
(2010) 02 JH CK 0100
In the Jharkhand High Court

Arjun Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : (2010) 126 FLR 536

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Heard.

2. The petitioner in this writ application, has prayed for quashing the order dated 7.11.1998 (Annexure-11) issued under the signature of the Adjutant, which order, the petitioner claims to be an order of his discharge from service, passed under Army Rule 13(3) Items III (V). A further prayer has been made for directing the respondents to give an opportunity to the petitioner to explain the charges levelled, if any, against him and also to reinstate him in services with all consequential benefits.

3. As informed, the petitioner had earlier filed a writ application vide CWJC No. 5162 of 2002 before the Patna High Court, which was dismissed for lack of territorial jurisdiction on 17.12.2003, where-after, he has filed the present writ application.

4. The petitioner was appointed as Signal Man Sipoyee in the Indian Army on 25.9.1985 and initially posted at Leh, Laddakh. Upon his last transfer, he was posted at Deepatoli Cantonment at Ranchi. By order dated 7.11.1998 (Annexure-11) passed by the Major General, GOC of the concerned division, he was discharged from service under the provisions of Army Rule 13(3) Items III (V), on the ground that he was no longer required in service.

5. Prior to the order of discharge, a show-cause notice was issued to him and the

period of filing reply to the show-cause notice, was extended from time to time. Pursuant to the order of discharge, the Movement order which was issued under the signature of Adjutant, was served upon him explaining therein that the order was passed as a consequence of the order of his discharge from service.

6. Against the order of his discharge, the petitioner preferred an appeal before the Appellate Authority which was dismissed, though the petitioner claims that no order passed by the Appellate Authority on his appeal, was communicated to him.

7. It is relevant to note that the order of discharge was passed on the ground that his performance in service was not satisfactory and that, during the tenure of his service, he has earned as many as four adverse red marks.

8. The grounds on which the impugned order has been challenged by the petitioner, are as follows:

I. The order of discharge was passed without adhering to the principles of natural justice in as much as, the petitioner was not given adequate opportunity to defend his case and the documents on which reliance was placed to discharge the petitioner, was not supplied to him.

II. No charge in respect of any alleged act of misconduct was served upon the petitioner and yet, he has been punished without initiating any disciplinary inquiry against him.

III. The order of discharge was actuated as a vendetta of the Superior Officer who had borne grudge against the petitioner for his attempt to point out certain alleged acts of mis-conduction the part of his Senior Officers.

IV. The order of discharge is otherwise bad in view of the fact that such order was passed by the Adjutant/Commanding Officer, who is not the competent authority under the Rules to pass such orders under Rule 13(3) of the Arms Rule 1954.

V. Impugned order of discharge amounts to punishment which, in itself, is an act of double jeopardy since for the same allegations, the petitioner was earlier punished .

VI. The discharge certificate has not been served upon the petitioner and the petitioner has also been deprived of his retiral benefits.

9. The respondents have denied and disputed the entire claim of the petitioner, contending that the grounds as taken by the petitioner, are misconceived and the petitioner is not entitled to any of the relief(s) claimed by him.

10. Explaining the stand taken, learned Counsel for the respondents raises the following grounds.

I. The present writ application is not maintainable in view of the fact that the petitioner has not challenged the order of his discharge. Instead, the order

impugned in this case, is the Movement order which was passed pursuant to the order of his discharge.

II. Contrary to the petitioner's claim that he was not served with the copy of the discharge order, the fact is that the petitioner was served with the discharge order, but he had refused to sign on the discharge certificate and this fact has been confirmed by as many as five witnesses who have put their respective signatures on the copy of the discharge certificate as appearing in Annexure-F.

III. The order of the Appellate Authority dismissing the petitioner's appeal filed against the order of discharge was effectively communicated to the petitioner vide letter dated 16.6.1999 issued under the signature of the GOC and Commanding Officer 23 Infantry Division and the reasons for dismissal of his appeal was also mentioned in the order.

IV. As indicated in the order of discharge, such order was passed on the ground that he was found to be undesirable soldier and his discharge was sanctioned by the General Officer Commanding, 23 Infantry Division.

V. Before passing the order of discharge, he was served with the show-cause notice on 14.10.1998 and the time for filing show-cause reply was extended from time to time till 30.10.1998, but the petitioner did not chose to file reply of the show-cause notice.

VI. While the order of discharge has been passed by the competent authority, the impugned Movement order was issued under the signature of the Adjutant in his officiating capacity as Commanding Officer.

VII. The petitioner having served only 13 years, and thereby not having completed the qualifying period of service for drawing pension, he cannot claim pension. I However, he is entitled for payment of gratuity.

11. As it appears from the facts stated, the concerned Superior Officer of the petitioner had found the petitioner's service as unsatisfactory. Such finding appears to have been recorded on the facts that during the tenure of his service, he has earned as many as four adverse red marks and minor punishments were also imposed upon him in the past for his alleged acts of misconduct. It also appear that prior to the decision to discharge the petitioner, a show-cause notice was served up on the petitioner and time for filing replies to the show-cause notice was extended from time to time. As it appears, the petitioner did not chose to file any reply to the show-cause notice on one plea or the other.

12. It also appears that the admitted fact that the petitioner had preferred an appeal against the order of his discharge, confirms that the discharge order was communicated to him. It also appears from the records that pursuant to the impugned order of discharge, the discharge certificate was also prepared which fact is confirmed by the signature of as many as five witnesses. The petitioner cannot therefore claim that the discharge certificate was not given to him.

13. Rule 13(3) of the Army Rules, provide for discharge of the Army Personnel. The table appended to Rule 13(3) of the Army Rule 1954, specify the category of officers who may be discharged and the grounds on which the officers can be discharged and the designation of the competent authority who is authorized to discharge. Table also provides for the manner in which discharge order can be passed.

14. It may be noted that the discharge is totally distinct and separate from dismissal, though, in both cases, the effect is of termination of service of the officer under the Army. The termination of the service of the officer by way of his discharge, cannot be equated with his dismissal from service and the discharge therefore cannot be construed as a punishment. The Rules do provide for discharge of an Army Officer if, in the opinion of the competent authority, his performance of his service is found unsatisfactory. The only requirement before passing the order of discharge, as envisaged under the Rule 13(3)III (V) which has been invoked in the case of the petitioner, is that a show-cause notice should be given to the officer of his contemplated discharge. In the instant case, admittedly, the show-cause notice of the contemplated discharge was served upon the petitioner. It further appears from the order of discharge dated 7.11.1998 that it was passed by the Major General, GOC who was admittedly the competent authority in the case of the officers of the rank of the petitioner. The issuance of the Movement order is only a consequence of the discharge order and the Rule does not stipulate that such Movement order has to be signed only by the competent authority. Even otherwise, it has been explained that the Adjutant who had put his signature on the impugned Movement order, was officiating for the Commanding Officer on the relevant date. There is therefore no illegality in the impugned Movement order.

15. The contention of the petitioner that the order of discharge from service amounts to a punishment and such punishment is too harsh and disproportionate to the charges levelled, appears to be misconceived. His contention that he has been subjected to double jeopardy, also appears to be misconceived.

16. As it appears from the admitted facts, for his alleged acts of misconduct, the petitioner was given minor punishments. Such acts of misconduct and the punishment which he had undergone, did constitute the adverse entries in his service records. It is on account of his repeated acts of misconduct during the 13 years tenure of his service, that he had earned as many as four adverse red marks. The order of discharge was taken therefore on the basis of his service records and the opinion formed by the competent authority that his performance in service was not satisfactory and he was not desirous to continue as soldier in the Army, was based on his performance.

17. As regards the petitioner's contention that he was not served with any memo of charge, nor was any departmental proceeding initiated against him, the same also appears to be irrelevant, in view of the fact that as stipulated in the relevant Rules, the only requirement before passing the order of discharge, is

that the officer should be served with the show-cause notice. The Rule does not stipulate it the memo of charge should be served upon the officer or that the departmental proceeding should be conducted against him before passing the order of discharge.

18. As regards the petitioner's apprehension that he would be illegally deprived of his retiral benefits, it appears that such apprehension is also misconceived. The respondents have assured that the petitioner would be entitled to payment of gratuity, as per the Army rules, though he may not be entitled to pension in view of the fact that he had not completed the minimum qualifying period of 15 years of service for gaining eligibility for pension.

19. In the light of the facts and circumstances of the case and the discussions made above, I do not find any merit in this writ application and therefore, the same is dismissed.