

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 17 of 2018****Tuesday, this the 12th day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 4575009X Awdesh Kumar Yadav (Ex Sep) S/o Sri Munsilal Yadav, resident of village-Hardobhiti, Post-Tumpar, Police Station-Mahuli, Tehsil-Khalilabad, District-Sant Kabir Nagar, (UP), Pin-272164.

.... Applicant

Ld. Counsel for the: **Shri VK Pandey**, Advocate.
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence, South Block, RK Puram, New Delhi.
2. General Officer Commanding, 22 Infantry Division.
3. Commanding Officer, 20 MAHAR Regiment.
4. OIC, The Mahar Regt Centre, PIN-900127, C/O 56 APO.

... Respondents

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

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *This Hon'ble Tribunal may kindly be pleased to quash the impugned rejection order dated 13.12.2011, as contained in annexure No.1 to this Original Application passed by the opposite parties in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to reinstate the applicant in service with all service consequences with retrospective effect.*
- (iii) *That this Hon'ble Tribunal may kindly be pleased to award the cost Rs. 20,00,000/- (Rs. Twenty Lacs) for mental and physical harassment and agony to the applicant against the opposite parties with the compound interest @ 18% per month from the date of discharge.*
- (iii) *that this Hon'ble Tribunal may kindly be pleased to award the cost Rs. 20,000/- (Twenty Thousand) to the applicant for financial loss as expenses in filling the instant original application with the interest @18% p.a.*
- (iv) *Any other beneficial relief which this Hon'ble Tribunal deems fit and reasonable be also awarded to the applicant against the respondents.*

2. The facts of the case as enumerated in the petition are that the applicant was enrolled in the Army on 23.01.2002. During the year 2011 applicant absented himself for the period 17.05.2011 to 03.08.2011 (79 days) and voluntarily rejoined for duty on 03.08.2011. He was awarded 28 days rigorous imprisonment and 14 days pay fine on 25.08.2011 which means that he was in custody for the period 25.08.2011 to 22.09.2011. The applicant is alleged to have written an

application for premature discharge on compassionate grounds on 19.09.2011 while detained in military prison. Based on premature discharge application dated 19.09.2011, his discharge was sanctioned vide letter dated 25.11.2011 (Annexure No. 10 to O.A.) and he was discharged from service w.e.f. 30.11.2011. Applicant had filed O.A. No. 199 of 2015 for cancellation of his discharge order and reinstatement into service. The above O.A. was disposed off vide order dated 17.12.2016 with directions to applicant to submit fresh representation to the respondents within two months. Accordingly, representation dated 25.01.2017 submitted by applicant was rejected by the respondents by speaking and reasons order dated 13.12.2017 (Annexure No. 1 to O.A.). This O.A. has been filed for quashing of discharge order dated 30.11.2011, rejection order dated 12.12.2017 and reinstate him into service.

3. Submission of learned counsel for the applicant is that applicant had never given application for premature discharge, instead he was forced to write premature discharge application. His further submission is that discharge application is dated 19.09.2011 while he was in prison, which clearly shows that this application was got signed under coercion while under rigorous imprisonment. Drawing attention to order dated 17.12.2016, learned counsel for the applicant submitted that this Tribunal

had observed that all formalities like clearance etc. were completed by unit personnel to oust him from service while applicant was in military custody which is complete violation of para 508, 509 and 510 of Defence Service Regulations for the Army, 1987. He pleaded for setting aside of impugned order dated 30.11.2011 and 13.12.2017 and re-instatement of applicant in service.

4. On the other hand, learned counsel for the respondents submitted that due to absent without leave from unit for 79 days, applicant on arrival in unit was punished for 28 days rigorous imprisonment and 14 days pay fine and while serving imprisonment, he submitted an application dated 19.09.2011 for premature discharge on compassionate grounds which was placed before Unit Standing Committee consisting of five officers and a JCO and on its recommendation, his premature discharge was sanctioned by Officer-in-Charge Records. His further submission is that since applicant had himself made a request for premature discharge on the grounds of looking after his children and living separately from his parents, it was sanctioned by following due process and no injustice was made to him. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both the sides and perused the material placed on record.

6. It is not disputed that applicant was awarded only 28 days rigorous imprisonment and 14 days pay fine on account of being absent for 79 days from unit, taking a sympathetic view of his plea that his child was sick.

7. While undergoing sentence in military custody he submitted an application dated 19.09.2011 for premature discharge on compassionate grounds which after scrutiny by Unit Standing Committee was forwarded to Records the Mahar Regiment and accordingly, his discharge was sanctioned w.e.f. 30.11.2011 and he was discharged from service. Applicant had filed O.A. No. 199 of 2015 against his discharge which was disposed off vide order dated 17.12.2016 with directions to applicant to prefer representation within two months. Accordingly, applicant had submitted a representation dated 25.01.2017 against his discharge which was rejected by GOC, 22 Infantry Division by speaking and reasoned order dated 13.12.2017. For convenience sake the same is reproduced as under:-

"1. I have perused the representation dated 25 January 2017 submitted by Ex Sepoy Awadesh Kumar Yadav addressed to Secretary, Ministry of Defence, Government of India along with the recommendations of Commanders-in-chain and connected documents placed on record.

2. Ex Sepoy Awadesh Kumar Yadav in his representation has contended inter alia, that neither any court of inquiry was conducted nor any show cause notice was served upon him for his absence of 79 days, in accordance with Army Act Section 106, that rules of natural justice were not followed before

discharging him, that the entire documentation for his discharge was completed while he was undergoing 28 days rigorous imprisonment in military custody which, as per him, shows that these documents were signed by him under threat, compulsion and duress, and that the discharge certificate as per Army Act Section 23 was not issued to him before his discharge.

3. Perusal of the comments of Commanding Officer, 20 MAHAR and documents on record reveal that the disciplinary action taken against the individual for being absent without leave is independent of the Court of Inquiry under Army Act Section 106 and therefore, non-conduct of the Court of Inquiry shall have no bearing on the subsequent disciplinary action. It is evident that Army Act Section 106 does not mandate issuance of any Show Cause Notice to the individual. The record reveals that while the individual was undergoing imprisonment in military custody, he had moved an application for his discharge on compassionate grounds, duly signed by him, which was processed by the Commanding Officer and the documentation /clearance procedure was completed by the unit personnel on his behalf. The contention of the individual regarding his forcible discharge is not tenable since the individual had willingly signed the application for discharge and was interviewed by the Unit Petition Committee comprising of Chairman and three independent members before processing it for discharge. It is further evident from the records that the individual was duly furnished with a discharge certificate as required vide Army Act Section 23. Hence, it is clearly that the discharge application was voluntarily preferred by the individual and processed by the unit authorities as per the prevalent rules and regulations and that the competent authority sanctioned the discharge at the request of the individual on 23 Nov 2011 under Army Rule 13 (3) (III) (iv). The individual did not challenge his discharge procedure before any superior authority including the Brigade Commander and Commandant Regimental Centre at any occasion during/after his discharge and has raised the grievance after a lapse of about two years which clearly proves his afterthought to make out a case for his reinstatement. Under these circumstances, his

allegation of discharge under duress, threat or pressure is unsubstantiated and baseless.

4. Apropos, I direct that representation dated 25 January 2017 submitted by Ex Sepoy Awadesh Kumar Yadav be rejected being devoid of merit and substance."

8. Applicant's contention that it was not possible for him to get his clearance done from various sections of the unit while in military custody/quarter guard and it was done by unit authorities without his knowledge to oust him from service, is rebutted by the respondents by saying that the Commanding Officer had already accepted his request to process his discharge application on compassionate grounds and the formalities of getting clearance from different sections of the unit were done by one of his buddy on his behalf. Respondents have also submitted that clearance certificate is an internal audit mechanism of the unit which serves the purpose of checking the unit documentary record of various stores for any outstanding money or material against a person proceeding on premature discharge/pension establishment and for this physical presence of a person is not required. Only credential, in terms of Army number and name along with signature is used to check any outstanding against the individual. We have been told that this process is being followed in the Army and we are satisfied.

9. Vide application dated nil (page 89 of O.A.) applicant has admitted that he had submitted an application for

compassionate discharge from service under pressure. This application is undated and does not establish the period when it was submitted, but the fact is that he had submitted a premature discharge application which was processed as per rules on the subject by forming a Unit Petition Committee dated 20.09.2011, consisting of five members as officers and one member as JCO, and on its recommendation, his premature discharge application was sanctioned vide letter dated 25.11.2011 and he was discharged from service w.e.f. 30.11.2011 on compassionate grounds.

10. Applicant's contention that respondents have not followed the procedure prescribed in Regulation 508, 509 and 510 of the Defence Service Regulations (DSR) with regard to military personnel under imprisonment vide which personnel kept under rigorous imprisonment are not allowed to live freely in the unit, rather they are kept in quarter guard cell, then how can a person undergoing imprisonment in quarter guard cell process his application for premature discharge. The aforesaid DSR paras do not contain that an imprisoned soldier is kept in cell throughout the day, but he is freed daily at particular intervals and is put on some job. In this regard we are of the view that a prisoner is allowed to write letters and submit his grievances. Therefore, it clearly establishes that applicant would have

submitted his premature discharge application while serving military imprisonment.

11. From the aforesaid, it is crystal clear that applicant had himself given premature discharge application on compassionate grounds which was recommended by Unit Petition Committee on 20.09.2011 and accordingly, his discharge order was issued on 25.11.2011 with directions to be discharged from service w.e.f. 30.11.2011. There seems to be no foul play on the part of the respondents that applicant was intimidated to write down application for premature discharge. The submission of learned counsel for the applicant that applicant was forced to write down the application for his premature discharge being in military custody does not appeal to us inasmuch as nothing has been brought on record to show that the applicant was forced to write down the application under coercion. It is nowhere mentioned in the O.A. that either the Commanding Officer or any Junior Officers/JCOs in the unit were unfair to applicant. In the circumstances, it does not commend to us for acceptance that applicant was forced to write down application for premature discharge. From the contents of the application, it appears to us that the application was written by the applicant voluntarily and without being coerced.

12. Thus, we find no illegality, irregularity or impropriety in the order passed by the respondents to discharge applicant at his own request. Applicant is therefore, not entitled to be reinstated into service at this stage.

13. In view of the above, O.A. No. 17 of 2018 has no merit, deserves to be dismissed and is hereby **dismissed**.

14. No order as to costs.

15. Pending miscellaneous applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 12.10.2021
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