

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 82 of 2018

Monday, this the 9th day of July, 2018

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

Ex Rfn Vikesh Kumar Balmiki (No. 5347320N)
S/o Late Govind Ram, R/o 6A Kalvin Road,
Civil Lines, Allahabad

..... Applicant

Ld. Counsel for the : **Shri A.K. Srivastava, Advocate.**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence,
New Delhi .
2. Chief of the Army Staff, IHQ of MoD (Army), South Block,
New Delhi 110011.
3. The Adjutant General, AG Branch, IHQ of MoD (Army),
DHQ P.O., New Delhi - 110011
4. The commandant Records 14 GTC, Subhathu, Shimla (H.P.)
5. Commanding Officer, 5/4 GR, Through Records 14 GTC,
Subhathu, Shimla (HP).

.....Respondents

Ld. Counsel for the : **Shri Anurag Mishra, Advocate**
Respondents. Central Govt Counsel.

ORDER

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

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

“(a) Issue/Pass an order or direction of appropriate nature to quash/set-aside the Records 14 GTC, Subhathu, Simla Hills impugned order dated 10 Nov 2016 denying relief requested vide his representation dated 10 Oct 2016 (Annexure No. A-1).

(b) Issue/pass an order or direction of appropriate nature to quash/set-aside the Records 14 GTC, Subhathu, Simla Hills discharge order dated 07 Aug 2003 to discharge the applicant on 31 Jan 2004 (Annexure No. A-4).

(c) Issue/Pass an order or direction of appropriate nature to quash/set-aside the forged and infructuous unwillingness certificate dated 09 Nov 2002 projected to have been written by the applicant (Annexure No. A-2).

(d) Issue/Pass an order or direction of appropriate nature to quash/set-aside the infructuous, arbitrary and illegal Hearing of Charge under AR 22 and Summary Trial proceedings against the applicant for an offence, committed on 20 Jun 1995, under AA Section 42 (e) that awarded a sentence of 14 days RI in military custody on 24.06.1995 (Annexure No A-7).

(e) Issue/ Pass an order or direction of appropriate nature to quash/set aside the infructuous, arbitrary and illegal Hearing of Charge under AR 22 and Summary Trial proceedings against the applicant for an offence, committed on 24 Jun 1995, under AA Section 40(b) that awarded a sentence of 14 days RI in military Custody on 06.12.1995 (Annexure No. A-8).

(f) Issue/ Pass an order or direction of appropriate nature to quash/set aside the infructuous, arbitrary and illegal Hearing of Charge under AR 22 and Summary Trial proceedings against the applicant for an offence, committed on 11 July 1996 under AA Section 63 that awarded a sentence of 03 days RI in military custody on 11 Aug 1996 (Annexure No. A-9).

(g) *Issue/ Pass an order or direction of appropriate nature to quash/set aside the infructuous arbitrary and illegal Hearing of Charge under AR 22 and Summary Trial proceedings against the applicant for an offence, committed on 05 Sep 2002, under AA Section 48 that awarded a sentence of 28 days RI in military custody on 07 Sep 2002 (Annexure No. A-10).*

(h) *Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit to compensate the applicant and his family members for not been provided with **CSD and medical facilities** since 01 Feb 2004 for almost about 13 years despite being discharged in the status of an Ex Serviceman (Annexure No. – 11).*

(i) *Issue/ Pass an order or direction of appropriate nature to the respondents to direct respondents to re-instate the applicant with all consequential benefits w.e.f. 01 Feb 2004.*

(j) *Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(k) *Allow this application with costs and interest.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on the post of Hair Dresser (Barber) in Gorkha Rifles of Infantry on 26.03.1993. After completion of training, the applicant was posted to 5/4 Gorkha Battalion at Fort William, Kolkata. The applicant rendered about nine years of service in Field/Counter Insurgency Operations/High Altitude Area out of his total services of ten years and three hundred twelve days before being discharged on the basis of application for voluntary discharge with effect from 01.02.2004. It is pleaded in the Original Application that before being discharged, the applicant was awarded seven medals, i.e. HAA Medal, CI Ops Medal, 50 Years' Independence Day Medal, Op Suraksha Medal, Samanya Seva Medal, Op PARAKRAM Medal and Op. VIDAY Medal in less than eleven years of service despite being a Barber by trade. It is further

pleaded in the Original Application that in the Gorkha Regiment, a very little number of non-Gorkha personnel were posted which at the relevant time were only ten in number and such personnel were discriminately treated and were given step brotherly treatment. It is also pleaded that the applicant's zeal, enthusiasm and readiness to perform all types of duties and to achieve better results was not liked by several General Duty Combatants and, therefore, they conspired to let him down and condemn his career since they did not want a low caste Indian to be applauded for his excellent performance. Due to vengeance, the applicant was roped in three cases within a span of two years of his initial service in the first Unit, i.e. 5/4 Gorkha Regiment. The applicant's seniors compelled him to consume liquor on days of issue in the *langar* on the pretext that it was part of his entitled ration and he would be punished if he refused to consume it. Initially, the applicant started taking his share of entitled 60 ml of liquor due to fear of punishment by seniors on pretext of wastage of ration. The applicant was served with charge sheets and was punished arbitrarily for grave nature of cases without lodging an FIR with the concerned police station. It is also pleaded that within less than nine months of his service in the first Unit, i.e. 5/4 Gorkha Regiment, the applicant was awarded sentence of 14 days rigorous imprisonment in military custody on 24.06.1995 for an offence under Army Act Section 42(e). Thereafter, within three months, punishment was again given to the applicant on 24.09,1995 under Section 49(b) of the Army Act alleging that he, when ordered by his senior to fall-in for check up roll call, used abusive language and said, "I will finish of two to three persons before I go on discharge". The applicant was again awarded 14 days rigorous

imprisonment in military custody. Within six months from the date of last punishment, the applicant was awarded punishment of three days rigorous imprisonment in military custody under Section 63 of the Army Act, 1954 alleging that on 11.07.1996 while joining from leave at 224 Transit Camp, he failed to pick up Government Transport being provided by 224 Transit Camp to further join Unit location and joined Unit location after 15 days. The applicant has further pleaded that he proceeded on two months' Annual Leave in January 2001. During his leave period, the applicant was directed to report to Unit in Meerut. Accordingly, he reported to his Unit at Meerut after availing his leave in March 2001. The applicant's Unit was away from its permanent location, Maipuron for Op PARAKRAM during 2001 and again for about 7-8 months in 2002 to Rajasthan. While moving to Rajasthan, while the Unit halted in Bhagat Lines, Meerut, the applicant was sentenced to 28 days' rigorous imprisonment in military custody on 07.09.2002 for an offence under Section 48 of the Army Act on the ground that he was found intoxicated on 05.09.2002 in the Battalion Area contrary to Unit orders. The applicant remained posted in Field Area for about nine years, so he used to work under pressure with inherent tension and started having health problems and out of sheer frustration he requested his Company Commander to arrange an interview with the Commanding Officer so that he could request him to get him posted out to some other Unit in Peace Area. The Company Commander asked the applicant to give an application with assurance that he would get it recommended by the Company Commander. The applicant expressed his inability to write a proper application being not well educated, therefore, the Company Commander asked him to sign a blank paper so that he

would get the application written and typed by someone in terms of Army Regulations. Accordingly, the applicant submitted a signed blank paper in good faith on 03/04.11.2002 just before Diwali festival while the Unit was in Meerut. In the first week of July, 2003, the applicant was called in the Company Office where to his utter surprise he was told to complete his pension documents since his discharge was expected to be approved at any time. The applicant approached the Company Commander and enquired as to how his premature discharge was likely to materialize upon which the Company Commander informed that the applicant himself had made a request for premature discharge on 09.11.2002 and now it cannot be cancelled. He was further told by the Company Commander that it was better for him to proceed on discharge otherwise he would be discharged as an undesirable soldier. Since he has incurred four red entries, he would not get any pension. After lapse of about eight months in July 2003 the respondents initiated another application as per format provided in para 1498-A of Regulations for the Army. It is pleaded that thereafter the competent authority issued discharge order vide letter dated 07.08.2003 to be effective with effect from 01.02.2004.

3. Argument of learned counsel for the applicant is that impugned order of discharge was passed after about 14 months from the date of application for voluntary discharge and because of such inordinate delay, the prayer for voluntary discharge became stale and said application for voluntary discharge because of such inordinate delay, ought not to have been acted upon.

4. After his discharge, the applicant preferred M.A. No. 351 of 2013 which was dismissed by this Tribunal vide order dated 29.09.2014 with

liberty to file a fresh one. Thereafter another O.A. was filed by the applicant and by order dated 16.07.2015 upon hearing Misc. Application No. 1865 of 2014, delay in filing the O.A. was condoned and the case was registered as O.A. No. 159 of 2015. In the said O.A., vide order dated 02.08.2016, the applicant was directed to prefer representation before the higher forum within a week. It was further directed that in case such a representation was preferred within said period, the authority concerned shall look into the matter and dispose of the representation within a period of four months. In pursuance of the order of the Tribunal to move representation within a week from 02.08.2016 the applicant preferred representation with considerable delay on 17.10.2016. The representation was rejected by the competent authority vide order dated 10.11.2016 on the ground that it was not moved within the time granted by the Tribunal. Feeling aggrieved by impugned order dated 10.11.2016, the present O.A. has been preferred.

5. Submission of learned counsel for the applicant is that the applicant is not well educated, so he could not prepare the application. He was asked to sign a blank paper which was signed by him. Subsequently said paper was converted into application for voluntary discharge. Subsequently, the applicant was asked to fill-up the prescribed proforma, then said proforma was filled-up and ultimately order of discharge was passed. It is submitted that because the applicant was a non-Gorkha, therefore, he was meted with step brotherly treatment and was victimised. Learned counsel for the applicant has pressed for reinstatement of the applicant in service with all consequential benefits. He has also challenged each and every punishment given to him for different charges on different

dates. So Rule 10 of the Armed Forces Tribunal (Procedure) Rules, 2008 comes into play which reads as under:

*“10. **Plural Remedies.** – An application shall be based upon a single cause of action and may seek one or more relief, provided that they are consequential to one another.”*

6. In view of the aforesaid provision, such prayers which provide a separate cause of action cannot be clubbed together in one petition. Since the applicant has challenged the order of his voluntary discharge, therefore, we have restricted ourselves only to that part of the prayer and we are not dealing with the prayers whereby different punishments awarded to the applicant on different dates for different misconducts, have been challenged. Apart from it, these punishments have not been made basis of his discharge.

7. Learned counsel for the respondents submitted that the applicant had earned four red ink entries on different dates on different charges. It is submitted that allegation of step brotherly treatment or victimization of the applicant by officers of Gorkha Regiment is baseless and without substance. Initially the applicant had given application for voluntary discharge and when it was acted upon and the applicant was asked to fill-up the prescribed proforma, the applicant filled-up the prescribed proforma which by itself shows that the application for voluntary discharge was moved by the applicant voluntarily because he filled-up the prescribed proforma for discharge in the year 2003. It has also been argued that though the applicant was discharged in the year 2004, he approached this Tribunal for the first time in the year 2013 challenging his discharge after about nine years and this long gap itself shows that at that time the applicant had no grievance with his discharge order. It is

submitted that the story as developed by the applicant is an afterthought. No written application, representation or statutory petition was preferred by the applicant challenging his discharge for several years and the applicant has absolutely no reason or explanation for the same which shows that the applicant was satisfied with the order of his voluntary discharge.

8. In view of the rival submissions, we proceed to deal with the matter.

9. The first submission of learned counsel for the applicant is that because the applicant is a non-Gorkha posted in Gorkha Regiment, he was given step brotherly treatment and was punished four times and accordingly four red ink entries were made in his service record. The applicant has pleaded in his O.A. that since he was willing and was always ready to accept challenging tasks, therefore, the other officers of the Regiment were harbouring grudge against him. This submission does not appear to have any substance because if the seniors of the applicant were not co-operating with him in the Unit, then there was no occasion for the applicant to get any important assignment. Since the applicant has received several Medals, therefore, he was entrusted with important assignments and this fact by itself shows that the allegation of step brotherly treatment is not correct. The applicant on different occasions was punished four times during his service period and four red ink entries were recorded in his service record, but said red ink entries were not made the basis of his discharge; rather his discharge was on his own request on the basis of which he has been voluntarily discharged. We, therefore,

confine ourselves only to the order of discharge which has been passed on the basis of his own voluntary discharge application.

10. Submission of learned counsel for the applicant is that the applicant is not well educated, therefore, he signed a blank paper on the pretext that a representation to the Commanding Officer shall be typed on it, but instead of preparing such representation on such signed paper, his voluntary discharge application was prepared. This submission does not appear to reason. The first reason is that the applicant has signed the application in English. Apart from it, copy of said application (Annexure A-2 to the O.A.) shows that the signatures of the applicant are at the correct place. From a perusal of the application, it does not give an impression that a blank paper was signed and thereafter application was prepared because the gaps between the lines and signatures of other authorities have reasonable gap between each and every line. Apart from it, if this application would have been obtained by fraud or by fabrication, then the applicant would not have filled-up the prescribed proforma in the year 2003. Besides this, if the earlier application was moved by the applicant under pressure or coercion or it was fabricated, then there was no occasion for the applicant to fill-up the prescribed proforma. This proforma (Annexure A-3) too has been signed at different places by the applicant. Apart from this, if the application would have been fabricated, then the applicant would not have signed the voluntary discharge application on prescribed proforma in the year 2003. This proforma has been annexed along with the O.A. as Annexure A-3. It was signed on 07.07.2003. So, if the earlier application was moved by the applicant under pressure or it was fabricated, then there was no question to fill-up

this proforma. This application too has been signed by the applicant at several places. It transpires from the perusal of the record that the applicant had moved representation for redressal of his grievance for the first time on 26.010.2009 and the same was disposed of by order dated 07.12.2009.

11. It appears that the order of discharge was challenged by the applicant on the ground that no show cause notice was issued. Said representation has been dismissed on the ground that order of discharge was passed on the voluntary request made by the applicant himself. Applicant has not filed copy of his said representation but the order passed thereon does not reflect that the grounds that are being raised by the applicant in the present O.A. were raised in the said representation. Therefore, in these circumstances, there was no requirement to issue show cause notice. It transpires from a perusal of the record that after moving application for discharge in the year 2002, discharge was sanctioned by the competent authority and accordingly discharge order was issued on 07.08.2003 and the applicant was discharged from service on 31.1.2004. It is really surprising to note that the applicant after his discharge in the year 2004 made representation for the first time in the year 2009, i.e. after about five years. This long gap, by itself, shows that at that point of time the applicant had absolutely no grievance with his discharge order, but after his discharge when the applicant felt some difficulties, then he started agitating that the order of discharge is not sustainable.

12. Learned counsel for the applicant lastly argued that even if everything is taken to be true, even then the application for discharge was moved in the year 2002 and the applicant was discharged in the year 2004,

therefore, the long gap of about fourteen months has rendered said application for voluntary discharge unsustainable and it was a duty of the competent authority to ask the applicant to move fresh application or to seek fresh consent of the applicant as to whether he intended to press the application for discharge, but no such action has been taken. In support of his submission, learned counsel for the applicant has placed reliance on pronouncement of this Tribunal in T.A. No. 1221 of 2010 **Varun Kumar Pandey vs. Union of India and others** decided on 12.012.2011. The controversy involved in this case was not even remotely involved in that case. It has nowhere been held in **Varun Kumar Pandey's** case (supra) that in case there is delay, then the application for voluntary discharge shall become meaningless and cannot be acted upon. For the purpose of clarity, we would like to reproduce relevant part of para-9 of said judgment.

“9. We have gone through letter dated 26th March 1991 written by the applicant addressed to the Commanding Officer perusal of which shows that the applicant did not want to continue in Military Service on account of certain personal problems at home. This letter however was not acted upon, i.e. neither the request for the applicant was conceded to nor was rejected. He however was allowed to continue in service for almost one year and nine months. Finally he was discharged from service on 04.12.1992 on account of disability i.e. “Low Back Ache”. The Medical Report was also placed before us upon perusal of which it revealed that the disability that the applicant was suffering from was assessed at 20 percent for a period of two years and the same was found aggravated by the Military service. It is abundantly clear that from the date of making of his application till the date of discharge the applicant continued in military service during which period it appears that the disability aggravated.”

13. Period of one year and nine months has been mentioned in the aforementioned judgment only as a fact. Applicant in that case was not

discharged on his own request; rather he was discharged in low medical category. That was a case for grant of disability pension. So the applicant cannot get any benefit of the said judgment as the said judgment does not support the contention of learned counsel for the applicant. In the said case, the applicant was discharged on account of disability of LOW BACK PAIN while in the present case, initially after moving application for voluntary discharge, the applicant has subsequently filled-in a prescribed proforma for the said purpose and had consciously signed it. Therefore, subsequent filling-up of prescribed proforma shows that the applicant was pressing his prayer for voluntary discharge even at that time. It transpires from a perusal of the record that the delay in passing the order of voluntary discharge occurred due to completing necessary formalities for which the applicant was asked to fill-up the prescribed proforma.

14. For reasons mentioned in the foregoing paragraphs, we are of the opinion that the O.A. deserves to be dismissed; hence **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: July, 2018
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