

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

O.A No. 37 of 2010

Bhupinder Singh	...	Applicant
Vs		
Union of India and others	...	Respondents

ORDER
28.05.2010

Coram : Justice Ghanshyam Prasad, Judicial Member.
Lt Gen N S Brar (Retd), Administrative Member.

For the Petitioner(s) : Mr. Rajeev Anand, Advocate

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

Lt. Gen. N.S.Brar (Retd)

This application is taken up under Section 14 of the Armed Forces Tribunal Act 2007.

The case of the petitioner is that he was enrolled in the Army on 26.08.1997 and his services were terminated under Army Rule 13(3) on 10.09.2004 as 'services no longer required being undesirable soldier'. The petitioner contends that his dismissal was carried out without following instructions contained in Army HQ letter dated 28.12.1988. The petitioner approached the Hon'ble Delhi High Court by way of Writ Petition (Civil) No 3780/2006 which was disposed of by order dated 12.05.2008 with liberty to file statutory appeal with the respondents. Statutory appeal dated 22.07.2008 was rejected vide order dated 26.02.2009 through forwarding

letter dated 27.02.2009 which shows that the decision had been taken on the applicant's Summary Court Martial whereas the applicant was never tried by SCM. This shows that his statutory appeal was treated without due consideration. The applicant therefore seeks quashing of the order dated 26.02.2009 and reinstatement in service.

In spite of repeated calls learned counsel for the petitioner failed to appear. Perused the records and written statements for both the parties.

The petitioner was enrolled on 26.08.1997 and was discharged on 10.09.2004. The applicant represented against the discharge on 18.11.2004 (Annexure A-1) and in response was informed vide communication dated 04.01.2005 that he had been discharged after incurring five red ink entries (Annexure A-2). The petitioner thereafter represented again on 31.01.2005 on the grounds that the procedure for such discharge had not been followed (Annexure A-5). This was disposed of vide communication dated 14.03.2005 (Annexure A-6). The petitioner thereafter filed Writ Petition (Civil) in the Hon'ble Delhi High Court titled **Ex Gunner Bhupinder Singh vs Union of India** (No 3780/2006). This writ petition was disposed of by the Hon'ble High Court vide order dated 12.05.2008 (Annexure A9) with the observation that the petitioner had not filed any statutory appeal and with the directions that he may be granted liberty to do so and in case he still feels aggrieved against the outcome of such appeal he may assail the same before the competent court. Statutory appeal dated 22.07.2008 (Annexure A-10) was rejected vide order dated 26.02.2009 (Annexure A-11) through forwarding letter dated 27.02.2009. The forwarding letter shows that the petitioners appeal against SCM has

been decided whereas the applicant was never tried by SCM. His statutory appeal was therefore dealt with without due diligence and proper consideration had not been given to his appeal. This order therefore deserves to be set aside and the petitioner reinstated in service.

Learned counsel for the respondents drew attention to the written statement and highlighted that the petitioner had incurred five disciplinary awards and consequent red ink entries. There was no inquiry warranted in this case as the disciplinary awards were given following due process of law including appropriate inquiries. These awards were on record and had not been contested. He was served a proper show cause notice by the competent authority on 02.07.2004 (Annexure R1) to which the petitioner replied in his own hand stating “ *I No 14423985 Rank DSV Name Bhupinder Singh do not want to serve any more due to family problems. I therefore want to go home due to my family commitments. I may be given orders to proceed to my home*”. (Annexure R2). He was accordingly discharged under Army Rule 13 Item III(v) being an undesirable soldier. He was medically examined at the time of discharge and was discharged in medical category SHAPE1. (Annexure R3). His statutory appeal dated 22.07.2008 was duly processed by the authorities and rejected by the General Officer Commanding in Chief, Northern Command vide detailed order dated 26.02.2009 (Page 27&28 of Annexure A11). Clerical error in mentioning SCM on the covering letter is of no consequence as the same is merely a forwarding letter and has nothing to do with the processing and disposal of the statutory appeal.

Having perused the records we are of the view that the petitioner was legally discharged following due process as per rules and the discharge is appropriate in view of the disciplinary record of the petitioner as also his reply to the show cause notice. We find no grounds to interfere in the same. The application is accordingly dismissed.

There shall be no order as to costs.

[Justice Ghanshyam Prasad]

[Lt Gen N. S. Brar (Retd)]

May 28, 2010
RS