

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

**T.A. No. 381 of 2009  
(Delhi High Court W.P (C) No. 2479 of 1990)**

**IN THE MATTER OF:**

**Ex Sepoy Pramod Kumar** .....**Applicant**  
Through Mr. Karan Chauhan, counsel for the applicant

Versus

**Union of India and Anr** .....**Respondents**  
Through: Mr. Ankur Chhibber, counsel for respondents

**CORAM :**

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

**Order**

**Date: 27-4-2010**

1. The applicant filed a writ petition (civil) No. 2479 of 1990 in the Hon'ble Delhi High Court for quashing and setting aside the order of discharge dated 1.2.1989 and order dated 8.1.1990 (**Annexure A-1**)

rejecting his statutory complaint with further prayer for reinstating him with all consequential relief. The same was transferred to the Armed Forces Tribunal on 14.9.2009.

2. Brief relevant facts of the case are that the applicant was enrolled in the Army on 27.10.1984. In 1988 while serving in Sri Lanka with 4 Infantry Division (Inf Div) he was tried by a summary court martial (SCM) for refusal to serve as a “sahayak”. He was charged for disobedience of lawful command under Section 41 (2) of Army Act the applicant was sentenced to three months rigorous imprisonment and dismissed from service. While serving his sentence at Central Prison, Vellore, the applicant’s conviction was quashed by General Officer Commanding (GOC) 4 Inf Div, as reviewing authority. The applicant was released from central prison, Vellore on 21.6.1988 and returned to his unit 16 RAJPUT on 22.6.1988, in Uri, Jammu and Kashmir.

3. The applicant contends that he requested for family accommodation in some station with a military hospital so that he could get his wife treated. While the commanding officer was on leave he sought officiating commanding officer interview. During the interview

the officiating commanding officer Lt Col (TS) Ram Raj got annoyed and forced the applicant to sign on an application, written by somebody else, requesting for premature discharge on compassionate grounds. On 19.1.1989 the applicant was dispatched to Rajput Regiment Records, Fatehgarh wherein during his interview with officiating Commandant, Col Ram Avtar, on 20-21.1.1989 the applicant requested, orally, that he be allowed to continue in service as his signature had been obtained under duress. This request was not accepted and the applicant was discharged on 1.2.1989 under Army Rule 13 (3) (iii) (iv).

4. The applicant filed a statutory complaint on 7.4.1989 which was rejected on 8.1.1990 by the Chief of Army Staff. It is contended that he also filed a revision petition on 2.3.1990 (**Annexure A-3**) to the Govt of India but has not received any reply. He prayed that his order for discharge be quashed and he be reinstated with all consequential benefits.

5. The respondents in their counter affidavit have stated that the applicant had himself asked for premature discharge on compassionate grounds. He was discharged under Army Rule 13 (3) (iii) (iv). The

applicant, while serving in 4 Inf Div had been awarded a sentence of three months rigorous imprisonment and dismissal from service for refusing to obey a lawful command. However, this punishment was quashed by the reviewing authority and the applicant was reinstated in service. On his return to his unit 16 RAJPUT, the applicant, during his initial interview with his commanding officer Colonel Jai Narain, requested for discharge on compassionate grounds. The commanding officer said he would look into the matter and sent him on annual leave from 8.8.1988 to 31.10.1988. The respondents aver that the applicant had never applied for family accommodation on compassionate grounds. The applicant sought another interview with the Lt Col Ram Raj Singh, the officiating commanding officer, during December 1988 and again requested for premature discharge. The applicant submitted an application for the same on 7.12.1988 (**Annexure R-1**). The commanding officer Col Jai Narain, on his return from leave, interviewed the applicant again where in the applicant reiterated his desire for premature discharge and submitted an undertaking that he would not withdraw his request subsequently (**Annexure R-2**). The application was never under duress.

6. The applicant was dispatched to Rajput Regimental Centre on 19.1.1989 where during his interview with the officiating Commandant the applicant never made any request for withdrawal of the request for premature discharge. The discharge of the applicant was voluntary and not under duress and therefore the respondents recommend that the application be rejected.

7. In his rejoinder to the counter affidavit the applicant has reiterated that his application for premature discharge had been under duress. The application was not written in the hands of the applicant. He also denied that Col Jai Narain, on his return from leave interviewed him.

8. We have perused the records and heard the arguments at length. During the course of the arguments the learned counsel for the applicant challenged the discharge order mainly on two grounds. Firstly the applicant's premature release was not made voluntarily and his signatures were obtained under duress (by officiating commanding officer Lt Col Ram Raj). He contended that discharge order should not be passed on that application. But this contention is not sustainable as he had applied on 7.12.1988 (**Annexure R-1**) and thereafter on 14.1.1989

(Annexure R-2) he again signed on an undertaking that was countersigned by Col Jai Narain Commanding Officer, against whom the applicant has no grievance. The applicant had not made any request for withdrawal of his request for premature release to Col Jai Narain. The allegation made against the Officiating commanding officer (Lt Col Ram Raj) is not sustainable. Thus the contention that his signature was obtained under duress is not tenable. The second contention is that during interview by Col Ram Avtar, Deputy Command Rajput Regiment Records on 21.1.1989 he made an oral submission to continue in service implying that the applicant wished to withdraw his application for premature release. There is however no written submission from the applicant in this respect. His oral submission is not supported by any reliable proof. The contentions that he had requested to withdraw his application for premature release is not maintainable and is an afterthought. The judgment cited by the learned counsel for the applicant in the case of *Balaram Gupta Vs UOI (AIR 1987 SC 2354)* is not applicable in this case. In that case the Supreme Court has held that an application for premature release can be withdrawn before the actual date of discharge. As the oral submission of the applicant is not sustainable this authority is not helping the contention of the applicant.

Thus on the basis of the aforesaid discussion the contentions of the applicant are not having legal force and no interference is required. Application is dismissed. No orders as to costs.

**MANAK MOHTA**  
**(Judicial Member)**

**Z.U. SHAH**  
**(Administrative Member)**

**Announced in the open court**  
**Dated: 27-4-2010**