to it.*

*(2A) Where the Central Government or the Chief of the Army Staff decides; that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfillment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision,*

*(3) In this table "commanding officer" means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the "commanding officer" means the Director of the Medical Services, Army, and in the case of junior commission-ed officer and warrant officers of Remounts, Veterinary and Farms Corps, the "Commanding officer" means the Director Remounts, Veterinary and Farms".*

**11. Discharge not to be delayed.** *-(1) Every person enrolled under the Act shall, as soon as he becomes entitled under the conditions of his enrolment to be discharged, be so discharged with all convenient speed: Provided that no person shall be entitled to such discharge; if the Central Government has, by notification suspended the said entitlement to discharge for the whole or a part of the regular Army.*

*(2) The discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or subject to such, conditions as such discharged person accepts,*

## NOTES

1. See notes 2 and 3 to AA.s.22. For the prescribed authorities competent to authorize discharge see AR 13 and table annexed thereto.

2. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorized by the competent authority and completed with all convenient speed by the proper authorities. See ARs 13 and 18. Until, the person's discharge is completed, he remains subject to AA but any undue delay in carrying out the discharge would give him good ground for complaint.

8. In our view, applicant in clearly wished to be discharged from service, that too during basic training and therefore, the applicant was rightly assessed to be unlikely to become an efficient soldier. In the circumstances, the respondents had no alternative left except to pass order for discharge of applicant as undesirable and unlikely to become efficient soldier. The discharge was sanctioned by Lt Gen MD Venkatesh, Commandant, AMC Centre & College on 21.06.2016. Also, the Applicant being an unattested recruit has the status of a probationer whose services could be terminated without holding an inquiry as held by the Hon'ble Supreme Court in catena of judgments.

9. The case of the respondents as emerged from the said order is that during his training the applicant gave an application on 17.06.2016 requesting for his voluntary discharge from Army on the grounds of his father's death. Thereafter, after discharge from service vide order dated 25.06.2016, the said order has been challenged by 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 his father's death and he was discharged from Army and therefore, the respondents have not committed any irregularity or illegality as alleged by the applicant. We have tallied the signatures made on the Application with the signatures made by him on the O.A. The two signatures are quite identical. Learned counsel for the applicant has further argued that the discharge of 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 17.06.2016 is a fabricated and forged document, which in view of this Tribunal is not correct, as the applicants

signatures are the same in various documents.

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 as alleged by applicant? It is pertinent to mention here that the applicant had also submitted an application dated 15.12.2016 to Commanding Officer and we find that the signatures on the Original Application are absolutely identical to the signatures of the applicant on his application for voluntary discharge and on the letter dated 15.12.2016. 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 Original Application and other applications to his Commanding Officer. 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. 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. Moreover, in view of the pronouncement of Hon'ble Apex Court in the case of ***Union of India and Others vs Manoj Deswal and Others***, Civil Appeal No 5015 of 2008 decided on 28.10.2015, the applicant was not attested and was only a recruit, hence before attestation the respondents had ample power to

discharge him without holding an inquiry if it was assessed that he was not likely to become an efficient soldier. 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 and therefore, he prayed for voluntary discharge and accordingly, he was discharged. When the applicant realized his mistake then he resorted to making false allegations against the respondents. The Army is a highly disciplined force and false and frivolous allegations will demoralize the Army Officers and adversely affect the high standard of discipline in the Army.

11. In conspectus, 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.

12. The O.A. has no merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

Dated : 25<sup>th</sup> March, 2021  
rathore

(Justice Umesh Chandra Srivastava)  
Member (J)