

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

M.A. 51 of 2013  
and  
O.A.No.08 of 2013

**Friday, the 5<sup>th</sup> day of July 2013**

THE HONOURABLE JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)  
AND  
THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

2593752-H-Ex Sepoy P.Alagesan  
No.9, North Tank Street,  
Udumalpet Town,  
Tamil Nadu – 642126.

... Applicant/Applicant

By Legal Practitioner:  
Mr. M.Selvaraj.

vs.

1. Union of India, represented by  
Chief of the Army Staff,  
New Delhi-110011.

2. The Officer in Charge Records,  
Madras Regiment Abhilekh  
Karyalaya, Records The Madras Regiment,  
Pin 900458 C/O 56 APO

3. The Commanding Officer,  
No.4 Madras, Wellington (Nilgiris)-643231

4. The then 2<sup>nd</sup> in Charge  
2<sup>nd</sup> Lt Edwin,  
D Company, Counter Insurgency  
Operation Area  
RAKSHAK(CIOP),  
No.4, Madras (Nilgiris)-643231.

5. The Chief Controller of  
Defence Accounts,  
Allahabad, Uttar Pradesh.

Respondents/Respondents

By B.Shanthakumar, SPC  
For respondents.

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Lt Gen (Retd) Anand Mohan Verma  
(Member-Administrative)

1. The main O.A. has been filed seeking re-instatement into service with all consequential benefits, declare the petitioner as if he had completed his initial engagement of service and sanction his pension and other benefits. The petitioner was enrolled on 17<sup>th</sup> March 1988 and was discharged from service at his own request on 1<sup>st</sup> February 1997 after serving for 8 years 10 months and 14 days.

2. M.A.No.51 of 2013 was filed after filing the O.A. requesting for condoning the delay of 4980 days in filing the main O.A.

3. The petitioner through his application and arguments of the learned counsel Mr. M.Selvaraj would state that after enrolment, he joined 4 Madras (WLI) from where he was posted to 6<sup>th</sup> RR Battalion where he served till 20<sup>th</sup> June 1996. Thereafter, he was posted back to 4 Madras when the Unit was engaged in counter-insurgency operation. The petitioner would claim that he was ill-treated by 2<sup>nd</sup> Lt Col Edwin E. Raj who was the Officer-in-charge of

"D" Company in which the petitioner was posted. The petitioner would submit that the said officer abused him and the scolding was such that no one can tolerate. When the petitioner protested, the said officer slapped him. Thereafter, the petitioner would claim that his hands were tied with a rope and the next day, he was brought before the Commanding Officer, 4 MADRAS who started threatening the petitioner that either he faces Court Martial proceedings or obtains discharge from the army at his own request. The petitioner claims that fearing for his life he signed the papers and based on the letter obtained from the petitioner under duress and threat, the petitioner was discharged from service. In the discharge order, it is stated that the petitioner was a non ex-serviceman and was not entitled to get any civil and service employment. The petitioner claims that he made a representation to the Chief of the Army Staff and President of India, but did not receive any reply. He again made a representation on 21<sup>st</sup> March 2011 to which he received a reply which he is now challenging since the said reply is vague and it does not state whether the petitioner is discharged from the army, due to the circumstances narrated in the representation or it was voluntary. The petitioner would argue that since he made a specific allegation that the petitioner's voluntary discharge application was obtained under duress and threat, the respondents should have spelt out the reasons in the discharge order for non-consideration of the issue raised by the

petitioner. In view of the facts and circumstances, the petitioner would pray for re-instatement into service or be granted pension and other benefits.

4. The petitioner in the M.A., states that he is a poor man, not married, that there is no other no member to earn, that he did not get any employment, that he faced untold miseries for day-to-day survival, that he was sent forcefully out without any benefit, that he is financially weak, that no one informed him that there is a forum in which he can get remedy. He further states that he has no source of income, that he was not even aware how to get justice and that only recently, he came to know about this Tribunal where he could speedy remedy and therefore, delay occurred in challenging the discharge order dated 1.2.1997 passed by the 2<sup>nd</sup> respondent.

5. The respondents in their counter-affidavit and arguments by the Senior Panel Counsel Mr. B.Shanthakumar would submit that the petitioner was discharged from service under Army Rule 13 (3) (III)(iv) at his own request with effect from 31<sup>st</sup> January 1997 (AN). Minimum 15 years qualifying service is required for earning service pension in terms of Rule 132 of the Pension Regulations 1961 (Part-I). Since the petitioner did not complete the minimum qualifying service, he is not eligible for service pension. The petitioner has already been paid AGIF Serving benefits of Rs.10,716/-, Service Gratuity and DCRG of Rs.45,849/-, Credit Balance of Rs.63,677/- and AFPP Fund of Rs.25,528/-. The respondents would argue

that the petitioner had applied for discharge on compassionate grounds vide his personal application dated 1<sup>st</sup> October 1996 which was recommended by Commanding Officer, 4 MADRAS and on the basis of this application, his discharge order was issued by Records, The Madras Regiment after approval by OIC Records. The petitioner filed O.A.No.54 of 2011 before this Tribunal which was dismissed as withdrawn with liberty to file another application. The respondents would claim that the petitioner's statement that Lt Col Edwin E Raj was heading Delta Company is false. The said officer was only an additional officer deployed at Delta Company carrying out counter-insurgency operation. The Company was headed by Maj VS Velan and the Company Second-in-Command was 2nd Lt Ashok. Maj VS Velan was present and in command of Delta Company throughout the stay of the Lt Col Edwin E Raj in Delta Company. The petitioner was discharged from service at his own request and as an afterthought, after a gap of 16 years in order to get the ex-serviceman status, the petitioner has fabricated the allegations against the C.O and other officers of the Unit. The respondents would plead that the contention of the petitioner is intended to mislead this Hon'ble Tribunal and hence, strongly denied. They would claim that no such incident as narrated by the petitioner in his application ever took place. The respondents would go on to argue that the petitioner makes false allegations against the Respondent No.2 also. The fact is that the petitioner never served under Respondent No.2. Since the petitioner did not have qualifying

service for grant of pension, he was not granted pension and his status is that of a non ex-serviceman as per the existing rules. These facts were correctly intimated to the petitioner. The respondents would further argue that the application is barred by limitation as the application has been filed after a lapse of 16 years. The respondents would claim that in a similar case of **Ex Hav Ram Bahadur Prasad vs. UOI in O.A.No.Nil (1) of 2011**, the Armed Forces Tribunal, Lucknow Bench in its order dated 8.8.2012 had dismissed the case on the ground of delay and laches when the application was filed after a lapse of 8 years. In the case between **Ex Hav Manendra Prasad Gupta and UOI in O.A.No.Nil (10)/2010** passed by the Lucknow Bench of the Armed Forces Tribunal and in the case between **ERA Rakesh Kumar Aggarwal and UOI & Others in O.A.No.55 of 2012** by order dated 17.2.2012 passed by the Hon'ble Principal Bench of the Armed Forces Tribunal, similar view was taken and the cases were dismissed on account of delay and laches. In view of the above circumstances and in the light of the judgments, the respondents would pray that the application be dismissed being devoid of any merit.

6. Heard both sides and perused the documents.

7. The points that need to be determined are,

*1) Whether the petitioner is entitled to re-instatement?*

*2) Whether the petitioner is entitled to pension?*

*3) Whether the application is liable to be dismissed on account of delay and laches?*

8. Point Nos.1 and 2: According to the Discharge Book, the petitioner was enrolled on 17<sup>th</sup> March 1988 and was discharged on 1<sup>st</sup> February 1997 at his own request before fulfilling the conditions of his enrolment. The application that the petitioner gave for discharge from service dated 1<sup>st</sup> October 1996 clearly states that he sought discharge from service on compassionate grounds. The application reads:

"APPLICATION FOR DISCHARGE FROM SERVICE ON  
COMPASSIONATE GROUNDS

*Sir,*

*1. With due respect and humble submission, I would like to narrate the following few pressing problems which compel me to seek discharge from service prior to completion of terms of engagement please.*

*2. I have joined the Army on 17 Mar 88 and devoted my duties to the utmost satisfaction of my superiors till date. But due to the following burning problems, I am not able to concentrate on the duties assigned to me:-*

*a) My mother is an anemia and heart patient and requires constant medical treatment. At present, there is no male member at home to look after her.*

*b) I have some agricultural land under court dispute and laying uncultivated due to lack of a responsible male member at home.*

*c) Besides, I am the one and only son of my parents and therefore my presence at home is inevitable at this critical juncture.*

*3. In the light of the above, I solicit your personal indulgence in sanctioning my discharge from service on compassionate grounds at an early date for resolving my problems please.*

*4. Thanking you in anticipation. "*

*Yours faithfully,*

*(No.2593752H Sep Alagesan P)"*

9. The petitioner has produced no evidence of any kind to suggest that he was ill-treated by Lt Edwin E Raj when he was in Delta Company. The respondents have denied that any incident such as mentioned by the petitioner ever happened and have clarified that the said officer was only attached with Delta Company for counter-insurgency operation and the actual Officer Commanding was Maj VS Velan who was present in the Company throughout the time with Lt Edwin E Raj in the Company. Any ill-treatment by the officer would have been definitely reported to the Commanding Officer and requisite action would have been taken. In the application for discharge too, the petitioner has not mentioned any incident which made him seek discharge. Therefore, we are inclined to believe that the discharge application was voluntarily made by the petitioner and he was



not subjected to duress or threat for doing so. There is no provision in the army to re-instate an individual after he has been discharged from service. Consequently, we are of the view that the petitioner is not entitled to any re-instatement. Since he was discharged from service with less than 9 years of service, he is not entitled to any pension as per Rule 132 of the Pension Regulations 1961 (Part-I) which lays down that the minimum period of qualifying service actually rendered and required for earning service pension shall be 15 years. We are of the view that the petitioner is making allegations in his application in order to seek pension to which he is not entitled. Since these allegations remain unsubstantiated, we are inclined to disregard them and not grant him relief of service pension. Points No.1 and 2 are answered accordingly.

10. Point No.3: The petitioner claims that he made representation on various dates after he was discharged from service. However he has produced only one representation dated 20.5.1997 addressed to the Hon'ble President of India with a copy to the Chief of the Army Staff. He claims that he did not receive any response to this application. Thereafter, his next application was on 21<sup>st</sup> March 2011 to which Madras Records Regiment responded suitably on 30<sup>th</sup> March 2011. The petitioner has not provided any explanation for the delay of 14 years in filing this O.A. except to state that he is a poor man and that he came to know of this Tribunal only recently.

These reasons are not sufficient to explain the delay in filing the main O.A. In view of the judgments passed by the Principal Bench **in O.A.No.55 of 2012, dated 17.2.2012** in the case between **ERA Rakesh Kumar Aggarwal and UOI & Ors** and in **O.A.No. Nil (1) of 2011** dated 8.8.2012 of Lucknow Bench of Armed Forces Tribunal in the case between **Ex Hav Ram Bahadur Prasad and UOI & others**, we are inclined to dismiss M.A.No.51 of 2013 on the ground of delay and laches. Point No.3 is answered accordingly.

11. In fine, the M.A.No.51 of 2013 is dismissed. Consequently, O.A.No.08 of 2013 is dismissed. No orders as to costs.

Sd/

LT GEN (Retd) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Sd/

JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

**05.07.2013**  
**(True copy)**

**Member (J)** – Index : Yes / No

Internet : Yes / No

**Member (A)** – Index : Yes / No

Internet : Yes / No

To

1. Chief of the Army Staff,  
New Delhi-110011.

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Madras Regiment Abhilekh  
Karyalaya,  
Records The Madras Regiment,  
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5. The Chief Controller of  
Defence Accounts,  
Allahabad, Uttar Pradesh.

6. Mr. M.Selvaraj,  
Counsel for Petitioner.

7. Mr. B. Shanthakumar, SPC  
For respondents.

8. OIC, Legal Cell, ATNK & K Area HQ, Chennai.

9. Library, AFT, Chennai.

HON'BLE JUSTICE V.PERIYA KARUPPIAH  
MEMBER (J)  
AND  
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER (A))

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