

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

**O.A. No. 447 of 2010**

**IN THE MATTER OF:**

**Naik Ravinder Singh**

**.....Applicant**

Through Mr S M Dalal, counsel for the Applicant

Versus

**Union of India and Others**

**.....Respondents**

Through: Mr Ankur Chibber, counsel for the Respondents

**CORAM:**

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

**JUDGMENT**

**Date: 12-01-2011**

1. The applicant had file
2. d O.A 447/2010 praying that the order of discharge dated 27/11/2008 be quashed alongwith the order dated 11/05/2010 (Annexure A-1) rejecting his complaint. The applicant had prayed he be reinstated in service with all consequential benefits.
2. The applicant was enrolled in the Army on 08/01/2002. He was promoted to the rank of Naik on 01/01/2004 and had been earmarked for promotion for Havildar.

3. The applicant states that on 12/06/2008 his 03 years old daughter was admitted to No 5 Air Force Hospital for treatment. On 30/07/2008 a false complaint was made against the applicant by the wife of Naik S Pegu alleging that the applicant had molested her 07 years old daughter at 5 Air Force Hospital . This complaint was subsequently withdrawn by the complainant on 07/08/2008 (Annexure A-2). Despite this withdrawal a Court of Inquiry was conveyed on 09/08/2008. The applicant states that he was cleared of all allegations.

4. The applicant states that on 09/08/2008 he was summoned by his Commanding Officer, Col RS Rawat, and coerced into submitting an application requesting for premature discharge. The applicant states that on 04/09/2008 he submitted an application requesting to withdraw his earlier application dated 09/08/2008 (Annexure A-3) seeking premature discharge. The wife of the applicant submitted another application dated 13/11/2008 (Annexure A-4).

5. On 27/11/2008 Record Office, Parachute Regiment issued his discharge order. The applicant submitted another application dated 10/02/2009 requesting for cancellation of his discharge order (Annexure A-5). No cognisance was taken on his application and the applicant was dispatched to Depot Coy for discharge drill. The order of his discharge was cancelled on 20/02/2009 due to the intervention of Colonel of the

Parachute Regiment (Annexure A-6). On 27/02/2009 however another order of discharge was passed and the applicant was discharged on 28/02/2009.

6. The applicant submitted a petition to the Chief of the Army Staff on 20/03/2009 (Annexure A-7). The same was rejected on 11/05/2010 (Annexure A-1).

7. The applicant contends that he had submitted two applications on 04/09/2008 (Annexure A-3) and 10/02/2009 (Annexure A-5) praying for withdrawal of his request for premature discharge. This was much before the discharge order was implemented on 28/02/2009. The respondents have therefore violated the Hon'ble Supreme Court judgement which states "**whereas resignation is to have effect from a future date it can be withdrawn at any time before that date**". The applicant states that on this ground his order of discharge is liable to be set aside. The applicant has cited following three judgments in support of his contention:-

(a) Union of India & Ors Vs Wg Cdr T Parthasarathy, AIR 2001 SC 158.

(b) L/Nk Sanjeev Kumar Vs Union of India & Ors, T.A 413/2010, decided on 08/02/2010, AFT, Principal Bench, New Delhi.

(b) Sepoy Mohammad Sobrati Vs Chief of the Army Staff & Ors, T.A 293/2009, decided on 06/10/2010, AFT, Principal Bench, New Delhi.

8. The respondents in their counter affidavit state that the applicant molested the 07 years old daughter of a serving soldier at 5 Air Force Hospital and informally confessed about his crime and made entreaty to be spared from the legal consequences. Detailed informal enquiries were conducted which left no doubt about the molestation. The applicant, to escape this stigma, submitted an application for premature discharge on 09/08/2008. Subsequently he submitted an application dated 04/09/2008 requesting that he not be discharged. The wife of the applicant submitted an application dated 13/11/2008 in pursuance of which the Colonel of the Parachute Regiment directed that the initial order of his discharge be cancelled. However, after knowing facts of the case the Colonel of the Parachute Regiment cancelled his earlier decision and directed that the applicant be discharged as sanctioned earlier. In view of this another order of discharge, dated 27/02/2009, was issued.

9. The applicant submitted another application dated 10/02/2009 praying cancellation of his discharge order. This was not considered by the Officer-in-Charge Records and the applicant was discharged from service on 10/02/2009. The respondents recommend that the application be rejected.

10. The applicant in rejoinder has stated that the charges about molestation are false. If the allegations are so serious disciplinary action would have been initiated against him. He has however been discharged on his own request.

11. We have heard the arguments and perused the record. The legal position is very clear, in that a request for premature retirement can be withdrawn at any stage before the discharge becomes effective. The applicant was discharged on 28/02/2009. However before the discharge became effective the applicant had submitted two applications dated 04/09/2008 and 10/02/2009 requesting that his earlier request for premature discharge be cancelled. He was legally entitled to withdraw the same and should not have been discharged. In view of the judgements cited by the applicant order of discharge is not sustainable and the applicant is entitled to relief. We therefore direct that the applicant be reinstated immediately with all consequential benefits. The orders by the respondents dated 27/11/2008 (order of discharge) and 11 May 2010 (rejection of petition) be set aside. Application is allowed. No costs.

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

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

**Announced in the open Court**  
**on the day of 12<sup>th</sup> January, 2011**