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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : January 12, 2015

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W.P.(C) 1943/2013

BABU LAL YADAV

..... Petitioner

Represented by: Sunil Narula, Advocate with Ms.Isha
Thakur, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Represented by: Mr.Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The present writ petition has been filed impugning the order dated December 15, 2011 passed by the Armed Forces Tribunal in OA No. 04/2009, wherein the Tribunal had dismissed the said Original Application, holding that no interference was warranted as there was no infirmity or illegality in the pre-mature discharge of the petitioner from service.
2. The brief facts relevant for adjudication of the present petition are that the petitioner was enrolled in the army on January 11, 1999 as Sepoy (Infantry). Upon successfully completing his training the petitioner was posted to 11 Kumaon Regiment and during this period of service the petitioner served in the 26 Rajputana Rifles during CI operations for a period of two years.

3. It is the case of the petitioner that in November 2006, an altercation took place between one Sepoy Mahipal Singh and the petitioner, and in retaliation, Sepoy Mahipal Singh got lodged a false complaint to the Commanding Officer against the petitioner alleging that the petitioner had stolen some money. When the Commanding Officer Col.Rajesh Sharma took up the said matter the petitioner apprised him of his position but the same was to no avail and instead of considering the case of the petitioner Col.Rajesh Sharma rebuked him. After the span of a few days, on the pretext of settling the complaint made by Sepoy Mahipal Singh, the Adjutant Captain Manish Gupta made the petitioner sign on some blank papers. Suspecting no foul play the petitioner innocently signed all the papers.

4. Sometime later, in the month of September 2007, to the shock and surprise of the petitioner he was informed that his discharge had been sanctioned vide order dated July 13, 2007. Thereafter the petitioner requested the Commanding Officer for a personal interview but the said request was denied. It was contended that the petitioner was also not allowed to make any representation against the order of discharge and was forcibly struck off from the strength of 11 Kumaon Regiment sometime in the first week of January 2008 and was detailed to report to the Kumaon Regimental Centre for completing the discharge drill. Upon reaching the Kumaon Regimental Centre the petitioner once again sought an audience with the Commanding Officer who assured him that his case will be taken up with his respective unit but the same did not prove fruitful and the petitioner was told to proceed on discharge w.e.f February 01, 2008.

5. Aggrieved by the order of discharge the petitioner submitted a statutory complaint dated March 10, 2008 and the same was rejected by the Chief of Army Staff vide order dated February 05, 2009.

6. Still aggrieved, the petitioner approached the Armed Forces Tribunal by way of OA No. 04/2009 which was dismissed by the Tribunal vide its order dated December 15, 2011, leading to the filing of the present writ petition.

7. Learned counsel for the petitioner took the stand that the Commanding Officer was biased against the petitioner on account of the altercation that had taken place between the petitioner and Sepoy Mahipal Singh. It is also argued that the blank papers that had got signed by the petitioner on the pretext of settling the said complaint had been used in order to falsely draw up an application on behalf of the petitioner for seeking premature discharge and the same could be demonstrated by the fact that the Company Commander had signed the application on the same day i.e. November 22, 2006 and the said application was recommended by the Commanding Officer the very next day i.e. on November 23, 2006. In order to further support his stand it is also contended that the interview register of the Commanding Officer for the month of February 2008 would reveal that a request for an interview had been made by the petitioner.

8. The aforesaid stand of the petitioner is vehemently opposed by the learned counsel for the respondents who contends that the application for premature discharge, though was written by another hand, clearly bore the signature of the petitioner and the said fact had not been denied. In order to substantiate the said contention learned counsel for the respondents placed reliance upon the statement of Lance Naik Nagender Singh, who stated that

‘he was requested by Sepoy Babu Lal to write a premature application since his handwriting was bad’.

9. It is further contended by the respondents that the petitioner had signed the application for premature discharge on November 22, 2006 and as per the extant rules, on May 15, 2007, he once again completed the discharge formalities by signing a typed format which was countersigned by the Company Commander on May 31, 2007 and thereafter by the Commanding Officer on June 09, 2007. Moreover, the petitioner had also furnished a certificate in the typed format dated July 03, 2007 seeking premature and before completion of 15 years of service on compassionate grounds, and the same was countersigned by the Commanding Officer on July 04, 2007.

10. Relevant would it be to note that in all these documents the date had been mentioned by the petitioner himself i.e. November 22, 2006, May 15, 2007 and July 03, 2007. The aforesaid documents were typed documents bearing the signature of the petitioner and had it been a case where the discharge papers were drawn up fraudulently on the basis of the blank papers signed by the petitioner the same could not have been prepared as per the format. Therefore, the signatures on the said documents could not have been obtained on blank sheet of paper and prepared thereafter. The same also served to negate the argument of the petitioner that he was taken by surprise when called to proceed on discharge as at various points of time he had duly participated and effected the discharge process under his own hand. Further, inquiries had been made from the Commanding officer, Kumaon Regimental Centre regarding the interview conducted in the month of February 2008, to which a response was received stating that no interview

was conducted by the Commandant nor was any such request received from the petitioner.

11. An examination of the original records would reveal that we are shorn of material as regards the alleged altercation between the petitioner and Sepoy Mahipal Singh. Needless to state, the same would have no bearing on the adjudication of the instant case as the said altercation was stated to have occurred sometime between August 15, 2006 to October 15, 2006 whereas the application for discharge was dated November 22, 2006 thereby indicating a lack of any nexus thereof between the two incidents.

12. So far as the contention that the signatures of the petitioner being obtained fraudulently on blank sheets of paper and later on used for preparing the application for premature discharge, a perusal of the record would reveal that the signatures of the petitioner find a place on the documents dated May 15, 2007 as well as July 03, 2007. Meaning thereby, that even if it was presumed that the signatures of the petitioner on the first application for premature discharge dated November 22, 2006 were fraudulently obtained, the petitioner would nevertheless have objected to participating in the remainder of discharge process, which was to be effected vide documents dated May 15, 2007 and July 03, 2007. The signature on all three of the documents have not been denied by the petitioner. Thus, the said plea that the signatures were taken on blank paper is devoid of merit and seems to be the product of an afterthought. Needless to state, at no point of time did the petitioner ever make any sort of protest with respect to the premature discharge while the same was in the process of being effected. Specifically when the petitioner was sent from his unit to the Record Office for his discharge thereby making him aware of the fact that he has been sent to the

Record Office for discharge only. Therefore, the stand of the petitioner that he was totally unaware that the process of discharge had been set in motion is incorrect for the reason that he always had an option to apply for cancellation for pre-mature discharge which was approved only on July 13, 2007 and given effect to only from February 01, 2008 but the petitioner chose to remain a bystander and do nothing. Even when the petitioner was to report at the Kumaon Regimental Centre in the month of January 2008, he could still have exercised the option of withdrawing the application for premature discharge but for reasons best known only to the petitioner, he chose not to.

13. As regards the interview, a perusal of the record would indicate that the petitioner was indeed interviewed by the Commanding Officer on December 31, 2007, with the remarks column stating that it was an interview for '*permanent posting out to pension*'. Apparently, the petitioner was indeed interviewed by the Commanding Officer, 11 Kumaon Regiment and had it been a case where he had any objection to the premature discharge, undoubtedly the same would have been taken up by the petitioner in said interview. Besides, perusal of the register for the month of September 2007 does not reveal any such interview having been sought by the petitioner, giving the impression that the petitioner did not opt to exercise cancellation of his premature discharge request.

14. Therefore, a perusal of the record as well as the pleadings only indicate that the petitioner was ordered to be discharged after due process at his own request, tendered in writing. Further, the petitioner also participated at all points of time in the discharge process and no infirmity or illegality is apparent in the premature discharge.

15. The petition is dismissed.
16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 12, 2015
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