

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 413 of 2010

[Arising out of WP(C)No. 5793 of 2007 of Delhi High Court]

L/Nk. Sanjeev Kumar ...Petitioner

Versus

Union of India & Ors. ...Respondents

For the Petitioner : Sh. D.S. Kauntae, Advocate

For the Respondents: Ms. Barkha Babbar, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has prayed that by writ of mandamus quash or set aside the impugned movement

order dated 6th March, 2006, 31st March, 2006 as well as order dated 15th March, 2007 and direction may be given to the respondent to reinstate the petitioner from the date of discharge i.e. 31st March, 2006.

2. Petitioner was enrolled in the Army as a Soldier General Duty in the JAT Regiment. Petitioner served in the Army for almost eight years. The petitioner while serving in JAT Regiment was threatened by Col. Rajesh Tyagi, Commanding Officer, 4 JAT Regiment, and forced to write an application for premature discharge from service. The petitioner refused to do so, then, Col. Rakesh Tyagi directed Subedar Major Pusa Ram from the same Unit that if he is not tendered his resignation, he will have to face Court Martial.

3. It is alleged that thereafter petitioner wrote an application for discharge on 21st February, 2006, under threat and coercion by Col. Rajesh Tyagi and Subedar Major Pusa Ram, in order to satisfy their personal whims and ill-will against the petitioner.
4. The petitioner submitted his application for voluntary discharge on 22nd February, 2006 on the ground of old age of his parents and the exercise for discharge was undertaken and he was actually discharged on 31st March, 2006 from his Unit. Petitioner was also asked to file an affidavit before Tinsukhia Courts that he is voluntarily submitting the letter of discharge and he will not agitate the matter in any court.

5. Thereafter, the petitioner was detained at Bareilly from 6th March, 2006 to 31st March, 2006 and petitioner's name was finally struck off from the strength of Army.
6. It is further alleged that Col. Rajesh Tyagi was on 30 days leave and his leave was to start after 22nd February, 2006. He availed his undue influence and presence and took personal interest to throw out the petitioner as expeditiously as possible from army service.
7. During his stay at Bareilly petitioner was forced to go on three days leave w.e.f. 14th March 2006 to 16th March, 2006 to his home for obtaining the signature of his wife on certain documents. However, petitioner filed an application for revocation of discharge and he gave a long telegram also but without any result. Thereafter,

petitioner filed a statutory complaint dated 13th/14th March, 2006, which was rejected.

8. Petitioner filed a Writ Petition in High Court and High Court vide its order dated 30th March, 2006 directed the respondent to dispose of expeditiously the petitioner's statutory complaint, which was filed on 13th/14th March, 2006. Ultimately the statutory complaint was disposed of on 15th March, 2007.
9. In his statutory complaint as well as in his telegram, given for revocation, petitioner has given details that under what circumstances he was forced to file an application for voluntary discharge on 21st February, 2006.
10. The authorities, in pursuance of the earlier Writ Petition filed in Delhi High Court in the case of W.P.(C)No.

4234/2006 and CM 3575/2006, High Court directed that a Statutory Petition under Section 26 of the Army Act is pending for consideration of the respondent that should be disposed of expeditiously by the respondent while exercising their discretion in open mind without being influenced by any observation made in the order.

11. This order was finally passed on 15th March, 2007. Aggrieved against this order petitioner filed present Writ Petition before Delhi High Court, which was transferred to this Tribunal on its constitution.
12. Learned counsel for the petitioner has submitted that the conditions governed for discharge is given in detailed memorandum of policy dated 26th May, 2000 that how the officer will be discharged and detailed

discharge drill has been given, but, that drill was not undertaken properly.

13. Petitioner has also submitted that Hon'ble the Supreme Court in series of cases has held in matters of resignation and revocation thereof if before acceptance of resignation incumbent revokes the same then such resignation should not be accepted viz. *Balram Gupta v. Union of India & Anr.* [1987 (Supp) SCC 228], *J.N. Srivastava v. Union of India & Anr.* [1998 (9) SCC 559], *Shambhu Murari Sinha v. Project and Development India & Anr.* [JT 2000 (6) SC 358] and *State of West Bengal & ors. v. Sushil Kumar Sharma* [JT 2000 (6) SC 361].

14. Learned counsel submitted that before his request for discharge is accepted, he has revoked the same, therefore, in view of the law laid down in the aforesaid

judgment, the petitioner should not have been discharged on 31st March, 2006 as he has already revoked the request and he has submitted that he had to write this request for discharge under the personal influence of Col. Rajesh Tyagi and it was not voluntary one. Petitioner also submitted that he was discharged without following the guidelines of memorandum and he has not filed all the necessary bank accounts and other papers with the signature of his wife, which were given to him. Therefore, his pension and other benefits may not be determined. He has also assailed the order of the disposal of the Statutory Complaint.

15. Learned counsel for respondents has submitted that petitioner's allegation is that he sought voluntary retirement not because of his own volition but under the coercion and pressure of Col. Rajesh Tyagi and it is also submitted that all the necessary exercise for

completion of the discharge formalities was done post haste.

16. We have heard learned counsel for the parties and perused the record. It is correct that petitioner did file the application for voluntary retirement on 21st February, 2006 and an affidavit to this effect, but, in fact, he revoked it on 13th March, 2006 by sending revocation application followed by a detailed telegram and a statutory complaint that his voluntary order of discharge was taken under the undue pressure of Col. Rajesh Tyagi, whether it was done under the pressure of Col. Rajesh Tyagi or other officers, but, the fact remains that before the exercise for discharge could be acted upon the incumbent has already withdrawn the same. He has also revoked the same on 13th March, 2006, which is evident from the order dated 15th March, 2007 on the rejection of his statutory complaint by the

Chief of the Army Staff. Chief of the Army Staff has only disposed of the petition in a mechanical way without proper application of mind. When the petitioner is making assertion that his request for voluntary discharge was extracted under the pressure then, in that case, the proper course was to investigate the matter by a proper enquiry. This kind of casual disposal of the statutory complaint is not at all warranted. If the statutory complaints are disposed of in the light hearted fashion, then purpose of filing the complaint would loose its significance. So far as law is concerned, it is well settled by series of decisions of apex court that in case a person voluntarily gives letter for resignation, but, before it can be acted upon, it is revoked, then, in that case, the request for resignation cannot be implemented.

In the case of *Balram Gupta (supra)* the appellant, after completing more than 20 years of service, offered his letter dated 24th December, 1980 to voluntarily retire from the service w.e.f. 31st March, 1981 by treating the notice period w.e.f. 1st January, 1981. The government, vide its letter dated 20th January, 1981 allowed the appellant to do so. However, in the mean time, the appellant stated that on account of persistent and personal requests from the staff members, he had to change his mind and accordingly by his letter dated 31st January, 1981 sought to withdraw his notice of voluntary retirement. But the authority disallowed the appellant's request and precluded the government servant from withdrawing his notice. Apex Court, while allowing the petition of the petitioner held "*In the facts of the instant case the retirement from the government service was to take effect at a subsequent date*

*prospectively and that withdrawal was long before that date. Therefore, the appellant had **locus poenitentiae**. The dissolution of the contract of employment would be brought about only on the date indicated i.e. March 31, 1981; upto that the appellant was and is a government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation.”*

17. This view has been followed in all the subsequent decisions, which have been referred hereinabove. Referring to the present facts of the case, the petitioner is suppose to have tendered a letter for voluntary discharge on 21st February, 2006, though, under pressure, but, he was to be discharged on 31st March,

2006, but before that he has already moved an application for revocation of letter of discharge on 13th March, 2006. Petitioner should not have been discharged on 31st March, 2006. This action of respondent is *prima facie* bad in law and equally wrong disposal of the statutory complaint by the Chief of the Army Staff on 15th March, 2007. Consequently, we allow this petition and set aside the order of discharge, petitioner should be reinstated and he shall be entitled to all back wages. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
08th February, 2010