

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 325 of 2009
W.P.(C) No. 3405 of 1997 of Delhi High Court**

IN THE MATTER OF:

Ex Rect. Yashvir Singh**Applicant**
Through : Mr. P.D.P. Deo and Ms. Monica Negi, counsels for the
Applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Mohan Kumar, counsel for the Respondents

CORAM:

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

JUDGMENT

Date: 24-05-2011

1. The petition was filed in the Delhi High Court on 08.08.1997 and thereafter, it was transferred to the Armed Forces Tribunal on its formation on 17.11.2009.

2. The applicant vide this petition has prayed that the discharge order of the applicant from service dated 30.11.1996 (**Annexure-A**) be set aside and directions be issued to the respondents to reinstate the applicant into service with all consequential benefits including promotion and pay and allowances.

3. The brief facts of the case are that the applicant was enrolled in the Army on 26.08.1996, on being found fit in all respects. He commenced his training in No. 2 Company of the Training Battalion.

4. The applicant was taken aback with shock and grief to see an application being made from his side and was compelled and pressurised to sign by him under compulsion stating "*due to some domestic problems, I am unable to carry out training and wish to go home*" (**Annexure-B**). He further submitted that the application was got signed on 28.11.1996. Immediately without any investigation, his name was struck off the strength and discharged from service w.e.f. 30.11.1996.

5. As per the discharge book that has been issued to him, he has been discharged under Army Rule 13 (3) (IV) being shown at his own request just after completion of three months and six days of service.

6. Learned counsel for the applicant argued that no counselling or opportunity to defend was afforded to the applicant before he was discharged. It is obvious that it was a pre-planned effort to throw him out from the armed forces. Learned counsel for the applicant further argued that neither the alleged application has been written by him nor bears the signature of the applicant. Based on this application, the discharge was sanctioned "*At own request*". He further argued that had there been any domestic problems, one could safely presume that applicant would not have chosen this as a profession and taken all the

pains to prepare himself to join as a Sepoy in the Army. Surprisingly, within three months, the domestic problems have surfaced which resulted in seeking of discharge by the applicant as alleged by the respondents is not tenable. If the contention was correct then applicant would not have given legal notice on 22.04.1997.

7. Learned counsel for the applicant further stated that there was some demand of money to be handed over to his brother, who was one of the JCOs in training battalion and to some officers which he declined and, therefore, he was sent out. However, he stated that there cannot be direct evidence to substantiate this averment, but it should be inferred from discharge proceeding.

8. Learned counsel for the respondents produced the record in original and drew our attention to the application for voluntarily discharge due to domestic problem as submitted by the applicant. He further contended that before the said application was submitted, the applicant had sought an interview with the Company Commander which has been documented as on 05.11.1996. Original was placed for our perusal, which also bears the signature of applicant. After the interview, he has submitted this application which also bears the signatures of two witnesses. The application for discharge on domestic ground does not bear any date but it can be safely assumed that it was handed over after the interview on 05.11.1996.

9. Learned counsel for the respondents further refuted the allegations of some money being demanded to be paid to a JCO or officers in the Training Battalion. He also pointed out that this averment has not been made in the original petition and are afterthought which is clearly without any substance.

10. Learned counsel for the respondents further argued that since the applicant had applied for pre mature discharge due to the personal domestic problem, the discharge was sanctioned by the competent authority under Army Rule 13 (3) (IV). The Part II order for discharge of the applicant w.e.f 30.11.1996 was published on 13.11.1996, clearly indicates that the application for premature release by the applicant was made before 13.11.1996 and it was sanctioned vide this Part II order. The applicant was having sufficient time before he was actually discharged which was given to him to obtain clearances. He made no representation during this period that such application was not submitted by him or not made by him or that he had no domestic problems.

11. Having heard both the sides and having examined all the documents in original, we are clear that applicant was interviewed by the Company Commander on 05.11.1996. Apparently, the interview was based on a request made by the individual a declaration was given by applicant that he has been interviewed by OC No.2 Trg Coy and he has no complaint. The declaration is bearing his signature and

date 05.11.1996. It is clearly inferred that during the interview the applicant had requested for pre-mature release due to personal domestic problems. On being given clearance to apply, the applicant made the application in the presence of two independent witnesses. We have compared the original document and signatures of the applicant on both the documents pertaining to interview as also the application to observe that they are of the same person. The applicant at one place admitted his signature with the allegation that under pressure he signed and in another place he denied his signature, he himself not serious to his stand. It is further made clear that mere sending notice after more than four month disputing that submission of applicant it cannot be inferred that application was obtained under pressure. The applicant has not been able to explain that just after discharge w.e.f. 30.11.1996 why he kept mum, whether he approached to higher authority in this respect.

12. We are not inclined to go into the allegations made by the learned counsel for the applicant pertaining to requirement of money to be paid to his brother who was a JCO who was posted at Trg. Battalion and Officer in the Training Battalion, as this was not covered by the applicant in his petition. Also, he is not in a position to substantiate his allegation.

13. Going purely through the requirement of Army Rule 13(3) (IV), it is clear that the CO is empowered to sanction the discharge of a

recruit who seeks volunteer discharge pre-maturely. In this case, the applicant has sought voluntary discharge and submitted his application accordingly. This application was also found signed by him as well as by two independent witnesses. The applicant has not been able to establish any enmity with these two independent witnesses. From the perusal of record it is revealed that before discharge he has availed the opportunity to meet the O.C. The applicant has not denied this fact in rejoinder or during the course of arguments. Thereafter, he applied discharge at his own accord. On that application after due formalities he has been discharged by competent authority. There is no infirmity in the order of discharge.

14. In view of the foregoing, we are not inclined to interfere in the impugned order of discharge. The case is dismissed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 24th day of April, 2011