

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 322 of 2010
(Delhi High Court W.P (C) No. 3227 of 1999)**

IN THE MATTER OF:

Angrej Singh

....Applicant

Through: Mr. Arvind Nayar, counsel for the Applicant .

Versus

Chief of Army Staff

.....Respondents

Through: Mr. Ankur Chhibber, counsel for the Respondents.

CORAM:

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

JUDGMENT

Date: 24.02.2012

1. The applicant had filed this WP(C) no. 3227/99 in the Hon'ble High Court, Delhi. The case was subsequently transferred to this Tribunal on 07.01.2010 and registered as T.A. No. 322/10.

2. The applicant vide his petition has prayed for setting aside the discharge order dated 31.01.1997, to reinstate the applicant and allow with consequential benefits.

3. The brief facts of the case are that applicant was enrolled in the Army on 15.04.1996 as recruit. He was discharged after 10 months and 17 days of training on 31.01.1997(Annexure A-1). After discharge he submitted an application to know the cause of discharge to the Commandant, Para Regimental Training Centre on 04.07.1997. He also sent a reminder through a legal notice on 02.06.1998. Respondents replied to his application and the legal notice on 10.09.1998 (Annexure A-8) in which it was said that the individual was granted discharge based on his own request. On 08.02.1999 he again made a representation to the respondents in which he pleaded that reason for discharge was given as plain "Discharge" and not discharge on his own request.

4. Learned Counsel for applicant argued that applicant had never applied for discharge on his own request. He pleaded that initially no order was supplied to the applicant till the applicant served a legal notice on the respondents dated 02.06.1998. (Annexure A-7).

5. Learned Counsel for the applicant further argued that he was incorrectly discharged under Army Rule 13 (3) since he was discharged by

Commanding Officer. As per Army Rule 13 he should have been served with the Show Cause Notice and Authority for discharge should have been Brigade Commander.

6. Learned counsel for the applicant also argued that application for discharge submitted by the respondents as Annexure R-I, though it bears the signature of the applicant but it was obtained by respondent on a blank sheet of paper. The applicant never wrote the application and never submitted this application. It also does not bear any date. He also invited our attention to Annexure R-II which gives out dates for processing of application. Having allegedly submitted the application in Sep 1996, it was processed only in Dec, 1996.

7. Learned counsel for the applicant relied on Hon'ble Allahabad High Court judgment in WPC 17089/1994 decided on 06.10.2004. In case of **Chandra Bahadur Khetri v/s Union of India & Others**. In that case Hon'ble Court observed that :

"In a similar matter when the Army authorities acting mala-fidely discharged the soldier (Non Commissioned Officer) from the Army on his alleged request for premature discharge which was when challenged by statutory

*complaint/representation followed by Writ
Petition No. Nil of 1992 Havildar Clerk
(4161876) Narain Singh Rathore Vs. Union of
India and others, was disposed off vide order
dated 13.7.1992 directing the Chief of the Army
Staff to decide the petitioner's representation
under Section 26 of the Army Act read with
Rule 364 of the Defence Services Regulations.
The Chief of the Army Staff while deciding the
representation ordered the reinstatement of
the petitioner in service with all consequential
benefits".*

8. Learned counsel for the respondents argued that Army Rule section 13 (3) Item III (iv) envisages that any person who has not been attested can be discharged on his own request or when he is unlikely to become an efficient soldier by the Commanding Officer. In this case applicant was still under training and had not been attested.

9. Learned counsel for the respondents argued that the application given by the applicant himself, though not dated, but

apparently was written in September 1996. Thereafter, he was recommended for discharge by his Company Commander. His case was again recommended by the Training Battallion Commander on 21.12.1996, who also counter signed the main application. The Commandant for the Para Regimental Centre finally approved the discharge on 21.12.1996. Consequently, Part-II order was issued on 15.01.1997 (Annex-IV). The applicant was finally discharged from service on 31.01.1997. This clearly shows that the applicant was very much aware of the process that was being undertaken in his discharge from service. He would have also obtained clearances and would have signed several forms/letters for payment of his financial dues, home address etc. During this entire period for Sept 1996 to Jan 1997, he made no objections. It is also likely that time gap between recommendation by his own Company Commander and by the Commandant i.e. between September 1996 and December 1997 must have been utilised by the authorities to convince him to continue into services. On his own request, the application was finally approved by the Commandant, who is a Brigadier and also OIC

Records on 21.12.1996 and he was discharged as per Army Rule 13(B) on 31.01.1997.

10. We have heard both the parties at length and have examined the documents in detail and perused the judgment cited by the applicant. We observe that applicant has not denied his signature on the application for discharge from the service while under training at Para Regimental Centre in September, 1996. He has not been able to explain that why he has made signature on alleged blank paper. Further, he has not made any malice or biased on the part of higher officer. Therefore, the contentions that he did not submit that application for discharge and his signature was obtained on blank paper, are not convincing. He has also made several signatures for other formalities for getting his financial dues but he has not made averment in that regard. He also had ample opportunity to request for cancellation of his application had he wanted to continue in the Army. He was discharged after having completed several other formalities like obtaining clearances, rendering details, signing forms etc. as a prelude to discharge. He had ample opportunity even at that stage when he could have asked for

cancellation or withdrawal of his discharge application. For the first time an application (Annex A-9) was on 10.11.1998 requesting to re-instate is submitted, that is after long time of discharge, that was not entertained.

11. We have also considered the judgement cited by the learned counsel for the applicant passed by Hon'ble Allahabad High Court in the case of Chandra Bahadur Khetri Vs. Union of India(Supra). This case does not help the applicant as Hon'ble Court remanded the case back to COAS with a direction to dispose off the representation of the petitioner alongwith any fresh representation which applicant was free to make but in the case in hand his application and notice were disposed of earlier before filing petition.

12. In view of the foregoing, we are of the opinion that the applicant had on his own, applied for discharge during period of training. Since he was not attested, he was discharged under Army Rule 13 (3) (iv) in which the Commanding Officer of a recruit is entitled to discharge a person who are unlikely to become an efficient soldier. No show cause notice is required in such cases. Contentions raised in this respect are also over ruled. In this case

discharge was sanctioned by the Commandant, Para Regimental Centre and therefore the discharge is in order.

13. In view of the above, we do not consider it appropriate to intervene in the matter. The application is accordingly disposed of. No order as to costs.

M. L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the 24th day of February, 2012
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