

(2007) 02 DEL CK 0197

In the Delhi High Court

Case No : Writ Petition (C) 5649 of 2006

Ex. Clk. Sajjan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Army Rules, 1954 — Rule 11(2)

Citation : (2007) 141 DLT 661 : (2007) 95 DRJ 162

Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : D.N. Sharma, for the Appellant; Adarsh Priyadarshi, for the Respondent

Final Decision : Allowed

Judgement

T.S. Thakur, J.—In this petition for a writ of certiorari, the petitioner calls in question the correctness of an order dated 17.01.2005 passed by the Officer-in-charge Artillery, Records, Nasik Road Camp discharging the petitioner from service at his request, which request according to the petitioner, stood withdrawn by him before the discharge was sanctioned.

2. The petitioner was enrolled as Naik Clerk in 74, Medium Regiment of the Indian Army on 31.01.2001. In July, 2004 he was transferred in the same capacity to 27, Mountain Artillery Brigade where he reported for duty on 30.07.2004. The authorities in charge of 27, Mountain Artillery Brigade found the petitioner to be professionally weak and described him as an unwilling worker who lacked initiative and was not able to work under stress and strain. In terms of an order dated 30.09.2004 issued by 27, Mountain Artillery Brigade, the petitioner was repatriated back to his parent regiment. The communication also indicated that the petitioner was ready to proceed on discharge and a copy of the application submitted by the petitioner to that effect enclosed and forwarded to the parent unit of the petitioner. From the official record made available to us by learned Counsel for the respondents, it appears that the Commanding Officer of

74, Medium Regiment accepted the request made by the petitioner for voluntary discharge on 14.12.2004 and the petitioner sent for completion of the formalities to the Artillery Records which in turn passed an order on 17.01.2005 discharging the petitioner w.e.f. 31.03.2005. A copy of the said order has been enclosed by the petitioner as Annexure P4 to the writ petition.

3. The petitioner's grievance in the above backdrop is that the sanction of his discharge by the Commanding Officer on 14.12.2004 followed by the discharge order passed by the Artillery Records on 17.01.2005 is illegal and wholly unjustified keeping in view the fact that the request made by the petitioner for voluntary discharge had been withdrawn by him in terms of two different communications, one dated 02.11.2004 and the other dated 06.11.2004 addressed to the Commanding Officer of the unit through proper channel. It is contended by Mr. D.N. Sharma, counsel appearing for petitioner that although first of the withdrawal letters dated 02.11.2004 does not bear any acknowledgment about the same having been submitted to the Commanding Officer, there is a proper acknowledgment on the second letter dated 06.11.2004 as is evident from the endorsement made on the second page of the said letter. It was contended that once the request for voluntary discharge stood withdrawn by the petitioner before the Commanding Officer who had sanctioned the discharge acting upon the said request, there was no reason for the Commanding Officer sanctioning discharge nor was there any justification for the Artillery Records to issue a discharge order ignoring, in the process, letters of withdrawal formally submitted by the petitioner. Reliance was placed by Mr. Sharma upon Rule 11(2) of the Army Rules, 1954 apart from a decision of a Division Bench of this Court in Shashi Pal Sharma Vs. Govt. of NCT of Delhi and Others, It was urged by Mr. Sharma that not only the Scheme of the Army Rules but even the general Principles of Law entitled the petitioner to withdraw the request for voluntary discharge from service at any stage before the said request had been accepted by the competent authority. The submission of withdrawal letters not being in dispute in the instant case, it was not open to the Commanding Officer or any other authority, for that matter, to send the petitioner out of the service, his conduct and deficiencies reported by the 27, Mountain Artillery Brigade notwithstanding.

4. On behalf of the respondents it was, on the other hand, argued by Mr. Adarsh Priyadarshi that the withdrawal letter dated 02.11.2004 did not bear any acknowledgment about its submission to the Commanding Officer and that even letter dated 06.11.2004 relied upon by the petitioner did not contain any cogent reason for withdrawal of the request for discharge. It was submitted that in the absence of a cogent reason a request for voluntary discharge from service could not be withdrawn by the petitioner at his will.

5. We have given our anxious consideration to the submissions made at the bar and perused the record.

6. The material facts as already noticed above are not in dispute. It is not in

dispute that the petitioner was substantively holding the post of Naik Clerk in his parent battalion. It is also not in dispute that the petitioner's service has been terminated not because of any enquiry or other misconduct on his part but on account of a request made by him for voluntary discharge from service. That a request for voluntary discharge made by any one serving under the State could be withdrawn at any time before the same is accepted, is a fairly well settled Principle of Law. There is nothing in the Army Act nor in the Army Rules and Regulations nor was any provision in the same pointed out to us by which a request for discharge on compassionate grounds attains finality and simply because it has been submitted. There is no provision that debars a person making a request for discharge from changing his mind and withdrawing his request. In the absence of any such disabling provision the General Principle of Law applicable to other services that a resignation letter or a request for discharge can be withdrawn before its acceptance, should be applicable to persons serving in the Armed Forces also. If that be so as it indeed is, we fail to appreciate how the Commanding Officer could have sanctioned the discharge of the petitioner even when he had received a request from the petitioner withdrawing the same. The withdrawal letter rendered wholly ineffective and non-existent the request for discharge earlier made by the petitioner, which could then hardly provide a basis for the Commanding Officer to proceed in the matter and to accept the same. Even assuming that the request had been made after the discharge stood sanctioned by the Commanding officer but before the discharge had actually become effective which event in the instant case took place on 31.03.2005 in terms of Artillery Records letter dated 17.01.2005, the Commanding Officer ought to have forwarded the request for withdrawal to the next higher officer in terms of Rule 11(2) of the Army Rules, 1954 which reads as under:

11. Discharge not to be delayed

(1) XXXXXXXX

(2) The discharge of a person, validly sanctioned by a competent authority, may, with the consent of the discharged person, be cancelled by any authority superior to the authority who sanctioned the discharge either without any conditions or subject to such conditions as such discharged person accepts.

7. There is no Explanation forthcoming from the respondents as to why the petitioner's request for withdrawal of the resignation was not considered either by the Commanding Officer or forwarded for consideration to the next superior officer. The only Explanation that the counter affidavit attempts to advance for ignoring the letter submitted by the petitioner is that the request was not addressed to 74, Medium Regiment. As a matter of fact, para 6 & 7 of the counter affidavit filed by the respondents refers to "This HQ" and alleges that no request for withdrawal of the resignation was received by the headquarter. The counter does not explain as to which headquarter was supposed to deal with the matter and how the petitioner could possibly approach the headquarter directly

when his conduct rules require him to submit all communications through proper channel which he had done in the instant case as is evident from the endorsement recorded in the letter of withdrawal dated 06.11.2004. Suffice it to say that the discharge of the petitioner passed on the letter earlier submitted by him for such discharge was in the facts and circumstances wholly unjustified.

8. Learned Counsel for the respondent lastly argued that since the petitioner has signed a certificate of discharge produced with the writ petition as Annexure P5, he must be deemed to have acquiesced in the discharge. We need to notice this argument only to reject the same. In a disciplined force like the army once an order is passed by the officer even when the personnel against whom the same is passed may be dissatisfied with the same, he has no option but to follow the instructions contained therein. Signature of the petitioner on the certificate of discharge cannot therefore be taken to be his acquiescence in the discharge order. The petitioner could and was perfectly justified in challenging the discharge in the present proceedings especially when the request for discharge stood withdrawn by him long before he was discharged, and the sanction could become effective.

9. The next question is the relief to which the petitioner would be entitled as a consequence of the discharge being found illegal. There is no difficulty in so far as the reinstatement of the petitioner in the post earlier held by him is concerned, although according to the respondents the petitioner is a man who does not measure up to the requirement of the job that has been assigned to him being professionally weak and one not willing to work. The question, however, is whether the petitioner should be held entitled to wages for the period between the date of his discharge till the date he is actually reinstated in service. To the credit of Mr. Sharma, counsel appearing for the petitioner, we must mention that he did not press for the grant of backwages either in full or in part. He urged that if the petitioner is reinstated in service and his seniority restored he would be satisfied even without backwages.

10. In the circumstances, Therefore, we allow this petition with the following directions:

- 1) The impugned order of discharge of the petitioner from service dated 17.01.2005 issued by the Artillery Records, Nasik Road Camp shall stand quashed.
- 2) The petitioner shall stand reinstated as Naik Clerk in his parent unit i.e. 74, Medium Regiment.
- 3) The petitioner shall be entitled to all other benefits including seniority as a consequence of reinstatement but shall not be entitled to any emoluments or backwages for the period he has remained out of service.
- 4) The parties are left to bear their own costs.

11. Order dusty to both the parties.