

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI  
T.A.No. 14 of 2011

(W.P.No. 67199 of 2009 of the High Court of Karnataka,  
Circuit Bench at Dharwad))

WEDNESDAY, THE 12TH DAY OF DECEMBER, 2012/21ST AGRAHAYANA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)  
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

SSRI SHANKAR YELLAPPA BADNI,  
S/O.YELLAPPA, AGED ABOUT 41 YEARS,  
WORKING AS NABE SUBEDAR,  
NO.115, INFBN (TA), MAHAR,  
C/O.56 APO, KUNDRU VILLAGE,  
21 FAD, ANANTHNAG DIST,  
STATE OF JAMMU KASHMIR  
(NOW NOT IN SERVICE) HEAD OFFICE  
AT NO.115, INFBN (TA), PORT MAGAR,  
BELGAUM, R/O.NO.3344, HOSPET,  
GULIGALLI GOKAK.

BY ADV.RAMESH.C.R.

VERSUS

RESPONDENTS:

1. THE CHIEF OF THE ARMY STAFF,  
(COAS) ARMY HQRS.,  
NEW DELHI.
2. THE ADDITIONAL DIRECTORATE GENERAL,  
(ADGT TA) 3 ARMY H.Q.,  
'L' BLOCK, CHURCH ROAD, NEW DELHI.

3. THE COMMANDING OFFICER,  
NO.115 INF BN (TA) MAHAR – 934315,  
PORT BELGAUM

4. THE GROUP COMMANDER,  
TA GP HQ SOUTHERN COMMAND,  
PUNE.

BY ADV.SRI.S.KRISHNAMOORTHY, SENIOR PANEL COUNSEL

### O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.C.R.Ramesh for the applicant and Mr.S.Krishnamoorthy for the respondents and perused the record.

2. The applicant initially filed W.P.No.67199 of 2009 in the Honourable High Court of Karnataka, Circuit Bench at Dharwad for a writ of certiorari for quashing the order dated 30<sup>th</sup> September 2009 bearing No.54246/Petn/SYB/GS/TA-3 (Annexure H) as illegal and void and also for restraining the respondents from interfering with applicant's duties as Junior Commissioned Officer. In other words, the applicant wants

that he may be allowed to continue in service despite the alleged resignation.

3. It may not be out of context to mention that the applicant was Naib Subedar in 115 Infantry Battalion (Territorial Army) Mahar, wherefrom he submitted his alleged resignation in July 2007 which was accepted by the competent authority. Consequently, he went home.

4. It is alleged by the applicant that he had not tendered any resignation at his own will, therefore, it was not proper for the authorities to act upon the resignation which was not voluntary. The applicant has further set up the story of coercion in obtaining the resignation letter and had alleged so in his representation dated 14<sup>h</sup> September 2007, available on record as Annexure B. The applicant has further set up the story that he had given one more letter on 13<sup>th</sup> September 2007 to Additional Director General, (Adgt TA) 3 Army Headquarters, New Delhi. Apart from the

aforesaid two representations a legal notice by Adv.Mr.Ramesh N Misale, Belgaum on behalf of the applicant was also given to the Secretary, Government of India, Ministry of Defence, New Delhi, the Chief of Army Staff and the concerned Commanding Officer.

5.. The respondents have denied the aforesaid allegations and set up the story that the applicant had tendered the resignation on his own and there was no coercion. The counsel for the respondents submitted that if any coercion had been practised on the applicant on the date and time alleged by him, the natural course for him was to lodge a complaint immediately after he was let free. But in this case the alleged complaints (Annexure A and Annexure B) were allegedly given by the applicant after acceptance of the resignation and even after his discharge. The learned counsel for the respondents further submitted that the representations Annexure A and Annexure B were not given and they were manufactured for the purposes of

the case. More so, the applicant has not filed any postal receipt or other proof with regard to handing over of the representations Annexure A and Annexure B to the concerned authorities. Learned counsel for the applicant, on the other hand, tried to submit that the representations Annexure A and Annexure B were given by the applicant personally, therefore, it was not possible to produce any postal receipt. In this connection the learned counsel for the respondents pointed out that the applicant had not obtained any receipt while handing over the representations to the concerned authorities. In our view, in absence of adequate proof regarding handing over of the said representations to the concerned authorities, the applicant's allegations that the representations were physically handed over by him cannot be relied upon.

6. The letters dated 13<sup>th</sup> and 14<sup>th</sup> September 2007 (Annexure B) by which the applicant pleaded the story of coercion for obtaining the resignation letter, according to the

counsel for the applicant, are the relevant documents to substantiate the applicant's case. In view of this, the letter dated 14<sup>th</sup> September 2007 is being re-produced as follows:

*"I Shri. Shankar Badni, TJ-5333-W 115 Inf Bn. (TA) Mahar C/o. 56 APO. Have been in Military service for 19 years since 1989. Completed 14 years of embody service. A (TA) Bn. Soldier has to work for his total service from 20 to 28 years in one unit only.*

*Adm. Inspection of the unit was started from 11--07-2007. So I was working in F.A.D Coy for PLAINTIFF No.2, PLF Commander. Because of inspection I was working for B.E.P.T firing line maintenance and doing the duty of Khot JCO and Adm JCO. Sepoy Ramu Galli of my PL every time used to protest against doing his job. Due to inspection pressure I had given him punishment. Sepoy Ramu Galli told this matter to his own brother Shri Basappa Galli working as clerk in Rear Belgaum Naik B Galli had come to Jammu and Kashmir unit from Rear Belgaum for his promotion from NK to Havaladar Cadre. That time B. Galli told all the matter to Quarters Master (Q.M.). Hence I was kept arrested and forced to write discharge application.*

*After that he made an allegation against me that I had misbehaved with his brother Sepoy Ramu Galli. Asked me to write discharge application. I was kept arrested in Barbar Shop as I refused to write discharge application. Kept NK/SUB A.L.Patil NK-n Kankhatri and NK P.Chikle as guards to keep watch on me. Again he*

*told that he would send me to civil Jail and I had to undergo for punishment of 14 years, what would happen to my wife and children, my children would become beggars and my wife would depend upon whom, like that he was scolding me. He threatened me to write Discharge Application otherwise he would call civil Police to arrest me. Putting pressure on me he took the Discharge application written by me. After that Havildar Mr.Basappa Galli went back to Rear Belgaum C.O. Sir was came on 25-07-2007 and sent my Discharge application to Group Commander (T.A) Group commander (T.A) Pune A.A.Q Group commander Interview asked me to keep quite.*

*Sir, as per Defence Law (Military) I would have to be charge sheeted but now I am being discharged from the duty (service). Only one year is remained for getting eligible to pension facility, I am very poor, 7 members of my family are depending upon me only. Hence I request your honour to kindly allow me to work for one more year."*

7. On the basis of the aforesaid letters as also other letters, the applicant seems to have set up the story that he had departmentally punished one Sepoy Ramu Galli who called his brother Basappa Galli from Belgaum to teach a lesson to the applicant. The said Basappa Galli, with the help of three other persons named in the aforesaid

applications who had been deployed to keep a watch on the applicant, gave threats to the applicant of dire consequences and thereby compelled him to sign a resignation letter which was not in any way voluntary. In our view, the story so set up by the applicant is inherently improbable and patently absurd. It is significant to mention that in the aforesaid application itself the applicant disclosed that he, after coming out on 25<sup>th</sup> July 2007, handed over the resignation letter to the Group Commander and other authorities. The applicant has nowhere stated that the said Basappa Galli after obtaining his signature on the resignation letter took away the same with him and it was he who sent the resignation to the authorities. The fact that the Basappa Galli obtained the applicant's signature on the resignation letter by itself is of no relevance in view of the fact that the applicant had been allowed to move along with the resignation letter. And, he had, after being freed from the clutches of the said Basappa Galli and others, an opportunity to withhold the resignation, but instead of



doing so he sent the resignation to the authorities. These circumstances demolish the applicant's case that the resignation was not voluntary. More so, the story so set up by the applicant is itself absurd. In our view, happening of such an incident in a military area even without knowledge of the authorities was highly suspicious and cannot be relied upon.

8. Learned counsel for the respondents next submitted that even after the alleged resignation, the applicant filled in the pension papers and signed the same on 31.08.2007 after affixing a photograph not only of his own but also of his wife and other family members. The counsel further submitted that if the resignation was not voluntary and that had been obtained by coercion, there was no question of furnishing pension papers by the applicant even before lodging the complaints dated 13 and 14 September, 2007 (Annexure B).

9. The counsel appearing for the applicant could not give any plausible explanation as to under what circumstance the pension paper was furnished by the applicant if he had not tendered the resignation. However, the counsel for the applicant informed that the applicant had filed Writ Petition No.2887/2008, in which a direction to consider his representation was issued. In our view, the applicant's case has no substance. The applicant was a Junior Commissioned Officer having adequate years of service with seniority, therefore, it was highly improbable that he had been subjected to coercion to put his signature on the resignation paper by a quite junior person. If it was at all correct, the natural course for the applicant was to lodge a complaint immediately after being let free from the clutches of the concerned persons. But he kept mum for about more than one and a half month. It appears that when the applicant came to know that he was not to get any pension as he had not rendered the requisite length of

qualifying service, he changed his stand by saying that the resignation was obtained under the coercion. After the acceptance of the resignation which was voluntary, the applicant cannot be permitted to assail the genuineness of the resignation, especially when the story of coercion is highly improbable, does not appeal to reasons.

10. More so, the letter No.54246/Petn/SYB/GS/TA-3 dated 30<sup>th</sup> September 2009 of the Additional Director General, Territorial Army, General Staff Branch, Army Headquarters, New Delhi, which is on record as Annexure H, is also relevant on the point. The Additional Director General had written to the applicant as follows:

*"2. Your case has been examined at appropriate level at this Dte on the basis of comments received from TA Gp HQ Southern Command and 115 Inf Bn (TA). The following has emerged from the comments:-*

*(a) You had applied for voluntary discharge in your own handwriting.*

*(b) You were not abducted /confined/forces to write application for your voluntary discharge.*

*(c) You were advised on implications of voluntary discharge by CO of 115 Inf Bn (TA) MAHAR.*

*(d) You never complained, at any stage, when interviewed by Commanders in chain of Command, before your discharge was recommended by Commander TA Gp, HQ Southern Command.*

*3. In view of the above, it is observed that your allegations are baseless and false and your discharge is in order."*

The aforesaid observations being based on consideration of the relevant materials and circumstances, in our view, have much substance.

11. In our considered view the resignation of the

applicant was voluntary and free from any coercion.

12. In view of the aforesaid, we are of the view that the applicant's case has no merit. Therefore the Original Application is dismissed.

13. There will be no order as to costs.

14. Issue copy of the order to both side.

LT.GEN.THOMAS MATHEW  
MEMBER (A)

JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

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