

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

OA No 444 of 2011

Gobind Singh

.....Petitioner.

Vs.

Union of India & Ors.

..... Respondents.

**ORDER
08 .12.2011**

Coram: Justice Ghanshyam Prasad, Judicial Member

Lt Gen H S Panag (Retd), Administrative Member.

For the Petitioner (s) : Brig (Retd) Rajinder Kumar, Advocate.

For the Respondents : Mr. S K Sharma, Sr. PC.

Lt Gen HS Panag(Retd)

1. By this petition, the petitioner prays for reinstatement in service with all consequential benefits such as seniority, pay and allowances, etc. by cancelling the discharge of the applicant same being illegal, unconstitutional, void and contrary to the provisions of Army Act and Army Rule as he was discharged from service prematurely by obtaining application for premature discharge forcibly which was withdrawn prior to the date fixed for discharge by following a procedure unknown to law.

2. Briefly stated facts of the case are that the applicant was enrolled in Infantry on 28 May 1986. He was detailed as part of ammunition depot guard of the formation where guards of other units were also detailed. Since it was a mixed guard there was an officer also in

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charge of the said guards. The said ammunition depot is located at two places. The applicant was living with the main guard location but on 22 July 2010, the applicant had gone to the other place to see the Jawans of his unit. During his absence some dispute took place between a JCO of 42 Armored Regiment and Jawans of the unit of the applicant. On getting information, the applicant returned to the main location of duty and found that the JCO of 42 Armoured Regiment was drunk. The matter was reported to the Officer incharge. Thereafter, the applicant was summoned in the unit where he narrated the complete facts of the incident to his Commanding Officer. On 26 July 2010, a prepared application in Hindi was placed before him in the officer of his Commanding officer; the applicant was not allowed to read it and was forced to sign it. Now the applicant was informed that his premature discharge from service at his request had been sanctioned w.e.f. 01 October, 2010.

3. Before the actual discharge orders were to take effect the applicant had submitted withdrawal of his request for premature discharge both to the unit commander and to the formation Commander (Annexure A-3). The petitioner submits that it was the duty of the unit commander/formation Commander to have cancelled the premature discharge orders and should have allowed him to serve till he would have reached the age of superannuation. He further stated that an employee has fundamental right to withdraw his request for premature discharge; the said discharge could be cancelled by the superior commander. Since the applications for withdrawing his request for premature discharge from

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service were received by the unit and the formation well in time, yet no action was taken to cancel the discharge which is illegal on the part of Commanding Officer and the Formation Commander. No Show Cause Notice was issued and no proper procedure had been adopted to discharge him from service.

4. Written statement has been filed on behalf of the respondents which inter alia contended that the applicant on completion of basic military training, was posted to 4 RAJPUT on 03.8.1987. Subsequently, on 15 Feb 2004, he was posted to 10 RR (RAJPUT) which was deployed in DODA Sector. On 14 Apr 2006, the petitioner was detailed for patrolling with column in General Area MECHAUR MZ-16. While the petitioner moving back from General Area MECHAUR MZ-3816 to Company post with column on 14 Apr 2006, terrorists which were hiding in a house in Village PANIM MZ-3815, opened indiscriminate fire on the column. In the ensuing fire fight, the petitioner sustained Gun Shot Wound Injury on both buttocks. He was evacuated to Command Hospital (Northern Command) by helicopter immediately. The condition at the time of evacuation was stable and out of danger. After completion of his RR service tenure, on 05 Sep 2006, he was posted to 4 RAJPUT deployed in the field area OP RAKSHAK (J&K), the petitioner was detailed as Guard Commander at Valla Ammunition Dump alongwith six other ranks under his command w.e.f. 28 May 2010. The petitioner alleged manhandled by Nb Ris Shyambir Singh of 42 Armed Regiment on 22 Jul 2010. Subsequently HQ 32 Inf Bde convened a Court of Inquiry for investigation into the

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circumstances under which ibid alleged incident occurred. Accordingly he was recalled from Valla Ammunition Dump for the Court of Inquiry. On returning, the petitioner submitted an application dated 17 Aug 2010 to Commanding officer for seeking premature discharge from service on compassionate grounds at his own request. The Commanding Officer recommended his discharge application and forwarded to Records the Rajput Regiment to consider premature discharge on compassionate grounds (Annexure R-5) and on receipt of the same alongwith complete set of pension documents, his premature discharge from service on compassionate grounds was sanctioned under Army Rule 13(3)I(i)(b) w.e.f. 01 Oct 2010 (Annexure R-6) and he was locally discharged from service before completion of service tenure at his own request.

5. Subsequently, an application dated 02 Oct 2010(Annexure R-8) served by the counsel of the applicant for seeking information under RTI Act which were forwarded to the learned counsel for the petitioner (Annexure R-13).

6. The respondents stated that the discharge order of Ex Naib Subedar Govind Singh was issued validly w.e.f. 30 Sep 2010 only on receipt of written application from the petitioner for discharge at own request with recommendation of his Commanding Officer under the provision of Army Rule 13(3)I(i)(b).

7. In the course of submissions, learned counsel for the petitioner argued and relied upon the following decisions of Hon'ble Supreme Courts/Principal Bench of AFT Delhi, in support of his contention, in which

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it has been held that an individual can withdraw his application once made for premature retirement before it becomes operative and effective :-

(a) Balram Gupta Vs. Union of India – 1987 Supp. SCC 228 pages 1 to 8.

(b) Union of India & Others Vs. Wing Commander T Parthasarthy(2001)1SCC 158 Pages 9 to 11.

(c) L/Nk Sanjeev Kumar Vs. Union of India & Ors TA No 413 of 2010 dated 8.2.2010 – Principal Bench of AFT Delhi.

(d) Sasi Kumar Vs Union of India & Ors. TA No 326/2009 dated 28.7.2010 – Principal Bench of AFT Delhi.

8. We have considered the submissions of the learned counsel for both the parties, their pleadings as well as the documents placed on record.

9. The applicant submitted application for premature discharge on 26 July 2010 and his discharge was sanctioned w.e.f. 01 Oct 2010 under Army Rule 13(3)I(i)(b). In the mean time, before the actual discharge order were to take effect, the applicant submitted application dated 21 Sep 2010 (Annexure A-3) for withdrawal of his request for premature discharge to the Commanding Officer 4 RAJPUT, OIC Records and the Commander 32 Infantry Brigade but the same was not acceded to and the petitioner proceeded on discharge w.e.f. 01 Oct 2010. The

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general principle, is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor and this has clearly been endorsed by the judgments referred to above. There is no justification in the plea of the respondents that the petitioner sought premature discharge to avoid pending disciplinary action. If at all, this reflects an escapist attitude on part of the Army Authorities which is detrimental to the enforcement of discipline in the Armed Forces.

10. Since the petitioner submitted his application for withdrawal of his request for premature discharge before his discharge became effective on 30 Sep 2010, we consequently allow this petition and set aside the order of discharge. Petitioner should be reinstated in service with effect from the date of his discharge within 15 days of the receipt of copy of this order. The petitioner can take the order by hand and report to RAJPUT Regimental Centre or his unit for immediate reinstatement. He will be entitled to all pay and allowances and consequential benefits from the date of his discharge including extension of service and promotion subject to his qualification and conditions laid down.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag (Retd)

08.12.2011
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