ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR

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TA 833 of 2010 (arising out of CS 589 of 2008)

Narender Singh …… Petitioner(s)
Vs
Union of India and others …… Respondent(s)

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For the Petitioner (s) : Brig (Retd) Rajinder Kumar, Advocate
For the Respondent(s) : Mr AK Gehlawat, CGC

Coram: Justice Prakash Krishna, Judicial Member.
Lt Gen (Retd) HS Panag, Administrative Member.

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JUDGMENT
3.12.2013

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The above case has been transferred by the learned Civil Judge(Junior Division), Ambala City to this Tribunal vide order dated 16.3.2010. Original Suit No. 589 of 2008 was instituted by the present petitioner challenging his discharge order from the Army.

The facts are not much in dispute. The undisputed facts are as follows :-

The petitioner was enrolled in the Army on 21.8.1984 and was allocated EME (Corp of Electrical Mechanical Engineering) and worked as Vehicle Mechanic. After a long service of 17 years, 10 months and 10 days, the petitioner due to his domestic problems applied for and was granted discharge from the Army on compassionate grounds. Further case of the petitioner is that on 7.10.2006, he applied for his re-enrolment in the Army. At this place, it may be mentioned here that an ex-army personnel may apply for re-enrolment within a period of five years, as per the letters issued from the Army Headquarters from time to time. According to the petitioner, he submitted all documents to Branch Recruiting Officer, Jhunjhnu

(Rajasthan) who sent all the documents for verification with the parent Record Office. In September, 2006, the petitioner received call letter from Branch Recruiting Office for re-enrolment in DSC. He accordingly reported for re-enrolment in the DSC to the Branch Recruiting Officer and was sent to DSC Records where he was put through some training and was then sent on posting to 688 DSC Platoon attached with 58 Wireless Experimental Unit C/O 99 APO. He on 30.10.2007, received a show cause notice as to why he should not be discharged on the ground that the gap between the date of discharge from former service and the date of re-enrolment in DSC exceeds five years. The petitioner was ultimately discharged and now has challenged the discharge order by filing the present suit No. 589 of 2008, seeking a decree of declaration that the discharge order is illegal and perverse and should be cancelled and he be reinstated in service with all consequential benefits.

On notice, the defendants filed a joint written statement wherein the factual aspect of the case as set out in the plaint, is not challenged seriously. The only substantive defence which has been set out therein is that the plaintiff(petitioner) put to screening physical medical examination on 7.10.2006 and subsequently he was enrolled in DSC on 4.11.2006. Hence, the gap between the discharge of plaintiff from former service (i.e. 13.6.2001) till the date on which he reported to the A.R.O. on receipt of call letter on 7.10.2006 being more than five years, and as such he was ineligible for enrolment in DSC. This fact came into notice of DSC Records subsequently on receipt of

his former service documents from EME Records. Therefore, the plaintiff was ordered to be discharged from service under rules.

The parties have filed certain documents before the trial court, which are on record. However, before Issues etc. could be instituted, the suit has been transferred as referred herein above to this Tribunal. None of the parties desired to file or lead any other evidence and the matter proceeded for hearing as such.

Heard the learned counsel for the parties and perused the record. The learned counsel for the petitioner submitted that within a period of five years, that is on 30.12.2005, the plaintiff showed his willingness for re-enrolment in DSC to the Branch Recruiting Officer who collected all the documents from the plaintiff and sent those documents to the Records Office of the petitioner's former service record. Elaborating the arguments, it was submitted that the plaintiff showed his willingness for his re-enrolment much before the expiry of the period of five years and he should not be penalised or put to loss for the inaction, if any, on the part of the respondents. He further submits that the petitioner admittedly was re-enrolled on 4.11.2006 in pursuance of the call letter dated 21.9.2006 and was discharged vide impugned order dated 12.11.2007. Thus worked for one year, now the respondents can not say that the re-enrolment is illegal. In the facts and circumstances of the case delay should be taken to have been condoned by the respondents, when plaintiff has not played any fraud or is guilty of forgery of any documents. The discharge order dated 12.11.2007 is liable to be set aside.

The learned counsel for the respondents on the other hand, supports the impugned discharge order and submitted that as per policy for re-enrolment in DSC issued by the Government of India, Ministry of Defence dated 15.12.1995, the impugned order has been validly passed. The said policy provides that all personnel joining DSC should be within five years of their retirement/discharge from previous service.

Considered the respective submissions of the learned counsel for the parties and perused the record. The first and fore-most question which falls for determination is how period of five years of gap should be counted. We have come across a copy of letter No. 65730/DSC-2/390-C/D(GS-IV) dated 15th December, 1985, issued by the Govt. of India addressed to the Chief of the Army Staff on the subject – REVISED STANDARD FOR RE-EMPLOYMENT IN DSC, prescribing the requirements for eligibility for re-employment to DSC and one of the requirements which is relevant for the present purposes is as follows :-

> "2. Further, all personnel joining DSC should do so within five years of their retirement/discharge from previous service or before attaining the following prescribed maximum ages for various ranks whichever is earlier."

Subsequently on 14.8.1987, a corrigendum has been issued whereby a new Para 3 has been added. The said paragraph reads as follows :-

> "3. The period of five years mentioned in line 2 of para 2 above will be counted <u>till to the date ex-serviceman reports to Recruiting Office for re-employment in DSC.</u> Similarly, the age given in column (b) of table appended below para 2 above will be counted till to the date ex-serviceman

reports to Recruiting Office for re-employment in the DSC."

On 26.10.2006, a clarification on the queries raised by the department has been issued with regard to the cut off date for determination of age for re-enrolment into the DSC. The same is reproduced below :-

"An ex-serviceman undergoes following stages with the Rtg Org/Regt Centres before enrolment :-

(a) Stage 1. This is the stage where the candidate registers himself for re-enrolment into DSC at the ZRO/ARO/Regt Centres. The act of registering the name indicates his willingness/availability for enrolment into DSC as and when vacancies are made available to the Rtg. Org/Regt Centres.

(b) Stage 2. Depending on the vacancies allotted to ZRO/ARO/Regt Centres, the candidates as per the seniority maintained in the register during stage 1 are intimated to report to the Rtg Agencies for physical and medical tests. **Therefore it is the day the ex-serviceman reports to the Rtg/Org based on the call letter is the day he is considered to have reported for enrolment."**

A fair reading of the above quoted portions of letters would show that some confusion was prevailing with regard to cut off date for determination of age for re-enrolment into the DSC. Ultimately the position was clarified vide letter dated 27.10.2006. But before that date, in September, 2006, call letter was issued to the petitioner and in pursuance thereof, he was re-enrolled in DSC and was permitted to resume the duties. He had undergone the medical test, physical test etc. and not only that, short training was also given to him. That appears to be the reason that the respondents have not termed re-enrolment of the petitioner into DSC as 'illegal or void' but as

'irregular'. For the sake of convenience, the discharge order is reproduced below :-

> "1. As per Govt. of India, Min of Def letter No. 65730/DSC-2/390-C/D (GS-IV) dated 15 Dec 1985 read in conjunction with 65730/DSC-2/1856-A/D (GS-IV) dated 14 Aug 1987, IHQ MOD letter No. 62502/Retg 5(OR)(A) dated 09 Apr 2002 and dated 16 62502/Retg 5 (OR) (A) 27 Oct 2006, gap between date of disch from former service and date of re-enrolment in DSC should not exceed more than five years. The personnel as per Appx 'A' to this letter have been found re-enrolled after a gap of more than five years. Their cases were referred to IHQ of MOD (Army) who have termed the re-enrolment as not in order and issued directions to discharge them from service forthwith.
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> 2. In view of the above, their re-enrolment into DSC have been termed as irregular and required to be discharged from service in terms with Rule 13(3) III (v) (for attested pers) and Rule 13(3) IV (for unattested pers) of Army Rules after obtaining sanction of the competent authorities ie Bde/Sub Area Commander and Commanding Officer/Centre Comdt. respectively. Before sanctioning the discharge, the competent authority may issue a "show cause notice" to the individuals and reply thereto be enclosed alongwith the discharge roll.
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> 3. Please note to forward all discharge documents as per ROI 2/S/86 alongwith Appx G to SAO 5/S/78 immediately after local discharge of the individual for our further necessary action."

The name of the petitioner finds place at Serial No. 22 in the appended list and 27 persons were discharged where under the heading "Total gap taken from the date of discharge to date of reporting for screening at Rtg Office for re-enrolment – 05 years & 98 days. Meaning thereby, due to lapse of 98 days beyond five years, petitioner's re-enrolment was found irregular. In view of the policy laid down by the Government of India, strictly speaking no fault can be found out in the order of discharge, discharging the petitioner. But

this is not the lone aspect of the case. We have to consider the impugned action of the Government in the peculiar facts of the case and the attending circumstances. The call letter was issued and the re-enrolment was offered in the situation as it then existed and clarified subsequently. Why the petitioner should be blamed ?

The only ground to discontinue the re-enrolment of the petitioner is that permissible gap of the period of 5 years in the present case exceeds by 98 days from the date of earlier discharge. It is not disputed that the petitioner reported for re-enrolment on 30.12.2005, much before the expiry of period of five years. In this regard, it is apt to reproduce para numbered as 4 to 6, of the written statement, which reads as follows:-

> "4 to 6. That para No. 4 to 6 of the plaint are wrong and hence denied. The true facts are submitted as below – The plaintiff has reported to Army Recruiting Officer Jhunjhunu (Raj) on 30.12.2005 and registered his name for re-enrolment in DSC and the plaintiff was not put to any screening physical and medical on that day and he was further called upon by A.R.O. Jhunjhunu on 21.9.2006 on availability of vacancy in the DSC. The plaintiff was put to screening physical and medical examination on 07.10.2006 and subsequently the plaintiff was enrolled in DSC on 4.11.2006, hence the gap between the discharge of the plaintiff from former service till the date on which he reported to A.R.O. on receipt of call up letter on 7.10.2006 was more than 5 years and as such the plaintiff was ineligible for enrolment in DSC as the plaintiff has not disclosed the true facts to the A.R.O. Jhunjhunu and subsequently when this fact came into the notice of DSC Record, on receipt of his former service documents from EME Records, and after thorough verification of his service documents, by DSC

Records, the plaintiff was ordered to be discharged from service under rules. For reference, the documents annexure R-1 to R-6 may be referred."

The other circumstance is that there is no allegation against the petitioner that either he played fraud, fabricated document or somehow delayed the re-enrolment. It is admitted case of the defendants that in the month of September, 2006, call letter was issued by them. In pursuance thereof on 4.11.2006, the petitioner was re-enrolled. He was physically found fit and was given some training. He continued to work and was served with a show cause notice on 30.10.2007 and was discharged on 12.11.2007. These facts which are not in dispute, do lead us to the conclusion that there was ample opportunity with the respondents to verify that the petitioner took voluntary discharge on 31.10.2001 and could be offered re-enrolment on or before expiry of five years i.e. upto 30.10.2006. For the reasons best known to them, call letter in the month of September, 2006 was issued offering re-enrolment, on 4.11.2006. The mistake if any, was on the part of the defendants. They should have taken care to verify the facts and entitlement of the petitioner for re-enrolment before issuing call letter or offering re-enrolment. They having failed to discharge their duty properly, we are of the opinion that in view of peculiar facts, petitioner who has put in around one year service after re-enrolment, should not have been discharged. Principle of estopple will be attracted on the facts of the present case. Having failed to avail the opportunity which they had to verify the facts, before issuing the call letter, now they cannot change their position and say that the call letter was wrongly

issued. All care and precautions before offering re-enrolment should have been taken by the defendants at their end or at any rate shortly after offering the re-enrolment. The respondents are estopped to say that they have wrongly done the re-enrolment, when the petitioner has already put in service for one year, in particular.

In Shri Krishnan vs The Kurukshetra University, AIR 1976 SC 376, the student was granted admission. Thereafter he was allowed to appear in the examination in April, 1972. Subsequently the University withdrew his candidature. The Apex Court has said that when there was ample opportunity to the University to scrutinise the admission, the University had no power to withdraw the candidature of the student subsequently. It was the duty of the Head of the Department of the subject before submitting the form to the University to see that the form complied with all the requirements of law. Neither the Head of the Department nor the University took care to scrutinise the admission form then the question of student committing a fraud did not arise. The principle laid down in the aforesaid case is fully applicable to the facts of the present case. They having failed to perform their duty, cannot take advantage of their own lapses and wrong and are estopped to say anything otherwise subsequently.

In view of above, we are of the opinion that the impugned discharge order cannot be allowed to stand.

However, before saying omega to the case, we will place on record that when re-enrolment is offered, it is only for a fixed term of ten years which can be renewed/extended for further period of five

years. It is, therefore, provided that the petitioner be permitted to work for the remaining period of ten years and thereafter his case may be reviewed in accordance with the rules and regulations. Since the petitioner has not worked after his discharge, it would not be appropriate to grant him any back wages etc. on the principle of 'No Work No Pay'.

Subject to above, the TA succeeds and allowed in part as indicated above. No order as to costs.

(Justice Prakash Krishna)

(Lt Gen (Retd) HS Panag)

3.12.2013
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Whether the judgment for reference to be put up on website – Yes/No