

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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TA 271 of 2011 (arising out of CMA 14 of 2010)

Surinder Singh **Petitioner(s)**
Vs

Union of India and others **Respondent(s)**

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For the Petitioner (s) : Dr. Sushil Gautam, Advocate

For the Respondent(s) : Mr. Mohit Garg, CGC.

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Lt Gen (Retd) NS Brar, Administrative Member.**

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**ORDER
21.11.2013**

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Briefly stated the facts of case are that the petitioner, hereinafter also referred to be as 'plaintiff', filed a suit for declaration before the trial Court. It was alleged by the plaintiff that he was serving the respondents in 14 Dogra at Jalandhar during the month of July, 2001. On 17.07.2001 an incident took place when daughter of defendant No. 3 came to the Officers Mess and identified the plaintiff. Thereafter the plaintiff was taken to the office, locked in the Quarter-Guard and was asked to sign on blank papers and on his refusal he was also given beatings. The plaintiff was dispatched to Faizabad from where he was dispatched to home and the plaintiff was accused of teasing the daughter of defendant No.3. The father of the plaintiff filed a complaint dated 06.09.2001 to GOC and the plaintiff was discharged from service allegedly on his request and a discharge order was passed.

2. The plaintiff earlier approached the Hon'ble High Court of Punjab and Haryana but the said petition was withdrawn and the plaintiff filed the present suit for declaration challenging the order of

discharge mainly on the ground that he never applied for discharge and his signatures were taken on a blank paper and it was written that the plaintiff had applied for discharge on his own. The plaintiff alleged that he had put in more than 12 years service and after three years he would have become entitled to pension, but he has been deprived of the pension because of the illegal action of defendant No.3.

3. The allegations made were denied by the respondents in their written statement and they pleaded that no such incident had taken place and the plaintiff had applied for discharge and accordingly his application was forwarded and the Commanding Officer passed the order of discharge.

4. On the pleadings of the parties, the following issues were framed by the learned trial Court;-

1. Whether order of discharging the plaintiff from the service is bad in law, arbitrary and in violation of the procedure prescribed under law as alleged and is liable to be set aside? OPP
2. Whether the plaintiff is entitled to be reinstated in service with all consequential benefits of pay and allowances and seniority? OPP
3. Whether the plaintiff is entitled to the mandatory injunction as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable? OPD.
5. Relief.

5. The learned trial Court decided all the issues against the plaintiff and in favour of the defendants and consequently dismissed the suit of the plaintiff.

6. An appeal was preferred to the Court of District Judge, Jalandhar and the case was pending there and on creation of this Tribunal, the appeal was sent to this Court and was registered as TA No. 271 of 2011. Record of the trial Court was summoned.

7. We have heard the learned counsel for the parties and have gone through the record of the case.

8. The submissions made by learned counsel for the plaintiff-appellant were that his signatures were taken on a blank paper and thereafter it was converted into an application for voluntary retirement though no such application had been presented by the plaintiff. It was also submitted that no order could be passed by the Record Office and as such the order was not in accordance with rules. It was also submitted that the back side of the application for discharge will show that no verification was done as per rules and, therefore, it was an order bad in the eyes of law.

9. On the other hand, learned counsel for the respondents had supported the impugned judgment for the reasons given therein. He also submitted that the suit had been filed after a period of three years and as such the suit was not within time.

10. The following question of law arises for consideration of this Tribunal:-

“Whether the impugned order of discharge of the plaintiff from service is bad in law, arbitrary and the plaintiff is entitled to be reinstated in service?”

11. A perusal of the record will show that the plaintiff had examined himself as PW 1 and filed his affidavit in evidence and he was also subjected to cross-examination. Apart from the plaintiff who again appeared as PW 2 for re-examination, he also examined PW 3

Daljit Singh, Member Panchayat of the village, to prove that the plaintiff has joint family and the plaintiff's parents never fell ill and there was no reason for him to apply for discharge since his other brothers are also there. This was sought to be proved from the statement of PW 4 Wazir Chand, Lambardar of the village. Plaintiff also examined PW 5/6 Rattan Singh who has stated that he learnt that the plaintiff was arrested for teasing the daughter of defendant No.4 and the plaintiff never expressed his intention to him for seeking voluntary retirement since he was quite satisfied and happy with his job and he never applied through him for seeking retirement.

12. The defendants examined DW 1 Naib Subedar Gulzari Lal who proved the documents Ex. D-1 to D-3.

13. From a perusal of the statement of the plaintiff it is clear that he stated that some incident was attributed to him and he was compelled to sign on blank papers. Plaintiff did not examine any witness from the Unit where he was serving, to prove that his signatures were taken on a blank paper. The incident is alleged to have taken place on 17.07.2001 and application Ex. D1 is dated 18.07.2001 and the discharge order was passed on 24.07.2001.

14. No complaint was ever made by the plaintiff to any of his immediate superiors or his GOC or Chief of Army Staff at any time to complain that he was compelled to give signatures on a blank paper. In case his blank signatures were taken on 18.07.2001 nothing prevented him from making complaint against the Commanding Officer in this regard but no such complaint was ever filed by him. However, his father made a complaint Ex.P.1 which is dated 06.09.2001 in which he made complaint against Col. Arvind Dutta.

The plaintiff's father had no reason to file a complaint when the plaintiff himself had not chosen to file any such complaint. The mere filing of a complaint by father of the plaintiff does not lead to any inference that his signatures were taken on a blank paper. Therefore, he has not been able to substantiate that any complaint was filed by him and his signatures were taken on a blank paper.

15. Apart from the above the plaintiff has not proved on record anything to show as to what enmity the Commanding Officer had against him to forge an application seeking voluntary retirement. No controlling officer will forge the papers to make a case for voluntary retirement by a person with whom he had no enmity.

16. Coming to the reasons given for voluntary retirement the plaintiff had given two reasons in the application submitted by him (a) to look after old and ailing parents and (b) to look after and cultivate landed property. These are the normal reasons taken by a person when he applies for voluntary retirement and it is the discretion of the authorities to verify if the services of the said person were indispensable or not. The verification is to be got done by the Commanding Officer and if he does not wish to get it verified and if the services of the plaintiff were not indispensable, it is his discretion not to get the papers verified if he so desired. This cannot be taken as a ground that these papers were not got verified by the Commanding Officer and were, therefore, forged.

17. The plaintiff does not dispute his signatures on the application for discharge Ex.P-1 and as such the learned trial Court had rightly concluded that the application bears his signatures and it has not been established that it was forged or fabricated.

18. Coming to the question as to whether there was non-compliance of Army Rule No.13, a perusal of the said Rule shows that the discharge is to be sanctioned by the Commanding Officer after taking approval of Officer Incharge, Records. There is nothing on record that the impugned order was not passed by the Commanding Officer.

19. Taking approval of the Officer In-Charge, Records does not lead to the inference that the impugned order is bad in the eyes of law. It is recommended to the Record Office who considers the question as to whether the Army-man should be allowed to seek retirement or not and is, therefore, sanctioned by the Commanding Officer under Army Rule 13. It does not lead to the interference that the order is bad in the eyes of law.

20. During the course of arguments a plea was also taken by learned counsel for the respondents that the suit was filed after three years of the impugned order and therefore, it was bad in the eyes of law. The petitioner had meanwhile approached the High Court of Punjab and Haryana, withdrew the case and filed it before the Civil Court. No such plea was ever taken by the respondents in their written statement and accordingly, no such issue was framed by the learned trial Court as to whether the suit is within time or not.

21. The question of limitation is a mixed question of law and facts and in case the plea had been taken by the defendants and an issue was framed in this regard, only then the plaintiff could have proved as to whether he sought the leave of the Court for filing the suit by deducting the period spent in litigating before the High Court of Punjab and Haryana. The impugned order is dated 24.07.2001 and

the suit was filed on 10.02.2004. However, in the absence of any issue having been framed, or the plea having been taken in the written statement, it cannot be held without perusing the orders passed by the High Court in allowing the petitioner to withdraw the petition that the petition is beyond time. Therefore, we are not giving any such findings though prima-facie the suit appears to have been filed after three years but since the plaintiff had litigated before the High Court of Punjab and Haryana in the writ, no such findings were given by the trial Court in the absence of any issue.

22. On appraisal of the evidence led before the trial Court and the reasons given in the judgment we accordingly affirm the findings of the trial Court on all the issues and hold that there is no merit in the appeal filed by the plaintiff, which is dismissed accordingly. However, the parties are left to bear their own costs.

(Justice Vinod Kumar Ahuja)

(Lt Gen (Retd) NS Brar)

21.11.2013
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Whether the judgment for reference is to be put on Internet? Yes/ No