

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.31 of 2015

Thursday, the 24<sup>th</sup> day of September 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH  
(MEMBER – ADMINISTRATIVE)

Rank-Ex-Sep (GDSM), Name-Kuldeep Kumar  
Service No.15613987-Y, S/o Mr. Gopi Chand  
aged about 30 years, Flat No.L-343, 2<sup>nd</sup> Floor  
16<sup>th</sup> Cross Street, Thiruvalluvar Nagar  
Thiruvanmiyur, Chennai-600 041.

... Applicant

By Legal Practitioners:  
M/s.M.K. Sikdar & S.Biju

vs.

1. Union of India, Through-The Secretary  
Government of India, Ministry of Defence  
New Delhi-110 011.

2. The Chief of the Army Staff  
Integrated HQs of MOD (Army)  
Post-DHO, New Delhi-110 001.

3. The Officer-in-Charge  
Records, The Brigade of the Guards  
Kamptee, Pin-441001, Maharashtra.

4. The Commanding Officer  
No. 12, Battalion, Brigade of the Guards  
C/o 56 APO.

....Respondents

By Mr. K.Ramanamoorthy, CGSC

**ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karupiah, Member (Judicial))

1. This application is filed by the applicant to issue direction against the respondents to produce the records in respect of impugned Discharge Order dated 20.03.2013 passed by the 3<sup>rd</sup> respondent and to quash the same and consequently to direct the respondents to re-instate the applicant in service with effect from 01.04.2013 along with seniority, promotion, backwages and other monetary benefits and to pass further orders in the facts and circumstances of the case.

2. The factual matrix of the applicant's case would be as follows:

The applicant was enrolled in Indian Army as Sepoy on 11.12.2000 and was promoted to the rank of Havildar. He underwent training and was posted with 4<sup>th</sup> respondent and he moved with 4<sup>th</sup> respondent to different parts of India. However, the applicant was tried by Summary Court Martial by the 4<sup>th</sup> respondent under Section 54(b) of Army Act 1950 for loss of ID Card and was punished on 29.08.2011 to be reduced to the rank. He was discharged from service on 01.04.2013, as if on compassionate grounds by an order of 3<sup>rd</sup> respondent, dated 20.03.2013. The applicant was recognized as National/International Sportsman in Archery and participated and

earned medals for the country on several championships from 2008 to 2013. The applicant was awarded one red ink entry for overstaying of ten (10) days on the leave granted to attend to his father's illness. The applicant became a good sportsman in the year 2008 and was selected for National Games along with Jharkhand Team, then went to the Army Sports Institute, Pune and due to his hard work and guidance of superiors, he won a gold medal in the 29<sup>th</sup> National Archery Championship, 2008 held at Pune. When he participated the National Championship at Guwahati, he misplaced one bag containing his belongings including his Identity Card and due to which he was tried by the Summary Court Martial and was punished. Despite the applicant was brought laurels to the organization and the country, he was directed by his Unit to return, from National Championship held at Chennai in the year 2012 and the applicant could not leave the National Archery Championship to be held from 26<sup>th</sup> December to 31<sup>st</sup> December 2012. However, he was, repeatedly, getting call from Unit to rejoin which caused mental strain and agony to the applicant, upon which he had forwarded one premature discharge application in November 2012 to the 4<sup>th</sup> respondent from Chennai and thereafter he voluntarily reported back to his Unit on 09.02.2013 after the completion of 33<sup>rd</sup> National Archery Championship held at Chennai. The said discharge application was not recommended, but the 4<sup>th</sup>

respondent declared the applicant a deserter and he was forced to submit a fresh discharge application or to face major punishment. The applicant therefore submitted a discharge application on 14<sup>th</sup> March 2013 and his absence for 137 days was regularized by the 4<sup>th</sup> respondent, but was awarded 28 days rigorous imprisonment and 14 days pay fine. On the basis of the fresh discharge application submitted by the applicant, the impugned discharge order dated 20.03.2013 was passed by the 3<sup>rd</sup> respondent. The applicant immediately submitted a Redressal of Grievances application on 26.03.2013 through proper channel, but in the meanwhile, the applicant was hurriedly given discharge from service with effect from 01.04.2013. The said application for Redressal of Grievances was not considered till date. Therefore, the applicant seeks for quashment of the order passed by the 3<sup>rd</sup> respondent on 20.03.2013 accepting the discharge application of the applicant and to direct the respondents to re-instate him in service with all attendant benefits.

3. The objections raised in the reply statement filed by the respondents would be as follows:

The service particulars given by the applicant in respect of his enrolment, training are correct. It is true that the applicant was promoted out of turn to the rank of Havildar with effect from 25.11.2009, since he being an outstanding sportsman. However, he

had lost his ID Card, the property of the Government while participating in 30<sup>th</sup> Senior National Archery Championship at Guwahati. Moreover, he failed to report the same immediately as per the existing instructions. Therefore, he was tried by Summary Court Martial, under Section 54 (b) of Army Act and was punished to be reduced to rank. The applicant was attached to Headquarters Squadron-1 Armoured Division on 18<sup>th</sup> October 2011 in order to attend an archery coaching class at National Institute of Sports, Patiala for his better future in archery. The applicant was also instructed to maintain continuous contact with the Unit appointment, but the applicant negligently did not maintain any contact with the Unit appointment for almost three (3) months. When the Headquarters Squadron 1, Armoured Division telephonically contacted 12 GUARDS to instruct the applicant to report to 12 GUARDS forthwith on 28.09.2012, it was found that the individual was not present at the location since last two months. The Unit sent a person to Headquarters Squadron 1 Armoured Division to find out the whereabouts of the individual, but he could not be found at both the places. A petition was received on 29.09.2012 from Smt. Manju, wife of the applicant that the applicant had falsely given divorce to her and the applicant eloped with a female archery student, namely, Miss Abhilasha, daughter of one Mr. Sudhir and the said facts were also

confirmed by the applicant's father Mr. Gopi Chand and the said Mr. Sudhir. Action was taken and the applicant was declared a deserter and the same was published by 12 GUARDS vide Part II Order dated 28.10.2012. A personal letter was received from the applicant on 05.06.2012 written from Palavakkam, Chennai that he immediately wanted to proceed on premature discharge from service. However, the applicant voluntarily reported to the Unit on 09.02.2013 at 1820 Hrs. When the Company Commander interviewed him, the applicant requested for immediate premature discharge on compassionate grounds in order to solve his domestic problems. Accordingly, he had submitted another application for premature discharge from service without final settlement of his account and other benefits. The period of absence to the tune of 138 days was therefore regularized by awarding him 28 days rigorous imprisonment and 14 days pay fine by Commanding Officer 12 GUARDS on 14.02.2013. The application of the individual for premature discharge was forwarded to Records Brigade of the Guards and accordingly, the discharge order was sanctioned on 20<sup>th</sup> March 2013 and the individual was finally struck off strength from the Army with effect from 01.04.2013. An application dated 26.03.2013 filed by the applicant for cancellation of his discharge order issued on 20.03.2013 was received by the office on 01.04.2013 much after the individual proceeded on discharge and

struck of strength from the Army. However, comments on his application were forwarded to Records Brigade of the Guards. Once the discharge order is issued, there is no question of cancellation of the same at such a short notice as requested by the applicant. The allegation made by the applicant that his premature discharge application was given under pressure was not correct. The said application for premature discharge from service was submitted by him without any pressure but with a sole object to solve his domestic problem. Therefore, the application filed for the purpose of quashment of the order of discharge dated 20.03.2013 and to re-instate him into service may not be entertained and it may be dismissed.

4. On the above pleadings, the following points were framed for consideration.

*(1) Whether the discharge order passed by the 3<sup>rd</sup> respondent on 20.03.2013 on the application for premature discharge of the applicant is liable to be quashed or set aside?*

*(2) Whether the applicant is entitled for re-instatement into service, as prayed for?*

*(3) To what relief, the applicant is entitled to?*

5. We heard the arguments of Mr. M.K. Sikdar, learned counsel for the applicant and Mr. K.Ramanamoorthy, learned CGSC assisted by

Major Suchithra Chellappan, learned JAG Officer appearing for the respondents.

6. We have also perused the documents produced on either side including the translated copies of documents in Hindi into English submitted by the respondents.

7. **Point Nos. 1 and 2:** The indisputable facts in this case would be that the applicant was enrolled in the Army on 11.02.2000 and was promoted to the rank of Havildar with effect from 25.11.2009 and he was an outstanding sportsman in archery and he was punished by Summary Court Martial, under Section 54(b) of Army Act for losing his Identity Card during the participation of National Archery Championship at Guwahati and was punished to be reduced to the rank on 29.08.2011 and thereafter, he was attached to Headquarter Squadron for the purpose of his better future in archery and while he was taking training there, he was declared a deserter and was subsequently, his absence was regularized after awarding 28 days rigorous imprisonment and 14 days pay fine. Further, the applicant had submitted a premature discharge application from Palavakkam, Chennai through post and the same was not considered and thereafter on regularization of his long absence, the applicant was discharged from service on his application for premature discharge.



8. Even though the applicant has admitted submission of application for premature retirement sent from Palavakkam, Chennai and also a fresh premature discharge application at the time of his rejoining, it was argued that the said application was obtained from him by exercising compulsion and threatening to face major punishments likely to be imposed against him. However, it was submitted by the applicant that the application for premature discharge dated 14.03.2013 was ordered by the competent authority on 20<sup>th</sup> March 2013. Further, it was argued by the applicant that why the said application dated 14<sup>th</sup> March 2013 was disposed of on 20.03.2013 hurriedly. But actually on verification, the said application was submitted by the applicant in the Unit on 11.02.2013 which is produced as Annexure-VIII. The corresponding translated copy is produced in the additional typed set in which the applicant has stated that he decided to retire from Army due to his compelling domestic problem and he was also absent without leave for sometime from military service owing to the said domestic problem and hence, he wanted premature retirement at the earliest without any FSA and allowances. Whether the said letter dated 11.02.2013 was written by the applicant on the exercise of threatening of higher punishments as pleaded by the applicant, is the crucial question to be answered. The allegation made in this application was that the requisition for

premature retirement was submitted by the applicant on 14.03.2013 which was ordered within six (6) days on 20.03.2013. Contrary to his submission, we find that the said application was submitted by the applicant on 11.02.2013 itself. The applicant has come forward with false information which would be amounting to misleading this Tribunal. However, the order was passed by the competent authority after a period of 38 days. The applicant did not retract the allegations made in the requisition for premature discharge dated 11.02.2013 for more than a month's time. After passing an order of premature discharge on 20<sup>th</sup> March 2013, he had come forward to file an application under Redressal of Grievances on 26.03.2013. The said application dated 26.03.2013 is produced by the respondents which is available at pages-23 to 24. In the said application, nothing was whispered about the threat of higher punishment or any other point as raised in this application to thwart the order of discharge. Therefore, the main reason stated by the applicant, for the purpose of setting aside the order of discharge passed by the competent authority is in accepting the application for premature retirement dated 11.02.2013.

9. Furthermore, the wife of the applicant, viz., Tmt. Manju had written a letter to the Commanding Officer 12 GUARDS complaining about her husband that he applied for divorce without her consent before Bagpat Court and the applicant was running Archery Academy

in the village since 2009 and after their marriage, they had two children and her husband had fled with a girl student of his Academy on 23.09.2012. Similarly, a letter by the father of the applicant in Hindi is also produced as Annexure-R. IV which would disclose that his son, viz., the applicant had given divorce to his wife and the applicant's father (father-in-law of the applicant) had to look after the wife and children of the applicant and the applicant did not send any money to his wife or children towards their daily needs. Yet another letter written by one Sudhir Kumar would disclose that the applicant was running an Archery Academy at Bagpat, UP and a girl of that Academy, viz., Abhilasha and the applicant were seen together to lead a married life as the applicant had already taken divorce against his wife. All these particulars and facts given in those letters need not be gone into for ascertaining the veracity, but they would disclose that there was no cordial relationship between the applicant and his wife, father. He had left out his children also. Therefore, we can presume that the applicant was in deep trouble to solve his family problem and domestic problems mentioned in his application for premature discharge would be true. We have already discussed that the threatening and other aspects pleaded by the applicant for submitting premature retirement dated 11.02.2013 were not made out nor disclosed in the requisition under Redressal of Grievances dated

26.03.2013. Therefore, the submissions of the learned counsel for the applicant that the requisition for premature discharge as submitted by the applicant under threat of higher punishment cannot be true. Once an order of discharge had been sanctioned on a requisition to discharge the applicant prematurely and the discharge process had also commenced, it was not possible for the competent authority to withdraw or cancel the order passed towards premature discharge. It is the case of the respondents that the application of ROG dated 26.03.2013 towards Redressal of Grievances was received only on 01.04.2013 much after the applicant was discharged from the service cannot be disbelieved, since we do not find any correctness in the pleadings and submissions of the applicant. Therefore, we find that the impugned order passed by the competent authority in accepting the request of the applicant and granting the premature discharge dated 20.03.2013 is not liable to be set aside. Consequently, the applicant who was discharged on premature retirement on compassionate ground cannot be ordered to be re-instated into service. Accordingly, both the points are decided against the applicant.

10. **Point No.3:** In view of our discussion held in Point Nos.1 and 2, the applicant's prayer for setting aside the impugned order dated 20.03.2013 in accepting the premature discharge of the applicant and

to re-instate him into service with all attendant benefits are not grantable, the application filed for that purpose is liable to be dismissed.

11. In fine, the application is dismissed. No order as to costs.

Sd/

LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

Sd/

JUSTICE V.PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**24.09.2015**  
**(True copy)**

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No

Internet : Yes/No

VS

To:

1. The Secretary  
Government of India, Ministry of Defence  
New Delhi-110 011.
2. The Chief of the Army Staff  
Integrated HQs of MOD (Army)  
Post-DHO, New Delhi-110 001.
3. The Officer-in-Charge  
Records, The Brigade of the Guards  
Kamptee, Pin-441001, Maharashtra.
4. The Commanding Officer  
No. 12, Battalion, Brigade of the Guards  
C/o 56 APO.
5. M/s. M.K. Sikdar & S.Biju  
Counsel for applicant.
6. Mr. K.Ramanamoorthy, CGSC  
Counsel for respondents.
7. OIC, Legal Cell,  
DAKSHIN BHARAT AREA, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

O.A.No.31 of 2015

Dt:24.09.2015