

(2012) 08 DEL CK 0230
In the Delhi High Court
Case No : Writ Petition (C) 4961 of 2012

Bharat Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0230

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : S.M. Dalal, for the Appellant; Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—OA No. 36/2011 filed by the petitioner before the Armed Forces Tribunal laid a challenge to the order of dismissal passed against the petitioner at a Summary Court Martial held on December 08, 2003 against which statutory and non-statutory representations to the Competent Authority were dismissed. The Tribunal has noted that when the petitioner absented from the drill parade on November 29, 2003, it was not a simple act of being absent, but had an element of challenge to the authority of the Armed Forces. The Tribunal has noted that the petitioner, of his own, left for his house on October 12, 2003 and on October 20, 2003 his father, a retired JCO, brought him to the Unit and the Second In-Command of the Unit in the presence of Subedar Major and the Sub-Unit Commander gave audience to father and son, during which meeting the petitioner kept on insisting that he did not want to continue to serve in the army.

2. At the trial, five witnesses deposed that despite being counseled to mend his ways, the petitioner insisted that he was not willing to serve the army any longer. The Tribunal has further noted that at the trial the petitioner made a statement that he joined the army under great pressure from his parents and that he did not wish to serve where one was to be on 24 hours duty. He stated that he would not attend the parades etc.

3. Learned Counsel for the petitioner states that in that view of the matter, the petitioner should be discharged from service.
4. Now, the petitioner joined service as a Sepoy on July 31, 1998 and the impugned order is dated December 08, 2003.
5. To the respondents it would make no difference whether the petitioner stands dismissed from service or stands discharged from service inasmuch as the petitioner has not rendered pensionary service nor would he be entitled to any gratuity etc. No benefit whatsoever, as an ex-serviceman, would be available to the petitioner, and lest there be any doubt, we take on record the statement made by Learned Counsel for the petitioner that if this Court were to convert the impugned order into one of discharge from service the petitioner would not claim any pecuniary or non-pecuniary benefit from the respondents.
6. The petitioner is aged 34 years today and is over-age for public employment. Thus, it is not a case where the petitioner would gain any benefit if it is directed that he should be discharged from service, except that a stigma of a person dismissed from service would be washed away.
7. Keeping in view the fact that the petitioner had wanted to be discharged from the service and he disobeyed the command to attend the morning drill thinking that this would compel the authorities to discharge him from service, we dispose of the writ petition issuing a mandamus to the respondents not to treat the petitioner as a Sepoy dismissed from service and instead treat the petitioner as discharged from service with effect from December 08, 2003.
8. Needless to state the petitioner would not be entitled to any pecuniary or non-pecuniary benefits from the respondents as a result of he being treated as discharged from service, except that we direct that a discharge certificate be issued as per which it would be recorded that the petitioner stands discharged from service with effect from December 08, 2003. No costs.