**CWP-34459-2024****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****(129)****CWP-34459-2024****Date of Decision: 19.12.2024****EX HAV CLK RAJ KUMAR**

...Petitioner

Versus

UNION OF INDIA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present:- Mr. Arvinder Singh, Advocate for the petitioner.

Mr. Maneesh Bali, Sr. Panel Counsel
for the respondents/UOI.

SURESHWAR THAKUR, J. (Oral)

1. The present petitioner was enrolled in the Punjab Regiment of the Indian Army on 04.02.2012 and served with the 3 Punjab on completion of recruit training. However, owing to some unavoidable family circumstances and under a fit of emotions, the petitioner, on 31.03.2018 moved an application before the army authorities, wherebys, he sought his being discharged from service, thus on compassionate grounds.

2. The said request was accepted by the respondents and resultantly, an order of discharge (SOS-Struck off strength) (Annexure A-1) became passed by the Army authorities. The said annexure is drawn on 04.04.2018, and, was made effective from 30.04.2018.

3. Be that as it may, the present soldier moved an application (Annexure A-2), wherebys, he asked for permission to withdraw his earlier request for his being discharged on compassionate grounds from the Armed forces, and which led to the making of the earlier order of discharge Annexure A-1.



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4. There is no wrangle about the fact that in terms of the verdict rendered by the Hon'ble Supreme Court in case titled as **J.N Srivastava Vs. Union of India and another** reported in (1998) 9 SCC 559, thus, with an expostulation of law therein, that any armed forces personnel, can avail the liberty to withdraw his earlier request for his being released from the armed forces on compassionate grounds. However the said endowed privilege vis-a-vis any armed forces personnel but is with a fetter, in as much as, the said request for withdrawal of the earlier request, thus has to be evidently received in the army establishment concerned, but before the making of the order of discharge.

5. Therefore, it has to be determined, whether as a matter of fact Annexure A-2 was evidently received by the authority concerned, thus before the making of Annexure A-1.

6. The learned counsel appearing for the petitioner has vehemently argued, that his request letter Annexure A-2 whereby he asked for withdrawal of his earlier request, thus for his being released from the army, but on compassionate grounds, rather was evidently received by the competent authority thus before the making of Annexure A-1. However, the said fact is vehemently contested by the learned counsel for the respondents. The said contest is rested upon certain observation(s) made in RA-38-2024 in OA-1929-2019 on 17.10.2024, observation(s) whereof become extracted hereinafter:-

“The submission cannot be accepted as there is no averment in this regard in the OA. It has only been averred that the application dated 23.04.2018 was sent through speed post and postal receipts have been annexed. Had the endorsement existed, it would have been pleaded. The said original was available with the applicant, yet no averment was made in this regard. The submission is suspect and cannot be accepted.”

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In fact, a perusal of the original of the letter dated 23.04.2018 shows that the submission is incorrect. The receipt appears to have been manufactured because the ink is very new as compared to the rest of the original letter. For this reason also, the receipt cannot be relied upon.

In view of the above, the original Application has no merit and is dismissed.”

7. The supra makes graphic speakings that a deep cloud of suspicion becomes ingrained in the letter dated **23.04.2018**, whereby the present petitioner purportedly withdrew his earlier request for his becoming discharged from Army, thus on compassionate grounds.

8. However, before proceedings to determine the tenacity of the above observation(s), as become relied upon by the learned counsel for the respondents, it is imperative to also bear in mind, that but obviously prior theretos OA-1929-2019 became dismissed, through a verdict becoming rendered thereon, on 19.07.2024, operative part whereof becomes extracted hereinafter:-

“Since the application dated 23.04.2018 was not received before the physical discharge of the applicant, no action could have been taken thereupon. When the application was received, the applicant had already been discharged. His request had been given effect to and the clock could not have been set back. In fact, an application received after the physical discharge is no application in the eyes of law.

Under these circumstances, no interference is called for.

The Original Application has no merit and is dismissed.”

9. The refusal on the part of the learned AFTC, to accept the supra contention, as now becomes addressed before this Court by the learned counsel for the petitioner, as relates to the receivings of Annexure A-2 by

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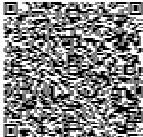
the respondents concerned, thus evidently occurring before the making of Annexure A-1, thus became anchored on the premise, that supra naturally rather was a disputed question of fact, and, that the said disputed question of fact, obviously required the makings thereintos of a Court inquiry by the respondents concerned.

10. Apparently, as noticeable from the speakings which occur in Annexure P-5, annexure whereof becomes enclosed with the order passed by the learned Tribunal on RA-38-2024, that the issue controversy relating to the letter Annexure A-2 becoming received by the Army authorities before the making of Annexure A-1, whereby the present soldier withdrew his earlier request for his being discharge, thus became ultimately decided against the present petitioner.

11. The said disputed question of fact when became ultimately decided through findings against the present petitioner becoming recorded by the Court of inquiry, through the making of an order Annexure P-5.

12. Consequently, thereby the said recorded findings, thus at this stage, acquire some effective conclusivity, unless, the same become reversed through availment of appropriate remedies, as deemed fit at the instance of the present petitioner.

13. Since at this stage, the learned counsel for the respondents submits, that the findings recorded against the present petitioner by the Court of inquiry Annexure P-5, would now become challenged by the present soldier, through his making an OA before the AFTC concerned. Consequently, till the said challenge is successfully made, thus thereupto, the supra findings recorded in Annexure P-5, do at this stage acquire conclusivity. Therefore, at this stage all the supra pleas raised now before this Court by the learned counsel for the petitioner relating to the receipt of Annexure A-2, by the respondents concerned, thus evidently occurring



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before the making of Annexure A-1, rather do not acquire any weight, at this stage. As such Annexure P-5 but only at this stage is validated.

14. Lastly, the learned counsel for the petitioner submits, that he would be instituting an OA, before the AFTC, within 4 weeks from today whereby, he would be laying a challenge to Annexure P-5, he is permitted to do so. If the said OA is time barred, thereupons, an application cast under Section 14 of Limitation Act may become appended therewith, whereupons the said occurring delay be considered to be condoned, thereafter, the OA shall be registered, and, the same shall be lawfully decided within a period of 6 months from its preferment.

15. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 19, 2024
mahima

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No