

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

**T.A NO. 546 of 2009
(WRIT PETITION (CIVIL) NO. 550 of 1999)**

IN THE MATTER OF:

Ex. Naik Rajbir Singh

.....APPLICANT

Through : Shri P.D.P. Deo, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS

...RESPONDENTS

Through: Shri 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: 19.09.2011

1. The case was first filed before the Hon'ble Delhi High Court on 10.09.1999 and was subsequently transferred to the Armed Forces Tribunal on 02.12.2009.
2. Vide this petition, the applicant has prayed that order dated 19.03.1998, the punishment of 8 days' pay fine being a 'black ink entry' be set aside and 'No Objection Certificate' (NOC) for enrolling to Defence Service Corps (DSC) since he is eligible, be issued by the respondents with consequential benefits.
3. Brief facts of the case are as follows.

4. The applicant was enrolled on 24.2.1986 in the Territorial Army (TA) under the provisions of Territorial Army Act 1948. On completion of his training, he joined his unit 108 Inf. Bn. (TA) MAHAR. He was promoted to the rank of Naik in 1996. Later on he was disembodied.

5. It was further alleged that the applicant received a telegram (Annexure P-1) without specifying the date of reporting "*unit embodied under TA Act 1948 rule 33. Report Duty on March 1998*" signed by adjutant 108 Inf. Bn. As per his averment, the applicant received that telegram on 11.03.98 and the railway warrant on 15.03.1998. Accordingly, the applicant reported for duty on 19.03.1998. The applicant did not receive the copy of the telegram by post for confirmation. The despatch of railway warrant being a mandatory requirement to re-call the applicant was, however, sent only on 10th March 1998 by the respondent.

6. The respondent No.4 meanwhile issued apprehension roll with reference to applicant to Collector and Superintendent of Police of Distt. Bharatpur on 11th March 1998.

7. On reporting to the unit, an allegation was made by respondent No.4 that the applicant was late and as such he was awarded punishment of 8 days' pay fine vide order dated 19.03.1998. It was alleged by the respondent that he was required to report on the 10th

March 1998 and since he had reported on 19.3.1998, thus he was late by 8 days.

8. The applicant further sought NOC from the authorities for getting enrolled in the DSC. However, he was denied the same because since he had been punished for 8 days' of pay fine. With this punishment, the applicant was also not entitled to any re-employment by any other government organisation.

9. Ld. Counsel for the applicant argued that the applicant is from a very poor family and had no other livelihood other than this employment. As such, he is seeking re-employment on having completed his term with the TA but this punishment of 8 days' pay fine was coming in the way of issuance of an NOC by the respondent. Therefore, the punishment which was awarded to the applicant was wrong and liable to be set aside and NOC is required to be issued.

10. Ld. Counsel for the applicant also stated that there were similarly placed individuals who had not reported in time but they were dealt with very leniently in comparison to the applicant who was awarded 8 days' pay fine and denied NOC vide letter dated 09.05.1999.

11. Ld. Counsel for the applicant also argued that on 02.9.1998, a show cause notice was issued by the respondent to the applicant which sought reasons why he was not being discharged from the

services in terms of TA Rule 16 of 1948. The applicant replied to the notice and also filed a representation. However, despite the response, the applicant was discharged from service vide letter dated 06.11.98.

12. Ld. Counsel for the respondents refuted the contentions placed by the applicant and submitted that the applicant having been accepted the punishment of award of 8 days' pay fine made several representations and letters to which an enquiry was held. On careful analysis of the telegram sent by the unit (Annexure R-A) it clearly states that "*report duty on 10.3.1998*". While the telegram produced in evidence by the applicant (Annexure R-B) reads "*report duty on March 1998*". The applicant had received this telegram on 26.2.1998, instead of 11.3.1998 as claimed in his averments. Secondly, on close scrutiny of the received telegram, the figure '10' has been converted into 'on'. It clearly shows some kind of tampering of evidence.

13. Ld. Counsel for the respondents further quoted that in the OA in which the applicant has averred that "*telegram only was received on 11.3.1998 & railway warrant was of upto 15.3.1998, hence he had no alter-native to leave on 15.3.1998 and report for duty on 19.3.1998*". This statement in itself goes against his averment made earlier in the OA which says that the telegram was received on 11.3.98 and railway warrant on 15.3.1998.

14. Ld. Counsel for the respondents further submitted that since the applicant was governed by the TA Act and Rules, he was summoned for embodiment. As per the regulations, the initial period of service was seven years in TA and further for 8 years in the TA Reserve. The enrolment could be renewed for a period of two years at a time but the period of enrolment does not exceed 15 years in any case. It is clear that the services of the applicant was not regular service as is in the Army but instead is intermittent service wherein a person enrolled may be called upon to render service if and when is required.

15. Ld. Counsel for the respondents also stated that in this case an apprehension roll was issued on 11.3.1998 whereas the applicant reported on 19.3.1998. The respondents after due investigation took a lenient view and regularised the period of absence without leave by imposing a mild punishment of 8 days' fine.

16. Ld. Counsel for the respondents also stated that because of the representations which were made by the applicant, several investigations were carried out in which it has been revealed that the applicant had altered the documentary evidence and therefore, he was issued with a show cause notice and his services were terminated under the TA Act read with TA Rule 14(b)(iii).

17. Ld. Counsel for the respondents further stated that the applicant had not asked for the NOC for disembodiment on 27.9.1986, he had in

fact asked the same for the first time on 26.7.1996. The applicant was wait-listed as he did not meet the QR. Thereafter, he applied for NOC again on 13.4.1998. But again this could not be accepted as he did not meet the QR. The applicant was informed accordingly vide letter dated 09.05.1998 (Annexure R-D). The Standard Operating Procedure on the issue of NOC states as under:-

- “(i) Your age should be 40 years.*
- (ii) You should have 07 ATC and 03 years embodied service.*
- (iii) There should not be any red/black ink entry in your documents during the service.”*

18. Ld. Counsel for the respondents stated that the applicant did not meet any of the above three laid-down guidelines.

19. Having heard both the parties at length and examined the documents, we are of the opinion that the telegram was received by the applicant on 26.2.1998, as per seal of the Post Office stating “report duty 10 March 1998” and not on 11.3.1998 as claimed by applicant. He, however, reported to the unit on embodiment on 19.3.1998. Thus, the absence was for 8 days. The Commanding Officer awarded him 8 days’ pay fine, which was a mild punishment being a ‘black ink entry’.

20. As per the averments made by the respondents, it is revealed that based on the representations of the applicant to the authorities

concerned, a detailed enquiry was carried out. In this enquiry it was found that the applicant had tried to tamper with the record. His averment in his own application is conflicting. The applicant has claimed that the telegram was received on 11.3.1998 while the post office's seal is of 26.2.1998. Even giving latitude for the postal services in remote areas and the village background where the actual delivery was done, a delay of 13 days from the date of receipt of the telegram at the Post Office to the individual is not conceivable.

21. As regards the receipt of railway warrant, at one instance the applicant has averred in his application that he has received the railway warrant on 15.3.1998 while in the same application he has mentioned that the railway warrant was valid upto 15.3.1998. That is material contradiction. The applicant has not been able to place the true facts in that respect.

22. In view of the above, we find it hard to accept the averments of the applicant at its face value. There has been no evidence to suggest that the telegram was actually received late and the railway warrant was received on 15.3.1998 so that he was not in a position to report on 10.3.1998. The penalty of 8 days' pay fine has been awarded after due process, thus it does not deserve interference. The contentions placed by the applicant are not sustainable. Thereafter, in an inquiry again the matter was enquired into and he was discharged under TA Act and

Rules. That order has not been challenged. But we do not find any illegality and do not wish to interfere in the matter.

23. As regards the issue of NOC, since the applicant did not qualify for the QR which has been laid down as a policy, therefore, NOC for his joining the DSC could not be issued. The order passed in this respect does not suffer from any infirmity or any illegality. The contentions placed by the applicant do not have any legal force.

24. In view of the foregoing discussion, we are not inclined to interfere in any of the orders in the case. The application is dismissed with no order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 19th day of September, 2011.