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**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

T.A NO. 474 OF 2009  
(WRIT PETITION (C) NO. 4014 OF 2004)

EX. SEP NARENDER, NO. 4196588  
VILLAGE MANGAL KALIA,  
P.O SEROHI BHALI, DIST: MOHINDER GARH (HARYANA)

THROUGH: COL. S.R KALKAL, ADVOCATE

..... PETITIONER

VERSUS

1. UNION OF INDIA  
THROUGH SECRETARY,  
MINISTRY OF DEFENCE,  
SOUTH BLOCK, DHQ, NEW DELHI-110 011
2. OFFICER IN CHARGE,  
RECORDS OFFICE  
THE KUMAON REGIMENT, RANIKHET.
3. GENERAL OFFICER COMMANDING  
CORPS C/O 56 APO

- 2/1
4. NB/SUB. SUBHASH  
JC NO. 539256  
13, KUMAON REGIMENT, C/O 56 APO
  5. HAV. MUNSHI LAL,  
KUMAON REGIMENT, C/O 56 APO..

THROUGH: LT. COL. NAVEEN SHARMA  
FOR THE RESPONDENTS

.....RESPONDENTS

**CORAM**

**HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER**  
**HON'BLE LT. GEN. S.S DHILLON, MEMBER**

**JUDGMENT**

8<sup>th</sup> December 2009

1. This petition has been brought against the order dated 31<sup>st</sup> October 2003 passed by the Commanding Officer, whereby the petitioner was discharged from service. A direction has also been sought to be given to the respondents

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to reinstate the petitioner in service with effect from the date of illegal discharge with all consequential benefits and to take appropriate disciplinary action against those who got the petitioner forcibly signed in the application for discharge.

2. It is stated that the petitioner was enrolled in the Army as Combatant Soldier on 12.6.2001 and allotted Army No.4196588P. The petitioner served the Army with sincerity and devotion and his efficiency was appreciated by the superiors. His name was also recommended for the foreign posting in U.N Forces. But because of the enmity he had with one of the Junior Commissioned Officers viz. N/Sub. Subhash, on a false complaint that the petitioner had stolen some cash from Sep. Mangal Singh, who is a close relation of N/Sub. Subhash, the petitioner's name was excluded from the list. But



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Sep. Mangal Singh refused to give such false evidence against the petitioner. A Court of Inquiry was ordered. The petitioner insisted to examine Sep. Mangal Singh. But, without affording an opportunity to the petitioner, on the basis of the false allegation, the petitioner was awarded 28 days rigorous imprisonment. While in custody, the petitioner was beaten badly by Nb. Sub. Subash and asked to sign the application for his discharge from Army. When he refused, the petitioner was given electric shock. The petitioner, under threat, signed blank papers produced by Nb. Sub. Subash and application for discharge on compassionate ground was made. After having undergone rigorous imprisonment for 28 days, the petitioner was forced to proceed on leave with effect from 14.10.2003 to 27.10.2003. After reaching home, he was taken to the Government Health Centre. The doctor, who examined him,

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issued a medical certificate showing multiple injuries on the foot and other private parts of his body. Thereafter, on the basis of the fitness certificate issued by the doctor, the petitioner reported for duty on expiry of leave. When he came back to the unit, he was discharged by the unit without following the normal procedure. According to the petitioner, there was no occasion for him to seek premature discharge. But the Commanding Officer ordered his discharge from service arbitrarily, though he was not competent to do so.

3. This petition was resisted by the respondents contending, inter alia, that the petitioner had performed his duties only in the normal manner and his claim that he was appreciated for his efficiency and on that basis, he was selected for the UN Mission is incorrect. The battalion, as a whole, had

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been selected for the UN Mission subject to discipline, medical and service criteria of the individual. Since he involved in a theft case, his name was removed from the list of persons selected for UN Mission. The petitioner committed theft of Rs.3000/- and the pass book of Mangal Singh and disciplinary proceedings were initiated against him. He was awarded 28 days rigorous imprisonment for that offence. A preliminary objection has also been raised that in view of Section 3(o)(iv) of the Armed Forces Tribunal Act, 2007, the petitioner cannot challenge the punishment awarded to him to undergo rigorous imprisonment for 28 days as it is not maintainable. However, counsel for the petitioner made it clear that the prayer is confined to the discharge managed by the respondents against the petitioner alone and he is not seeking any relief with regard to the punishment awarded. It is stated that the petitioner had



sought discharge from service voluntarily and it was considered by the Commanding Officer. The petitioner had put his signature on the application voluntarily. There was no reason at all for the Commanding Officer or any other officer to be associated with the torture alleged to have been meted out by the petitioner while undergoing imprisonment.

4. Counsel for the petitioner contended that there was no reason for the petitioner to seek discharge from service voluntarily. He was forcibly made to sign the application under threat while undergoing imprisonment. He was tortured, by beating and administering electric shock, to obtain his signature on the application for discharge from service. In this regard, reference was made to Annexure P2 medical certificate. Annexure P2 does not show the name of the doctor

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who issued the certificate. In normal circumstances, if an injury is noted on the body of a person, it would become a medico legal case. When the doctor had noticed that there were multiple wounds both on the foot and on the lower abdominal flank near penis, the matter should have been referred to the police. There is nothing on record to show under what circumstances the injuries were noted by the doctor and at whose instance the certificate was issued. Annexure P2 would not in any way help the petitioner. But, in support of his contention, counsel for the petitioner has referred to the fact that the petitioner was reported sick on 19.9.2003, 23.9.2003, 26.9.2003 and 29.9.2003. In the background of the case, Annexure P2 medical certificate appears to be not worthy of credence. It has next been contended by counsel for the petitioner that after having served the sentence of rigorous



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imprisonment and was fit for rejoining duty, there was no reason for the petitioner to seek voluntary discharge from service. If attending circumstances are taken into consideration and the petitioner, who was found eligible for selection for the UN Mission, was found guilty for having committed theft, that background cannot be ignored. However, the fact remains that there is application from the side of the petitioner seeking voluntary discharge from service. There is no evidence to show that it was written under threat or pressure. Once that application is made, the burden rests on the petitioner to prove under what situation his signature was obtained. In this regard, counsel for the petitioner pointed out that immediately after his discharge, the petitioner had made a complaint to the Chief of Army Staff and on that basis, a Court of Inquiry was set up. But that would not be sufficient to rebut the contention

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raised by the respondents that the petitioner had voluntarily made request for discharge from service. It is to be noted that the application for discharge has to be made in the prescribed form showing certain details. That form, which contained the signature of the petitioner, was recommended by the Company Commander and approved by the Commanding Officer after affording him an opportunity of being heard. There could be no reason for the Commanding Officer to be a part of the so called trap designed by Nb. Sub. Subhash.

5. It has next been contended that the Commanding Officer was not competent to authorise discharge of the petitioner from service. In this regard, reference has been made to Army Rule 13, which defines 'authorities empowered to authorise discharge'. Army Rule 13 reads as follows:

"13. Authorities empowered to authorise 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.

.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

(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 commissioned officer and warrant officers of Remounts, Veterinary and Farms, Corps, the 'commanding officer' means the Director Remounts, Veterinary and Farms".



The above rule would show that the Commanding Officer was competent to authorise discharge of the petitioner from service. Therefore, we do not find any illegality or impropriety in the order of discharge.

6. It is further submitted that the contention of the petitioner is well founded from the affidavit filed by Mithilesh Kumar Yadav, who had stated that third degree method was adopted by the respondents for obtaining the so-called voluntary discharge from the petitioner. It may be mentioned that the petitioner himself got discharged from service and the subsequent thereto this affidavit would not be admissible in evidence. It is not in any way going to rebut the presumption with regard to the application for voluntary discharge.

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7. We do not find any merit in this petition. It is, therefore, dismissed.

(LT. GEN. S.S DHILLON)  
MEMBER

(JUSTICE S.S KULSHRESHTHA)  
MEMBER