

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI  
(Court No.2)**

**T.A NO. 320 of 2009  
(WRIT PETITION (CIVIL) NO. 6836 of 2009)**

**IN THE MATTER OF:**

**Ex Lt Rajib Phukan** .....**APPLICANT**  
Through : Mr. S.S. Pandey, counsel for the applicant

**Vs.**

**Union of India and Others** ...**RESPONDENTS**  
Through: Mr. R. Balasubramanian, Asstt. Solicitor General for the  
respondents

**CORAM:**

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER  
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 09.11.2011**

1. The case was first filed in the Hon'ble High Court on 13.02.2009 as WP(C) No.6836 of 2009 and was subsequently transferred to the Armed Forces Tribunal on 17.11.2009.

2. Vide this petition, the applicant has prayed for quashing and setting aside the order of discharge by accepting the resignation of the applicant passed on 22.12.2006. The applicant has also prayed that the medical records of the applicant may also be summoned and to quash the findings of the Release Medical Board (RMB) which has down-graded him to S-3. The applicant has also prayed for reinstatement in service with all consequential benefits.

3. Brief facts of the case are that the applicant was commissioned into the Territorial Army (TA) as an officer on 24.01.2003. After commissioning and training, the applicant was posted to 125 Infantry Battalion (TA) located at Secundarabad. Thereafter, the applicant worked in different TA units to the entire satisfaction of his superiors. In 2006, he was posted to 166 Infantry Battalion located in Assam. Here the attitude of respondent No.4 who was performing the duties of second in command towards the applicant was not proper. He tried to humiliate the applicant whenever he got an opportunity and he also made fun of the applicant in front of the troops despite the fact that the applicant had made it clear to the respondent No.4 that he was not comfortable with his comments and jokes.

4. In April 2006, when the Commanding Officer was away from the unit on temporary duty, the respondent No.4 was officiating as the Commanding Officer, he called the applicant and gave him the task to collect the formats from the unit register kept in the neighbouring unit for various purposes. The applicant went to the neighbouring unit but could not get the formats as the unit was busy in administrative inspection. The applicant informed the Adjutant of his unit accordingly. Next day, the applicant was rebuked by the Respondent No.4 and when the applicant protested, respondent No.4 got infuriated. He ordered the Adjutant to place the applicant under arrest. However, the matter was amicably settled by the intervention of the Adjutant.

5. After arrival of the Commanding Officer, the applicant met him and narrated the entire incident. The Commanding Officer promised that he will look into the matter and he told the applicant not to mention the incident to any senior officers visiting the unit. After sometime, respondent No.4 called the applicant to his Office and spoke to him very politely and advised the applicant not to report the matter to anyone and promised that he will not trouble the applicant in future. After a few days when the CO proceeded on leave, respondent No.4 became the Officiating CO and he again started harassing the applicant. On 18.05.2006, he initiated the AFMSF-10 against the applicant declaring him a mental patient, who required psychiatric evaluation because of excessive drinking. The applicant was forcibly sent to the military hospital under escort.

6. The applicant had to undergo various tests and since the tests did not reveal any abnormality despite two months of investigation, he was discharged from the hospital in temporary medical category S3(T-24) allegedly for harmful use of Alcohol with direction to review his medical category after six months. The applicant was declared fit for military duties with minor restrictions. The medical board recommendations are at Annexure P-2.

7. On return from the hospital, the applicant sought some leave and/or disembodiment for six months. Respondent No.4 became adamant and told the applicant that he could not go unless he signs the

application for resignation of Commission. Under pressure, the applicant made an application for resignation of his commission since he was desperate to go on leave. Accordingly, the applicant was disembodied from service on 27.09.2006. The resignation letter dated 17.08.2006 was not given back to him (Annexure P-3 Colly).

8. After spending sometime at home and when the applicant came in a proper state of mind to think and analyse the whole sequence of events and its implications, the applicant wrote a letter on 14.12.2006 addressed to the respondent No.3 requesting for withdrawal of his resignation alongwith request of embodiment in a different unit, if possible. (Annexure-P-4 colly).

9. The applicant did not get any response to his letter on 14.12.2006 till 09.01.2007 when he received a letter issued by respondent No.3 stating that the Competent Authority has accepted the resignation of the applicant w.e.f. 22.12.2006 (Annexure P-5 colly). The applicant also received a letter from his unit on 28.02.2007 to report to the 155 Military Hospital to carry out the RMB (Annexure P-6 colly). The applicant wanted his medical board/re-categorisation board also to be done by the Medical Board. He also sought complete papers from the unit which were received on 10.03.2007 (Annexure P-7 colly).

10. The applicant met the concerned authority bringing out the fact that he had already withdrawn his resignation before its acceptance

and as per their advice submitted an application based on which he was called for interview at Delhi on 24.04.2007. The applicant appeared for the interview. However, the applicant received a reply dated 07.05.2007 from the respondents stating that based on interview, the applicant has not been selected for grant of commission in TA (Annexure-P-8 colly).

11. The applicant was again told to apply for grant of commission in TA and a call up letter dated 23.9.2007 was issued to him by the respondents. However, he was intimated that his application has been rejected on technical grounds perhaps because of his low medical category vide their letter dated 11.12.2007 (Annexure P-9 colly).

12. The applicant thereafter spoke to the concerned authorities in Delhi on telephones to know about the reason of his non reinstatement and he was informed that because of his temporary low medical category he was not called back in service. The same was reaffirmed on a later date by the respondents in their letter dated 26.3.2008 in response to the query dated 29.2.2008 written by the mother of the applicant addressed to respondent No.3 (Annexure P-10 colly). After protracted correspondence for holding release medical board in respect of the applicant, he was finally examined by the graded specialist in psychiatry at Barrackpore, Kolkata on 29.4.2008 who opined that the applicant is fit to be upgraded in Shape-I. Based on the advice of the specialist, the RMB was carried out on 11.06.2008

(Annexure P-11 colly). The applicant received two letters, one dated 21.08.2008 and second on 11.09.2008 from respondent No.3 asking for the RMB proceedings and also stating that the case of the applicant for TA commission will not be considered without the same. The applicant replied vide letter dated 09.09.2008 followed by another letter dated 14.09.2008 stating that copy of RMB has already been forwarded by the medical authorities to respondent No.3 on 12.06.2008 (Annexure P-12 colly). The applicant neither received the copy of the RMB proceedings nor received any intimation regarding his reinstatement in service. Presently, the applicant has already been released from the service and no longer subject to Army Act. Therefore, the statutory right to make representation to the Central Government against the illegal action of the respondents is not available to the applicant as he is no longer subject to the Army Act.

13. Learned counsel for the applicant argued that it is the settled law that in case a person withdrew his letter of resignation before the date of acceptance, his request for resignation will be treated as cancelled. In this case, the letter of resignation was of dated 17.08.2006 which came into effect on 27.9.2006. The applicant sought the cancellation of resignation letter vide letter dated 14.12.2006 whereas the resignation was accepted only on 22.12.2006. Therefore, the plea for cancellation of his letter of resignation could have been accepted.

14. In support of his contentions, learned counsel for the applicant quoted the judgment passed by the AFT in **TA No.413/2010 L/NK Sanjeev Kumar Vs Union of India & Ors.**, wherein it has been held that letter of revocation submitted before the actual discharge had to be accepted and his letter of resignation should be treated as cancelled.

15. Learned counsel for the respondents argued that the applicant was disembodied on 27.9.2006. His letter of 14.12.2006 was basically for re-embodiment of his services. He drew our attention to Annexure P-4 colly. It has been stated that the resignation of the applicant was accepted by the competent authority vide their letter dated 22.12.2006 (Annexure P-5 colly).

16. Learned counsel for the respondents further stated that it was not the case of withdrawal of resignation but a request for being embodiment once again. In his letter dated 14.12.2006, the applicant has stated that *“the circumstances under which I had put up my discharge application has changed, hence I wish to withdraw my discharge application. I am presently on disembodied state, may I request you to grant me embodiment under rule 33 and post me if not to 166 INF BN (TA) (H&H) Assam than to any other TA unit in India.”* This clearly shows that it was not a letter for withdrawal of resignation but only for embodiment of his services.

17. Having heard both the parties at length and having examined the documents, we are of the opinion that it is a settled law that resignation if withdrawn before the date it has been made effective, should be treated as cancelled.

18. In this case the resignation letter of 17.8.2006 was approved by the Central Government on 22.12.2006 and was to be made effective from the same date (Annexure P-5 colly). However, the applicant had submitted his application for withdrawal of said letter of resignation on 14.12.2006. This fact has not been disputed by the respondents either. The learned counsel for the respondents however, stated that the approval of the competent authority i.e., the Chief of the Army Staff was obtained on 12.12.2006 while the letter was issued on 22.12.2006. Therefore, the resignation had become effective on 12.12.2006 itself.

19. We are of the opinion that the communication dated 22.12.2006 clearly laid-down that “the officer will be relieved of his duties with effect from the date of issue of this letter”. Therefore, the approval of the Competent Authority is of no consequence because technically the applicant would have remained in strength till 22.12.2006.

20. In view of the foregoing, we are of the opinion that the letter dated 14.12.2006 is amounted to letter of withdrawal of his resignation. This action can easily be interpreted that he wanted to continue in T.A.



service. Thus, the contentions of the respondents raised in this respect are not maintainable. The resignation of the applicant which was revoked on 14.12.2006 is very much in order and the letter of 22.12.2006 stands quashed. The applicant should be treated as in continuous service for all purposes.

21. The applicant is presently disembodied w.e.f. 27.09.2006. He shall continue to remain in the same state till his medical category is upgraded and he meets the other eligibility criteria. The applicant may be re-embodied based on operational requirement. The order of discharge and rejection of his prayer for re-embodiment are quashed and it is observed that the order of discharge and the application for re-embodiment will not come in his way for his re-embodiment.

22. The implementation of this order be completed preferably within a period of 90 days. The petition stands partly allowed. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

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

Announced in the open Court  
on this day of November, 2011.