

**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. No. 270 of 2010
(Delhi High Court W.P (C) No. 10985 of 2006)**

IN THE MATTER OF:

Sepoy Vijay Pal Singh**Applicant**
Through Mr. D.S. Kauntae, counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Ms. Barkha Babbar, counsel for respondents

CORAM :

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

Order
Date: 7-5-2010

1. The applicant filed a writ petition (civil) No.10985 of 2006 in the Hon'ble Delhi High Court praying that the orders dated 07.09.2004 by which he was discharged from service with effect from

31.10.2004 (Annexure P-1) and order dated 12.12.2004 (Annexure P-9) by which his representation for revocation of premature retirement was rejected, be quashed and he be reinstated in service with all consequential relief. The same was transferred to the Armed Forces Tribunal on 9.11.2009.

2. The brief relevant facts are as under. That the applicant was enrolled in the Army on 15.3.2000. In August 2004 the applicant was sanctioned 10 days leave to enable him to bring his wife to the duty station since government accommodation was allotted to him. Subsequently this leave was cancelled on the grounds that he had availed his full entitlement of leave for the year 2004. The applicant however maintains that he was entitled to 30 days advance of leave from the forth coming year (ie 2005). The applicant sought an interview with his brigade commander but this was denied by his commanding officer who placed him under “close arrest”. The applicant contends that he was tortured and detained in the unit “quarter guard”. He further contends that he was pressurised by his commanding officer to render an application for discharge or face a “court martial”.

3. The applicant contends that on 7.9.2004 he was forced to sign on blank papers and on an application written by another person. Subsequently the applicant was sent on ten days leave from 8.9.2004 to 17.9.2004 under escort of two Army personnel for the express purpose to obtain the signature of his wife on the discharge document. His wife subsequently challenged this deceit by filing a representation dated 15.10.2004 and prayed that the discharge proceedings against her husband be stopped. On expiry of his leave the applicant was escorted to JAT Regimental Centre, Bareilly, to complete “pre discharge formalities”. The applicant was discharged with effect from 31.10.2004 under Army Rule 13 (3) (iii) (iv) by the Officer in Charge, JAT Records.

4. The wife of the applicant filed a representation to the Hon’ble President of India and received an “acknowledge receipt” from the President’s secretariat dated 18.10.2004. The applicant contends that he submitted another representation dated 17.10.2004 in which he stated that he had been forced to sign an application requesting for premature discharge. In the same representation he had stated that he

wished to continue in service and the orders of discharge may be cancelled. On 27.10.2004 (Annexure P-7) he was informed that the discharge orders could not be revoked but representation was not disposed off. The applicant filed a writ petition No. 16953 of 2004 in the Hon'ble High Court and the court vide its order dated 26.10.2004 directed the respondent to dispose of his representation dated 17.10.2004 (Annexure P-5) with liberty to approach the court, against aggrieved order passed by the respondents if any. His representation was there after rejected vide order dated 12.12.2004.

5. The applicant further contends that his discharge orders were signed by Lt Himanshu Mehra which is contrary to Army Rule 13 and was thus illegal as the officer lacked jurisdiction to sign such an order. The applicant has prayed that the impugned order of discharge dated 7.9.2004 and the order passed on his representation dated 12.12.2004 be quashed and he be reinstated in service with all consequential relief.

6. The respondents in their counter affidavit have stated that the applicant was enrolled on 15.3.2000. The applicant was given his full

entitlements of leave in 2002, 2003 and 2004. The applicant, after his father's death, could not concentrate on his work due to concern for his widowed mother, newly wedded wife and likely encroachments on their land. He had therefore applied for premature discharge on compassionate grounds. The same was sanctioned and whilst at JAT Regimental Centre at Bareilly for discharge drill the applicant sought to withdraw his application, which had already been processed. The applicant also challenged the discharge proceeding before the Hon'ble Delhi High Court that was disposed off by the Hon'ble Delhi High Court. The application dated 19.10.2004 was rejected by Commander 17 Infantry Brigade on 12.12.2004 (Annexure P-9).

7. The respondents maintain that the discharge of the applicant was sanctioned by his commanding officer +and approved by officer in charge records on 29.9.2004 with effect from 31.10.2004. The applicant applied for cancellation of discharge on 19.10.2004 after his discharge had already been sanctioned.

8. The applicant in his rejoinder has reiterated the points mentioned earlier and stressed that he had submitted his application

for cancellation of his discharge order on 17.10.2004 well before his final discharge comes into effective on 31.10.2004.

9. We have perused the records and heard the arguments. It is beyond doubt that the applicant's application (whether willing or coerced) was accepted and he was directed to be discharged with effect from 31.10.2004. The applicant prior to discharge coming into effect, had submitted an application dated 17.10.2004. This was rejected. This was not proper and bad in law. The applicant had every right to request for cancellation of his earlier request for discharge on compassionate grounds before the final execution of the same. During the course of the arguments learned counsel for applicant cited the following judgments in support of his contention.

(1) *Balram Gupta Vs UOI & Anr.*, AIR 1987 SC 2354 - (2) *J.N. Srivastava Vs. UOI & Anr.*, (1998) 9 SCC 559 (DB) – (3) *Ex. Clk Sajjan Singh Vs. UOI*,. 2007 (95) DRJ 162 – (4) *Shashi Pal Sharma Vs. Govt of NCT of Delhi & Ors.*, 127 (2006) DLT 88 (DB) – (5) *Srikantha S.M. Vs. M/s Bharath Earth Movers Ltd.*, JT 2005 (12) SC 465 - (6) *Shambhu Murai Sinha Vs. Project & Development India & Anr.*, JT 2000 (6) SC 358 – (7) *UOI & Ors.*

Vs. Gopal Chand Mishra & Ors AIR 1978 SC 694 and (8) T.A. NO. 413 of 2010 L/Nk Sanjeev Kr. Vs. UOI decided on 8.2.2010 by Armed Forces Tribunal. We have perused the judgments cited by the counsel for the applicant. In the case of ***Balram Gupta Vs UOI & Anr.,(Supra)*** and other similar cases it has been observed that withdrawal of application for premature release can be made any time before it comes into effect. The Hon'ble Tribunal in case of ***(Delhi High Court W.P. (C) No. 5793/2007) - T.A. NO. 413 of 2010 L/Nk Sanjeev Kr. Vs. UOI decided on 8.2.2010,*** decided on the same lines and has observed that revocation can be made before the order comes into effect and has ordered reinstatement in service with all consequential benefits. In the present case also applicant has applied earlier for revocation of his premature release, therefore, he is entitled for redressal. The discharge order as well as the order rejecting his representation are liable to be quashed. These decisions also support the conclusion drawn by us. On the basis of the aforesaid discussion we have decided to set aside the discharge order therefore that we need not discuss other issues raised in the application. Hence the discharge order and order passed on the representation are hereby quashed. We direct the respondents to reinstate the applicant in

service with effect from 1.11.2004 with all consequential benefits.

The application is allowed. No order as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 7-5-2010