

(2008) 06 UK CK 0041

In the Uttarakhand High Court

Case No : Writ Petition No. 1229 (SIS) of 2006

Ex. Rect. Rakesh Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-06-2008

Acts Referred:

Army Rules, 1954 — Rule 13, 13(3)(4)
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 363, 366A, 376

Citation : (2008) 3 UC 1694

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Lalit Kumar, for the Appellant; Arvind Vashistha, Asstt. S.G., for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of Constitution of India, the Petitioner has sought writ in the nature of mandamus commanding the Respondents to reinstate the Petitioner in service with all consequential benefits.

2. Heard learned Counsel for the parties.

3. Brief facts of the case, as narrated in the writ petition, are that the Petitioner got enrolled in the Corps of Engineers of the Regular Army as a Driver on 22nd May 2003. He was sent for training to Training Battalion, Bengal Engineers Group, Centre Roorkee, under the command of Respondent No. 2. It is alleged that the Petitioner completed the basic military training but on 6th May 2004, he developed pain in the abdomen and got admitted in Military Hospital, Roorkee. It is further alleged that on 11th May 2004, Petitioner received a telephonic message from Sonapat that some hooligan had tried to rape his younger sister. In these circumstances, he took discharge from Military Hospital and after informing his Senior JCO, he left to his native place Sonapat. On reaching home,

he enquired about his sister and the offender. He came back on 18th May 2004 to Military Hospital, Roorkee, for further treatment as he was still having pain in his abdomen. On 20th May 2004, according to the Petitioner, after getting discharge No. 11. Military Hospital, he reported back to the Battalion. Thereafter, Petitioner continued his training till, 21st May 2004. However, on 27th July 2004. Petitioner was arrested by Haryana Police in a case lodged against him. He remained in judicial custody in civil jail on charge of rape. Meanwhile, on 17th March 2005, the Petitioner was served with a show cause notice, directing him to explain by 31st March 2005, as to why he should not be discharged from service under the Army Order 29/80, revised Army Order 28/2001/0V read with Army Rule 13(3) (IV). It is further stated in the writ petition that the Petitioner could not reply said notice. On 13th April 2006. Petitioner got acquitted from the court, of the charge levelled against him. However, when he came on 19th April 2006 to report to the Battalion, he was informed that he has already been discharged from the service. Hence, this writ petition.

4. On behalf of the Respondents counter affidavit has been filed. It is admitted in the counter affidavit that the Petitioner got enrolled in the Army on 22nd May 2003 through recruitment office Charkhi Dadri. It is also admitted that Petitioner remained in Military Hospital, Roorkee, w.e.f. 6th May 2004 till 11th May 2004, for pain in his abdomen. It is also admitted in the counter affidavit that show cause notice was served on the Petitioner. The rest of the contents of writ petition as stated are not admitted. It is stated in the counter affidavit that instead of reporting, to duty on 11 & May 2004, the Petitioner remained absent without leave from 12th May 2004 to 18th May 2004 by forging the discharge slip which was purported to have been issued by the Military Hospital, Roorkee. It is further stated in the counter affidavit that on 18th June 2004 a Police party from Police Station Gohana, District Sonapat, came to the training Battalion along with non-bailable warrant, issued by Judicial Magistrate against the Petitioner for his arrest in respect of the F.I.R. No. 46 dated 16th May 2004, relating to offences punishable under Sections 363, 366A and 376 I.P.C.. It appears that the Petitioner was arrested and produced before the Judicial Magistrate, Gohana. Meanwhile, according to the Respondents, two show cause notices were issued to the Petitioner. The reply was given by the Petitioner on 7th April 2005. However, the same was not found to be satisfactory. Thereafter, in view of the Petitioner's involvement in the criminal case, he was discharged from the Army under Rule 13(III)(IV) of Army Rules, 1954, a copy of which is Annexure CA-6 to the counter affidavit. It is further stated in the counter affidavit that a court of inquiry investigated the matter, relating to absence of the Petitioner from duty after his discharge from Military Hospital.

5. In the rejoinder affidavit the Petitioner has reiterated the averments made in the writ petition.

6. The first objection raised on behalf of Respondents against this writ petition is that the Petitioner has not sought quashing of the discharge order from Army as

such no order of reinstatement can be passed. In reply to this, learned Counsel for the Petitioner stated that he has not been served with the discharge order (copy of the discharge order, is annexed as Annexure 6 to the writ petition).

7. Sri Lalit Kumar, learned Counsel for the Petitioner drew attention of this Court to Rule 13 of the Army Rules, 1954 and argued that the Petitioner's discharge from the service is not in accordance with law. In this connection he referred to Annexure 3 to the counter affidavit and submitted that show cause notice has been served as to why the Petitioner be not discharged from the service for being inefficient and undesirable soldier. He drew attention of this Court to Column 4 of Rule 13(III)(IV) of the Army Rules, 1954, and argued that the ground of "undesirability is not mentioned in the Rule. However, perusal of the Rule does show that a recruit who is considered unlikely to become efficient soldier can be dealt under the Rule for his discharge from the Army. It is not disputed between the parties that on 6th May 2004, Petitioner got admitted in the Military Hospital. It is also not disputed that he left Military Hospital on 11th May 2004. It is also not disputed that again he reappeared on 18th May 2004. There is no application for leave, made by the Petitioner, who was still a recruit, and had not completed his training period. Admittedly, the Petitioner appears to have been involved in a rape case during the period he remained absent and in that connection got arrested in July 2004. A recruit, who had that kind of conduct during his recruitment period, from no stretch of imagination can be said to be likely to be an efficient soldier. The reply given by the Petitioner to the Respondent authorities in connection with show cause notice is filed as Annexure 5 to the counter affidavit, in which he has admitted that he was likely to remain in jail and could be acquitted as he has got the matter compromised / compounded.

8. In view of the facts and circumstances of the case relating conduct of the Petitioner, and having considered the submissions of learned Counsel for the parties, this Court is not inclined to grant the relief sought by the Petitioner in this case. Therefore, the writ petition is liable to be dismissed. The same is dismissed.