IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

OA No.252/2010

L/NK Mukesh Singh .....**Petitioner**

Versus

Union of India & Ors. .....**Respondents**

For petitioner: Mr. D.S. Kauntae, Advocate.
For respondents: Mr. Anil Gautam, Advocate

CORAM:
HON'BLE MR. JUSTICE N.P. GUPTA, JUDICIAL MEMBER.
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER.

O R D E R
05.10.2012

1. By this OA, the petitioner seeks to challenge the discharge order dated 18.02.2009 (being speaking order) passed in compliance of the order of High Court of Delhi dated 02.07.2008 in CWP No.4637 of 2008, and also seeks to challenge the discharge dated 12.11.2004, and subsequent order dated 16.06.2008, on various grounds.

2. As we get from the averments of the petitioner that the discharge has been ordered on the grounds of petitioner having incurred four red ink entries and has been discharged under Army Rule 13(3)(III)(v) as 'undesirable'.

3. Long drawn arguments were submitted including that while in service, vide order dated 11.03.2003, further retention was approved in low medical category and still during this period of retention, he has been discharged. Likewise, detailed averments and arguments were sought to be made about the correctness, legality, propriety and following proper procedure in the matter of awarding various punishments which have come out to be red ink entries. It was also submitted that the show cause notice has not been issued by the Competent Authority, in as much as, it is signed by the Commanding

Officer (Col) and not by the Brigade Commander. It is also submitted that the petitioner never submitted any reply, rather the show cause notice was never served upon him, and also that he was never served with a discharge order. Rather, subsequently he received the discharge certificate somewhere in the middle of 2005. Learned counsel also invited our attention to certain notings said to have been made in Part-II order. Then, by referring to Annexure A-14, it was sought to be contended that actually the Brigade Commander did not apply his mind consciously, as to whether the petitioner is required to be discharged or not. Rather, the proceedings were prepared by the unit authorities, and recommendations were made, and the Brigade Commander simply sanctioned the discharge, and thereby a very poor homage was paid to the letter and spirit of Army Rule 13(3)(III)(v), rather the order is an outcome of mere following some mechanical procedure.

4. Learned counsel also sought to rely upon quite a few judgments as mentioned in para 5.10 of the OA.

5. Learned counsel for the respondents supported the impugned action and submitted that in view of catena of subsequent decisions which are also based on judgment of Hon'ble Supreme Court in **Union of India Vs Deepak Kumar reported at 2009(7) SCC 370**, all the submissions made by the petitioner do not hold good. An objection of delay was also taken on the side of the respondents, and reliance was placed on the judgment of Hon'ble Supreme Court in **Union of India Vs M.K. Sarkar reported at 2010(2) SCC 59**. The respondents relied upon the judgments of Delhi High Court in **Pratap Singh Vs Chief of Army Staff & Ors., being LPA 136/2003 decided on 03.06.2011, Sepoy Islam Khan Vs Union of India & ors., WP(C) No.5023/2011 decided on 12.09.2011, Sh. Om Lat Vs Union of India &**

Ors., WP(C) No.5747/2011 decided on 02.07.2012 and a decision of this Bench dated 27.02.2012 passed in T.A. No.563/2009.

6. To counter, learned counsel for the petitioner submitted that on the theory of prospective over ruling, since at the time when the petitioner's discharge was ordered, the judgments relied upon by the petitioner did hold the field, therefore, his case is required to be considered on the touch stone of those judgments only and not the subsequent judgments.

7. We have heard learned counsel for the parties and considered their submissions. At the outset, it may be observed that in view of the judgment of Hon'ble Supreme Court in M.K. Sarkar's case mentioned above, mere filing of successive writ petitions before the High Courts, either for seeking direction to provide documents, or for passing speaking order, would not enure any benefit to the petitioner to cover up the delay and latches, as the discharge is of 2004, and admittedly, he received the discharge certificate in 2005. It is a different story that the petitioner has not produced the copy of any of the writ petitions whether it be WP(C) No.4637 of 2008 or WP(C) No.12/2008 to show as to what was the relief claimed therein.

8. Be that as it may, but it is not the case that in those writ petitions the discharge was under challenge. Then, from a look at Annexure A-6, it is clear that the petitioner had filed the statutory petition also way back on 15.02.2008, and the impugned order Annexure A-1 is also as old as of 18.02.2009. Obviously, this impugned order of 18.02.2009, can very well be said to be the final order which can be claimed by the petitioner even after claiming of benevolence de horse the judgment in M.K. Sarkar's case to be the starting point of limitation. Even if computing from that time, the present OA is clearly

barred by time, as prescribed in Section 22 of the AFT Act, for which no explanation whatsoever has been given.

9. In that view of the matter, the petition being clearly barred by time, the same is, therefore, dismissed without going into the merits of the case.

M.L. NAIDU
(ADMINISTRATIVE MEMBER)

N.P. GUPTA
(JUDICIAL MEMBER)

New Delhi
October 05, 2012
Ns