

RESERVED
Court No 2
 (Supp No. 1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 105 of 2022

Friday, this the 24th day of March, 2023

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”

EX Rect No. 1320 VIKAS KUMAR son of Shri Jogendra Prasad, resident of Vill-Louka-Sitarganj, PO-Sitarganj, Distt-Udham Singh Nagar, (Uttarakhand)-262404.

.....Applicant

Ld. Counsel for the: **Shri Virat Anand Singh** and
 Applicant **Shri Anugrah Narayan**, Advocates

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Commandant, Kumaon Regimental Centre, C/o 56 APO.
4. Training Officer, The Kumaon Regimental Centre, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Kaushik Chatterjee**, Advocate
 Respondents. Central Govt Counsel

ORDER

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby he has sought following reliefs:-

(i) To quash or set aside the, DISCHARGE ORDER (not served) being ill-legal.

(ii) To pass a suitable direction to respondents to re-instate applicant back to Military Training at par with his batch mates in terms of service seniority.

(iii) To further direct respondents to follow procedure of relegation or re-mustering, as applicable, to ensure applicant a last opportunity.

(iv) To direct respondents to provide full medical facility to applicant to enable him overcome his disability, if any.

(v) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(vi) Allow this appeal with exemplary cost of Five lakh Rupees for harassment, and suffering of an innocent combatant.

2. The factual matrix on record is that the applicant was enrolled in the Army on 19.09.2019 in Kumaon Regiment. During basic military training, on 24.09.2019 feeling uneasiness, he reported to Medical Inspection Room (MI Room) from where he was referred to Military Hospital, Bareilly on 27.09.2019 for further treatment, however, on investigation no serious ailment was diagnosed. He was granted recruit leave at his own request. Thereafter, on termination of leave, he alongwith his brother reported to the Regimental Centre and submitted personal application dated 24.10.2019 requesting for discharge from service at his own request on extreme compassionate ground. Accordingly, his application was sanctioned and he was discharged from

service w.e.f. 25.10.2019 (AN) on compassionate grounds under Rule 13 (3) (iv) of Army Rules, 1954. Prior to discharge from service applicant signed (i) No claim certificate from Army on release on own request, (ii) No claim certificate of AGI, (iii) Discharge Roll, (iv) No demand certificate, (v) Option certificate (new system), (vi) Local discharge certificate and (vii) Undertaking certificate. Applicant has filed this O.A. for re-instatement into service on the ground that no Show Cause Notice was served to him prior to discharging him from service and also being not medically fit he was not provided any opportunity of relegation to other course.

3. Submission of learned counsel for the applicant is that applicant being fascinated towards Army service from childhood joined NCC during school days and obtained 'C' certificate. It was further submitted that due to his hard work he was selected to be recruited in Kumaon Regiment w.e.f. 14.09.2019 and sent for training w.e.f. 19.09.2019 at the training centre where during the course of his training he felt uneasiness and reported sick on 20.09.2019. It was further submitted that he was referred to Military Hospital, Bareilly on 27.09.2019 for treatment under medical specialist where on investigation only general weakness was found.

4. Learned counsel for the applicant further submitted that after treatment the applicant was sent twice on recruit leave for the period from 06.10.2019 to 07.10.2019 and again from 17.10.2019 to 23.10.2019. It was further submitted that on reporting from leave applicant was asked to sign certain documents by his Company Officer and immediately on signing these documents he was discharged from

service without assigning any reason. It was also stated that on 11.09.2021 a letter was received by the applicant reflecting therein that a sum of Rs 4341/- was required to be deposited against recovery of training charges which shocked him and compelled to file this O.A. Learned counsel for the applicant has made reliance on order dated 27.06.2017 passed by this Tribunal in O.A. No. 264 of 2013 in the case of ***Rect Narender Singh vs Union of India & Ors.***

5. On the other hand, submission of learned counsel for the respondents is that applicant was recruited in the Kumaon Regiment on 19.09.2019 and immediately after start of training he reported sick on account of uneasiness. It was further submitted that after providing basic treatment at MI Room he was referred to Military Hospital, Bareilly from where he was granted recruit leave twice. It was further submitted that on reporting from recruit leave alongwith his brother, he submitted an application dated 24.10.2019 requesting for discharge from service at his own request on extreme compassionate grounds, which was processed and sanctioned by competent authority. Accordingly, he was discharged from service under Rule 13 (3) (iv) of Army Rules, 1954.

6. Learned counsel for the respondents further submitted that prior to discharge from service applicant signed various certificates such as no claim certificate and no demand certificate from Army etc. It was further submitted that since the applicant was discharged from service at his own request, there is no provision for his re-instatement into service. He pleaded for dismissal of O.A.

7. Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Kaushik Chatterjee, learned counsel for the respondents and perused the record.

8. The undisputed fact of the parties are that the applicant was recruited in Kumaon Regiment of the Indian Army on 19.09.2019. Within a period of one week, during the course of his basic military training, he felt uneasiness and reported to MI Room from where he was referred to Military Hospital, Bareilly on 27.09.2019. However, on investigation no serious ailment was diagnosed. He was twice sent on sick leave. Thereafter, on expiry of recruit leave the applicant with his brother reported to the Kumaon Regimental Centre and submitted a personal application on 24.10.2019 requesting for discharge from service at his own request on extreme compassionate ground which was sanctioned and he was discharged from service under Rule 13 (3) (iv) of Army Rules, 1954.

9. The facts on record clearly envisages that prior to discharge from service the applicant also signed various certificates such as no claim certificate from Army on release on own request, no claim certificate of AGI, Discharge Roll, no demand certificate, option certificate, local discharge certificate and undertaking certificate. In the circumstances when the applicant has himself gave discharge application form duly witnessed by two Army personnel and his real brother Pradeep Kumar who is also serving in the Army as Ambulance Assistant, there seems to be no weightage on the points raised by the applicant that he signed application for discharge unknowingly and under coercion. For

convenience sake, extract of personal application dated 24.10.2019 submitted by the applicant is reproduced as under:-

“सेवा में
कमांडर अधिकारी
ट्रेनिंग बटालियन
कुमाऊँ रेगिमेंटल सेंटर रानीखेत

विषय: स्वेच्छा से सेवानिवृत्ति हेतु

महोदय,

मैं न्यू रिक्रूट विकास कुमार कोहिमा कंपनी 19 प्लाटून 10/19 बैच का पिछले दिनांक 21.09.2019 से सेवार्थ हूँ, मेरे घर में समस्या होने के कारण मैं नौकरी करने में असमर्थ हूँ, और मैं अपनी सोच समझ से नौकरी छोड़ना चाहता हूँ।

महोदय मैं भविष्य में सेना के प्रति किसी भी प्रकार की आपत्ति नहीं करूंगा, मैं किसी के दबाव से नहीं जा रहा हूँ, मैं स्वयं अपनी इच्छा से नौकरी छोड़ रहा हूँ, मैं आने वाले भविष्य में सेना के प्रति किसी भी प्रकार का कोई केश नहीं करूंगा।

अतः महोदय से निवेदन है कि मुझे शीघ्रती शीघ्र घर भेजने का कष्ट करें।
मैं और मेरा परिवार आजीवन आपका आभारी रहेंगे।

हस्ताक्षर गवाह :-

- (a) सीनियर जे सी ओ sd/- x x x
(b) सी एच एम sd/- x x x
(c) भाई -प्रदीप कुमार कंपनी

हस्ताक्षर -Vikas Kumar

नाम - विकास कुमार

रैंक - रिक्रूट

प्लाटून - 19

- कोहिमा कंपनी

बैच - 10/19”

10. Perusal of aforesaid application makes it clear that applicant has given application for discharge on account of his domestic problems without any intimidation from the respondents. We find that the respondents have not erred in discharging him from service and contention of the respondents that a discharged Army person under own request cannot be re-instated into service seems to be tenable.

11. Placing reliance on order dated 27.06.2017 (supra) learned counsel for the applicant submitted that applicant deserves to be re-instated into service. We have perused the aforesaid order and we find that facts of that case are totally different to the case in hand. In that case applicant was re-instated into service on the ground that he failed in three

attempts and was not given chance to muster in other trade as per Army Order 4/2008.

12. In view of the above, the O.A. deserves to be dismissed. It is accordingly **dismissed**, as such.

13. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated :24.03.2023

rathore

(Justice Anil Kumar)
Member (J)