

RESERVED
Court No.1

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

Original Application No. 01 of 2016

Wednesday, this the 28th day of November 2018

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

No. 7784010A Rect Shyam Sunder Mishra Son of Ram Surat Mishra, Resident of Village-Pure Badlu Mishra Purab Gaon, Post Office-Nareni, Tehsil-Amethi, District-Sultanpur (UP).

..... Applicant

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

Versus

1. Chief of Army Staff, DHQ, PO-New Delhi-110011.
2. Commandant cum Chief Records Officer, CMP Centre and Records, Bangalore.
3. Union of India, through Secretary, Ministry of Defence, DHQ, PO-New Delhi.

..... Respondents

Ld. Counsel for the :**Shri D.K. Pandey**
Respondents Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. This Original Application was filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *Quash the premature discharge order bearing CMP Centre and School order No. Nil dated 13 Jun 2009 (showing date of SOS as 13 Jun 2009 without stating with effect from FN or AN), discharge was executed in the FORENOON of 13 Jun 2009 (Annexure A-1 refers), with all the consequential benefits to the applicant.*
- (b) *Quash Officer in Charge CMP Records, Bangalore letter No 7784010A/SSM/R-1/NE(CC) dated 14 Sept 2015 with all the consequential benefits to the applicant.*
- (c) *To issue any other order or direction considered expedient and in the interest of justice and equity.*
- (d) *Award cost of the petition.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 04.06.2008 in Corps of Military Police (CMP). While undergoing basic military training at CMP Centre and School on 08.09.2008, he was found missing. A Court of Inquiry was conducted and the applicant was declared deserter w.e.f. 08.09.2008. On 23.04.2009 after absence of 228 days the applicant rejoined duty voluntarily. Thereafter on 26.05.2009 the applicant was tried under Section 39 (a) of the Army Act, 1950 and awarded seven days’ Rigorous Imprisonment in

military custody. The applicant is purported to have submitted an application dated 09.06.2009 to Officer Commanding, Basic Military Training Wing for discharge on extreme compassionate grounds and accordingly he was discharged from service w.e.f. 12.06.2009 (AN) under Rule 13 (3) III (iv) of Army Rules, 1954.

3. Ld. Counsel for the applicant submitted that while undergoing basic military training, the applicant's mother fell seriously ill. The applicant reported the matter to his superiors and proceeded on one month's leave. During leave the applicant himself fell sick which resulted into his overstaying of leave. It is contended that on recovery, the applicant reported for duty after a gap of 228 days and on resuming duty on 23.04.2009 he was tried under section 39 (a) of the Army Act, 1950 and awarded 07 days' rigorous imprisonment in military custody and thereafter on the basis of forged application for premature discharge the applicant was discharged from service under Rule 13 (3) III (iv) of the Army Rules, 1954. Feeling aggrieved with the impugned order of discharge, the applicant preferred an appeal dated 30.04.2011 under RTI Act, 2005 which was suitably replied vide order dated 17.07.2010. Dissatisfied with reply of the respondents, the applicant preferred statutory complaint dated 31.03.2011. While the statutory

complaint was pending, the applicant filed O.A. No 328 of 2011 in this Tribunal. The said O.A. was disposed of vide order dated 23.11.2011 with the directions to the respondents to decide statutory complaint of the applicant within a period of three months. On the directions of the Tribunal, the respondents issued speaking order dated 14.05.2012. Ld. Counsel for the applicant further submitted that the applicant was discharged from service on the forged application under Rule 13 (3) III (iv) which stipulates discharge on own request and contended that the applicant had never submitted the alleged premature application for discharge. In this connection he further submitted that the opinion of Shri Radha Krishan Gupta, a private hand writing and finger print expert, has opined that the applicant had not written the alleged premature application for discharge. He pleaded that the applicant be re-instated into service.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant while undergoing basic military training was found missing on 08.09.2008. He vehemently refuted that any leave was granted to the applicant. A C of I was convened which declared the applicant to be deserter w.e.f. 08.09.2008. The applicant voluntarily rejoined duty on 23.04.2009 after absence of 228 days. Thereafter he was tried under section 39 (a) of

the Army Act and awarded 07 days' RI in military custody. He submitted that as per policy in training centres, a recruit who is absent for more than 30 days can be discharged. Hence there was no requirement and motivation for Army authorities at training centre to force a premature discharge for the applicant. He claimed that the applicant has been discharged because he applied for premature discharge. He further explained that many trainees opt for premature discharge in the face of certain discharge from service on discipline grounds and the organization obliges them because such exit improves their re-employment opportunities in the outside world. He further submitted that the official organization for hand writing verification CFSL could not reach a firm conclusion in the absence of appropriate samples for comparison hence it is not clear as to what samples have been used by the private hand writing expert to reach at his conclusions and hence no weightage should be given to his opinion. He concluded by stating that the Ld. Counsel for the applicant has at no stage contested that the applicant was not absent for 228 days. Thus as per existing rules it is clear that there was no way that the recruit could have continued in training and was bound to be discharged on disciplinary grounds. Hence in this situation the applicant has a vested interest in claiming

the bogey of fake/forged premature discharge application and hence his O.A. should be dismissed.

5. We have heard the Ld. Counsel for the parties and perused the material placed on record. In this case we find following significant facts which are beyond dispute i.e.:-

(a) That the applicant as a recruit was a deserter and joined back for training after 228 days of absence.

(b) That guidelines for conduct of training for recruits i.e. para 4 of Directorate General of Military Training, Integrated Headquarters of Ministry of defence letter dated 28.02.1986, reads as follows:-

"4. A recruit who has been absent without leave for a period of 30 consecutive days during basic mil trg period, will not be allowed to rejoin his trg again. Such rectx will be discharged after necessary discp action. The absentees for less than 30 consecutive days may be considered for relegation, if otherwise, found suitable for retention. However, once the tech trg of a recruit has commenced, the discretion to discharge the recruit for such absence will be left to the Comdt of the Centre, who may retain or discharge him considering the case on its merit."

(c) Thus it is clear that there was no way the recruit could have continued in training as a recruit after the desertion episode of 228 days.

(d) We, therefore, find some weightage in the submissions of Ld. Counsel for the respondents that the applicant had every motivation to avoid a discharge on discipline grounds and therefore the fact that he could have applied for pre-mature discharge cannot be ruled out.

(e) We also do not find any substance in the submission of Ld. Counsel for the applicant that since the applicant had received the minor punishment of 07 days RI in military custody from his Commanding Officer, therefore he could not have been discharged on grounds of 228 days desertion as a recruit.

(f) We have also noted that the complete issue of the applicant's hand writing analysis by a hand writing expert has gone into a state of indecision due to following reasons:-

(i) The application for pre-mature release was signed in 2009 and there is no matching document as yet of 2009 which has been submitted for comparison by hand writing experts. That is why we find that the official organisation of NFSL is not offering any opinion and is asking for more samples.

(ii) On the other hand the private hand writing expert employed by the applicant has compared

the photocopy of application of 2009 by the applicant with a sample given by the applicant in 2017.

(iii) We feel that in the normal course a person's hand writing changes significantly between the tender age of 17-18 and thereafter as compared at the age group of 26-27. While technically it may be still possible to compare two samples after a gap of 8-9 years, however the degree of difficulty is certainly more when there are such huge time gaps. Additionally if the applicant has a vested interest in proving that the new samples of hand writing offered by him do not match with old one, it will only increase the degree of difficulty of hand writing experts and the reliability and credibility of such comparative reports.

(g) In view of the above we are of the considered opinion that we cannot give any credence to the opinion of private hand writing expert as employed by applicant and we will accept the opinion of CFSL that no opinion is possible in the present circumstances unless more samples are provided.

6. In view of the above facts, we feel that there is no need to peruse the issue of an opinion by hand writing

expert as nothing meaningful and beyond doubt is likely to come out of it. It is an admitted fact that Army is a combatant force and requires the highest level of discipline. It cannot afford to have recruits under training who desert the organization for 228 days and then want to rejoin and continue training.

7. Admittedly, the Army trainee is a probationer. It is obvious that so long as the employee is on probation, continuation of his or her employment is not certain, and is subject to the employer being satisfied that the employee is suitable for the job. In the case in hand, since the Commanding Officer was not satisfied with the performance of the applicant, therefore he was rightly discharged from service. In this particular case the Army had every right to discharge him as a recruit on grounds of being a deserter for 228 days and missing his training for more than 30 days. However, they have apparently discharged him on ground of discharge at own request. In view of the fact that nothing credible has come out from hand writing analysis of experts, we are inclined to believe due to circumstantial evidence, that the recruit had applied for discharge at own request. In any case we want to make it clear that a recruit who deserts for 228 days during his initial training has no locus standi to claim re-instatement on any ground.

8. On the point of non issuance of show cause notice to the applicant before discharge, the Hon'ble Apex Court in its judgment in Civil Appeal No 5015 of 2008 ***Union of India & Ors vs. Manoj Deswal*** has opined that no specific notice is required to be given before discharge of a person who is not attested i.e. recruit, more so as C of I was held and the applicant was declared a deserter.

9. In view of the foregoing we are of the considered view that the order passed by Commanding Officer dated 12.06.2009 (AN) is just, legal and proper. Due process has been adopted in ordering the discharge, as in the interest of maintaining organizational effectiveness and discipline required in a combat force, it was not considered proper to continue the applicant as trainee and therefore before the Army could remove him as per their procedure for absentee trainees, he was discharged on own request.

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

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : November, 2018

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