

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

11.

O.A. No. 514 of 2010

Rifleman Ajay Kumar Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Mr. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

05.07.2012

1. In the present petition, petitioner is resident of Aligarh, Uttar Pradesh, therefore, this petition should have been filed before the Lucknow Regional Bench of Armed Forces Tribunal. However learned counsel for the petitioner did not bring this fact to our notice and argued the matter for two days. Had this fact been brought to our notice at the outset, we would certainly have transferred this case to the Lucknow Regional Bench. Since we have heard the arguments of the parties at length, therefore, we are entertaining this petitioner before this Bench.

2. Petitioner vide this petition has prayed to quash and set aside the discharge order dated 12.05.2010 in the light of Army HQ Policy letter dated 18.12.1988. It is also prayed that directions may be issued to the respondents to reinstate the petitioner back in service with all consequential benefits.

3. Petitioner was enrolled in the Indian Army on 30.08.1993. He remained absent from 11.05.1995 to 07.06.1995 for which he was awarded 28 days RI by the CO on 01.07.1995. Again he overstayed his leave from 05.05.1997 to

25.05.1997 for which he was awarded 28 days RI and 14 days pay fine on 24.06.1997. He applied for leave in May, 2000 but the same was refused to him, therefore, he remained absent without leave w.e.f. 18.05.2000. After solving his domestic problems, he reported back to duty and on being refused permission to rejoin by the Unit, he reported to GOC I Corps on 28.05.2000 and based on his direction again reported to the unit on 05.06.2000. However he was again refused entry by the Unit. He again came with his father to rejoin his duty on 03.07.2000 but again he was refused. Therefore, he filed a Writ Petition (Civil) No. 5418/2001 and as per direction of Hon'ble Delhi High Court given vide judgment dated 08.12.2004, he was taken back on duty by his Unit on 28.12.2004.

4. Thereafter, petitioner continued to serve and in 2010 he was granted annual leave from 03.01.2010 to 03.03.2010 and he reported back to unit on 03.03.2010. He was charged for being absented from Firing Parade on 04.03.2010 and he was awarded 2 days RI on 30.03.2010. He was also charged for using abusive language to his superior officer on 29.03.2010 and was awarded 2 days RI on 05.04.2010. Thereafter he was issued a show cause notice dated 09.04.2010 and finally he was discharged from service on 26.04.2010 vide discharge order dated 12.05.2010. Therefore, petitioner has filed the present petition seeking aforesaid reliefs.

5. A reply has been filed by the respondents and they have pointed out that petitioner has been a perpetual defaulter since the beginning. He was punished for being absent in 1995 and 1997. He was also punished twice in 2010 for absenting himself from Firing Parade and for using abusive and threatening language against his superior. Court of Inquiry to investigate the facts of both cases were conducted, wherein petitioner was also examined as

a witness, and he was found blameworthy. However, the petitioner refused to sign his statement in both Court of Inquiries and this has been validated by the Presiding Officer and two members of the Inquiry.

6. We have heard both the parties and gone through the record.

7. Learned counsel for the petitioner argued that petitioner has almost 16 years of total service and he has been dealt with very harshly. He also orally submitted that petitioner's case for discharge was not approved by the Brigade Commander. He relied on the judgment given by Hon'ble Delhi High Court in the case of **Ex Sepoy Sube Singh Versus Union of India & Ors. (W.P.(C) No. 4656 of 2003) decided on 02.04.2007** wherein their Lordships have condoned the shortfall of almost 3 years of service in completing 15 years of qualifying service for pensionary benefits.

8. On the other hand, learned counsel for the respondents argued that petitioner's case has been dealt with properly. He was issued a show cause notice and a reply has also been given by the petitioner. Learned counsel produced original record before us and submitted that approval of Brigade Commander was taken in the present case.

9. After going through the record, we are satisfied that a proper show cause notice was issued to the petitioner and he did file his reply. It is also on record that a proper case was put up before the Brigade Commander and Brig Arun Kumar has endorsed the discharge of petitioner from service.

10. Learned counsel for the petitioner strenuously urged before us that considering the service tenure of petitioner i.e. of 12 years, his shortfall period for completing 15 years of qualifying service for service pension may be condoned and petitioner may be granted pensionary benefits.

11. We would have acceded to this limited prayer of the petitioner but the fact remains that petitioner has physically served only for 12 years in all. His period of absence from May, 2000 to December, 2004 cannot be taken into consideration because he did not serve physically during this period and rejoined only on 28.12.2004 after the decision of Hon'ble Delhi High Court. The conduct of the petitioner does not give a happy picture, therefore, we are not inclined to grant relief of service pension to the petitioner. However, petitioner may file a representation with the authority for service pension and authority will consider the same sympathetically in accordance with law and will dispose of the same within a period of six months.

12. Petition is accordingly disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 05, 2012
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