

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.09 of 2013

Friday, the 19th day of July 2013

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

Rudra Harish,
S/o Sri R. Peeraiah,
Soldier GD, 15200569-X,
Village-Sunkesula Palli,
Mandal-Poruma Milla,
Post-Bommanapalli,
Taluk-Badvel, District-Cuddapah,
State-Andhra Pradesh,
Pin 516193.

..... Applicant

By Legal Practitioner:
Mr. M.Selvaraj

vs.

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

2. The Officer in-charge
Artillery Records, Nasik Road Camp,
Maharastra, Pin-908802.

3. The Brigade Commander,
9, Arty Brigade, Meerut Cantt.,
C/o 56 APO.

4. The Commanding Officer,
191, Field Regiment, Unit Code 926191,
C/o 56 APO.

..... Respondents

By Mr. Shanthakumar, SPC

ORDER

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

1. This O.A. has been filed requesting to quash the oral order, confirmed by order dated 29th September 2012, by which the petitioner was discharged from service on 18th March 2012 onwards and consequently re-instate the petitioner and pass such further or other orders as deems fit.

2. The petitioner through his application and pleadings of his learned counsel Mr. M.Selvaraj would state that he was enrolled on 5th January 2003 and served in Jammu, Dehradun and Siachen Glacier under different commanding officers. He would claim that under a particular Commanding Officer, viz., Col A.K. Das, he was placed in terrible working condition in the glacier area but no one paid heed to his problems. He would state that the 4th respondent had not acted fairly and had made three red ink entries in his service book illegally depriving the petitioner of his service. He would go on to say that he did not overstay leave granted to him due to his own fault, but it was due to torture of the 4th respondent who had made him to overstay the leave. The 4th respondent had mala fide intention against the petitioner and hence he did not allow him to continue in service.

3. The respondents through their counter-affidavit and pleadings of the learned Senior Panel Counsel would state that the petitioner after joining the army served in his Unit and 19 Rashtriya Rifles. While serving in 19 Rashtriya Rifles, he was granted 52 days Annual Leave from 23rd January 2006 to 15th March 2006. He failed to rejoin duty on due date and voluntarily rejoined at Artillery Centre, Hyderabad after overstaying his leave for 103 days. In the year 2010, he once again overstayed his leave by 10 days. In the year 2011, when his Unit was in "OP MEGHDOOT", that is in the Glacier, he was granted 30 days part of annual leave and he once again overstayed the leave by 15 days. In the same year, i.e., 2011, he was absent without leave from Unit Line on 25th October 2011 and was apprehended by JCO of the Unit at Base Camp on 29th October 2011. For the above mentioned acts of indiscipline, the petitioner was summarily tried by the Commanding Officer as provided in Army Act and suitable punishments were awarded to him, details of which are tabulated below:

Ser	Offence	Punishment Awarded	Relevant Sec of Army Act	Provision under which power exercised by Commanding Officer
(a)	OSL-103 days	28 days RI	AA Sec 39(b)	Army Act Sec 80
(b)	OSL-10 days	07 days RI & 14 days Pay Fine	AA Sec 39(b)	Army Act Sec 80
(c)	OSL-15 days	07 days RI	AA Sec 39(b)	Army Act Sec 80
(d)	OSL-05 days	07 days RI & 14 days Pay Fine	AA Sec 39(a)	Army Act Sec 80

The petitioner was encouraged at all times and was granted his full quota of leave as and when required by him, but there was no improvement shown by him. Since the lackadaisical attitude of the petitioner mandated stern action, Commander, 102 Infantry Brigade was apprised and the petitioner was asked to show cause as to why should he not be discharged from service for being undesirable in terms of Army Rule 13 (3) Item III (v) and provisions contained in Paras-2 and 5 of Army Headquarter Letter No.13201/1139/AG/PS-2(C), dated 28th December 1988. His reply to the Show Cause Notice was examined. In this reply, the petitioner mentioned that he was no longer interested in serving in the army. Commander 102, Infantry Brigade approved his discharge and he was discharged on 19th March 2012. The discharge of the petitioner is in consonance with the regulations and rules as enunciated in Army Law and therefore, the application be dismissed being devoid of merit.

4. Heard both sides and examined documents.

5. The only point that needs to be determined is Whether or not the petitioner is entitled to the relief asked for?

6. POINT: The petitioner during an earlier hearing had stated that he had not received his Discharge Book and was discharged from service only on oral orders. We asked the Respondents to produce a copy of the Discharge Book. On the date of final hearing the petitioner produced his Discharge Book which he claimed to

have received only recently. According to the Discharge Book he was discharged on 19 March 2012 on the orders of Cdr 102 INF BDE. He had 9 years 2 months and 15 days of service at the time of discharge.

7. The procedure laid down in the Army Headquarters letter No.13201/1139/AG/PS-2(C), dated 28th December 1988, is as follows:

"the procedure to be followed for dismissal or discharge of a person under AR 13 or AR 17, as the case may be, is set out below:

(a) Preliminary enquiry: Before recommending, discharge or dismissal of an individual, the authority concerned will ensure:

- (a) That an impartial inquiry (not necessarily a court of inquiry) has been made into the allegations against him and that he has had adequate opportunity of putting up his defence or explanation and/or adducing evidence in his defence.*
- (b) That the allegations have been substantial and that the extreme step of termination of the individual's service is warranted on the merits of the case. "*

Having taken cognizance of the acts of indiscipline the higher commander i.e. Commander 102 Infantry Brigade caused Show Cause Notice to be served on the petitioner which was served on 06

January 2012 and the petitioner replied to it on 19 January 2012.

The extracts of the reply are:

"EXPLANATION : SHOW CAUSE NOTICE

Sir,

1. Please refer your letter No PC-3000/2/191/RH/A2 dt 06 Jan 2012.

2. I, No 15200569X Gnr (DMT) Rudra Harish want to state following few lines for your kind attention pl.

3. I was enrolled in Army on 05 Jan 2003 and was posted to 191 Fd Regt on 07 Feb 2004. I was not happy with life in the Army, so I became OSL wef 16 Mar 2006 to 27 Jun 2006 and was awarded 28 days of RI on 24 Jul 2006 by the Commanding Officer. In Nov 2010, I was again OSL wef 20 Nov 2010 to 29 Nov 2010 and was awarded 07 days RI and 14 days pay fine on 18 Jan 2011. In 2011 again I was OSL wef 19 May 2011 to 02 Jun 2011 and was awarded 07 days RI on 18 Jun 2011. The same year, I was also AWL wef 25 Oct 2011 to 29 Oct 2011 and was awarded 07 days RI and 14 days pay fine on 30 Oct 2011. These are the four red ink entries which I have received in my service in the Army.

4. Adequate counselling has given to me time and again in the unit to improve my discipline, but I am no longer interested to serve in the Army.

5. In view of the above, I request you to grant me permission for discharge from service. "

After due consideration of the reply, discharge was approved by Commander, 102 Infantry Brigade on 7th March 2012. He was discharged from service with effect from 19th March 2012.

8. Though the learned counsel for the petitioner claims that the signature of the petitioner was obtained on this reply without the petitioner knowing what he was signing, we are informed that the qualification of the petitioner is SSC which would mean that he did understand the meaning and import of the reply that he signed. When he says he signed without knowing what he was signing indicates he is feigning ignorance and trying to mislead the Tribunal. He has clearly stated in his reply that he is not interested in serving in the Army and requested discharge from service. The action of the respondent in discharging the petitioner 'as undesirable' is in conformity with the laid down instructions and we find no infirmity in these actions. Accordingly, we are of the view that the petitioner is not entitled to the relief that he has asked for.

9. In fine, the petition is dismissed. No order as to costs.

Sd/
LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

19.07.2013
(True copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

Vs

To:

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New Delhi.
2. The Officer in-charge,
Artillery Records, Nasik Road Camp,
Maharashtra, Pin-908802.
3. The Brigade Commander,
9, Arty Brigade, Meerut Cantt.,
C/o 56 APO.
4. The Commanding Officer,
191, Field Regiment, Unit Code 926191,
C/o 56 APO.
5. Mr. M.Selvaraj,
Counsel for petitioner.
6. Mr. B.Shanthakumar,
Counsel for Respondents
- 7.OIC, Legal Cell, ATNK & K Area HQ, Chennai.
- 8.Library, AFT/RBC, Chennai

**HONOURABLE JUSTICE
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