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COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

O.A. No.532 of 2011 with M.A. No.187 of 2012

IN THE MATTER OF:

Ex. Sepoy Manoj Kumar

.....Petitioner

VERSUS

Union of India & Ors.

.....Respondents

Dated: 11.09.2012

Present: Mr. V.D. Sharma, counsel for the Petitioner.
Mr. V.S. Tomar, counsel for the respondents.

Heard learned counsel for the parties. Arguments concluded.

The petition is dismissed. See separate order.

M.L. NAIDU
(Administrative Member)

N.P. GUPTA
(Judicial Member)

Dated: 11.09.2012
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IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

2.

O.A. No.532/2011

Ex Sepoy Manoj Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. V.D. Sharma, Advocate
For respondents: Mr. V.S. Tomar, Advocate

CORAM:

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

ORDER
11.09.2012

1. This OA No.532/2011 was filed on 28.11.2011. Vide this petition, the applicant has prayed for quashing/cancelling the discharge order dated 17.10.2008 w.e.f. 01.12.2008. The applicant has also prayed for reinstatement in service with all consequential benefits.
2. The applicant was enrolled in the Army on 30.09.2001. He was posted to 5 RAJPUT. He applied for premature discharge on 24.04.2006 (Annexure A-1). He again applied for premature discharge on 07.01.2008 which was sanctioned by the Commanding Officer on 17.01.2008.
3. Subsequently, due to change of the compelling domestic requirements, it is alleged that the applicant decided to cancel his premature discharge and therefore, he applied vide his letter dated 06.10.2008 and again on 14.11.2008 wherein he sought cancellation of his request for discharge (Annexure A-2 and

A-3). It has also been alleged that his Commanding officer had assured him that he will not be sent on premature discharge.

4. It has also been alleged that his wife Smt. Geeta Devi and his father met the Centre Commandant at Fatehgarh in November 2008 and requested him to cancel the discharge of the applicant. Smt. Geeta Devi also applied to all concerned for stopping the discharge of her husband vide her application dated nil (Annexure A-4).

5. Based on the discharge order dated 17.10.2008, the applicant was finally discharged from the service on 01.12.2008.

6. On 10.02.2010, a legal notice was sent by the applicant to the respondent No.5 (Annexure A-5). This was replied vide Rajput Regiment Record letter dated 16.06.2011 (impugned).

7. Learned counsel for the applicant argued that since the domestic circumstances of the applicant had changed, he was willing to continue in service. Applicant's wife and father also visited the Regimental Centre in November 2008 and had sought an interview with the Commandant who has assured them that he will look into the matter.

8. In support of his contentions, learned counsel for the applicant cited ***AIR 1999 Supreme Court 1571 in case of J.N. Srivastava Vs Union of India and others*** wherein the Hon'ble Apex Court has held that an employee was entitled to withdraw his request for voluntary retirement at any time before the notice was accepted by the employer and or before reaching the proposed date of retirement. Learned counsel for the applicant submitted that the facts of

the present case are ipso facto applied to the case of the applicant as the applicant had also written applications seeking cancellation of his discharge on 06.10.2008 and 14.11.2008.

9. Learned counsel for the applicant also stated that the application for premature discharge is under Army Rule 13 in which it is laid down that only the Commanding Officer can sanction the discharge. In this case the Commanding Officer has merely recommended for discharge and it is the OIC Records/Centre Commandant who has approved the discharge.

10. Learned counsel for the respondents argued that the applicant was discharged from service under Army Rule 13(3)III(iv) before fulfilling the service conditions of enrolment on compassionate grounds, at his own request. The Commanding Officer has very correctly signed the discharge and to prove the same he drew our attention to the application dated 07.01.2008 wherein the Commanding Officer had very clearly approved the discharge as sanctioned. Further, he argued that application for expeditious discharge was submitted by the applicant on 28.06.2008 (Annexure R-5) which the Commanding Officer had recommended to the OIC Records for expeditious discharge of the applicant.

10. Learned counsel for the respondents further argued that as per Army Rule 13(3)III(iv), the Commanding Officer is entitled to discharge a person before completion of his terms of engagement and before sanctioning discharge of an individual, the Commanding Officer has to keep in mind the man power situation in the Unit. Therefore, he argued that the Commanding

Officer had sanctioned the application of applicant dated 07.01.2008 on 17.01.2008. However, he merely recommended to the Record Office for expeditious discharge of the applicant as he had again applied on 28.06.2008. Learned counsel for the respondents also drew our attention to the letter written by the applicant's father which was perhaps of dated 31.08.2006 wherein he has also sought premature discharge for his son.

11. Learned counsel for the respondents further argued that the applicant was a habitual defaulter and had earned four red ink entries and he was also liable to be discharged as an '*undesirable*'. However, since his premature discharge was already sanctioned, perhaps the Commanding Officer did not want to discharge the applicant as '*undesirable*'.

12. Learned counsel for the respondents also argued that the alleged applications for cancelling his request for discharge have never been received by the Unit. He also argued that no proof has been placed on record by the applicant that these applications were received by the Unit. As such, there are no grounds to say that applicant wanted to cancel his premature discharge. So much so that even the purported letter by his wife to all concerned, does not bear a date. In response, the learned counsel for the applicant did produce the Post Office receipt dated 16.11.2008 for despatch of the letters to various addresses.

13. Having heard both the counsels at length and having given our best consideration to both the sides, we have examined the documents in detail.

We are of the opinion that the sanction for discharge was given by the Commanding Officer on 17.01.2008, on his application dated 07.01.2008. However, since the actual discharge was also dependant upon the Record Office to permit the individual to go on discharge, subsequent actions are required to be taken by the Record Office. The Commanding Officer recommended the case for early discharge pursuant to the application dated 28.06.2008. The discharge order dated 17.10.2008 was given by the OIC Records which directed that the applicant be discharged w.e.f. 01.12.2008.

14. Despite the strenuous arguments advanced by the learned counsel for the applicant, it has not been proved that the application for cancellation of his request for premature discharge was ever received by the Unit or the Centre Commandant. We have also noted that the application by Smt Geeta Devi w/o applicant does not state that the petitioner wants the discharge to be cancelled. In fact, it only narrates that the family situation at home has been organised and there is no valid reason for the applicant to proceed on discharge. It is completely silent on the desire of the applicant.

15. In view of the foregoing, we are of the opinion that there are no grounds to entertain the petition. The petition is dismissed. No order as to cost.

N.P. GUPTA
(Member)

M.L. NAIDU
(Member)

New Delhi
September 11, 2012

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